

NOTE:

The above Clause number 49 and 50 shall apply only to 'measurable items', as defined below:

All MS and DI pipelines shall be measurable items.

Measurement shall be done as per IS 1200; in running meters, for each different diameter and class of pipeline. All items, other than the MS and DI pipelines, are considered as not measurable and no variation or alteration shall be allowed in non-measurable items.

Valuation of variation in quantities of measurable items shall be done as per clause number 50 in section C on page 24 and 25 of tender document. The unit rate for such valuation shall be derived from the pipeline costs quoted by the bidder in the appropriate column of tables titled 'ITEM RATE OFFER' and 'OPTIONAL RATES FOR DI K7 PIPES AND OF PN 16 RATINGS' under clause 3.1 of the 'FINANCIAL BID DOCUMENT'.

51. PLANT TEMPORARY WORKS AND MATERIALS

1. **Plant, etc. exclusive use for the works** – All Constructional Plant, Temporary Works and materials provided by the Contractor shall, when brought on the Site be deemed to be exclusively intended for the execution of the Works and the Contractor shall not remove the same or any part thereof, except for the purpose of moving it from one part of the Site to another, without the consent, in writing, of the Engineer which shall not be unreasonably withheld.
2. **Removal of plant, etc.** – Upon completion of the Works the Contractor shall remove from the Site all the said Constructional Plant and Temporary Works remaining thereon and any unused material provided by the Contractor to the satisfaction in the Engineer.
3. **Employer not liable for damage to plant, etc.** – The employer shall not at any time be liable for the loss of or damage to any of or damage to any of the said Constructional Plant, Temporary Works or materials.
4. **Octroi, Sales tax, Cess and other imposts.** – The Contractor shall pay Octroi, Sales Tax, VAT, Cess, Work Contract Tax and all other taxes, duties and charges as may be applicable from time to time in respect of materials purchased by him or plants and equipment brought to Site. No separate payment shall be made for all these and they shall be deemed to have been covered within the Contractor's rates for the finished items of work.
5. **Temporary Works** – At least fourteen (14) days in advance of taking up any temporary works, the contractor shall submit to the Engineer for approval complete drawings of all temporary works he may require for the execution of the Works. He shall, so required by the Engineer, submit his calculations relating to the strength of the temporary works proposed. Modifications that the Engineer may require shall be made by the Contractor at the latter's cost and expenses. At the discretion of the Engineer, a higher stress upto a maximum of twenty five percent (25%) in excess of the stress normally allowed for permanent structures may be permitted in the design of temporary works.

Notwithstanding the approval by the Engineer of any of the temporary works, the contractor shall remain wholly responsible for their adequacy, safety, proper maintenance and of all obligations in regard to such works specified or implied in the Contract, until the removal of such works.

52. APPROVAL OF MATERIAL, ETC. NOT IMPLIED

The operation of Clause 51 hereof shall not be deemed to imply any approval by the Engineer of the materials or other matters referred to therein not shall in interfere with rejection of any such materials at any time by the Engineer.

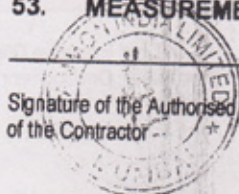
53. MEASUREMENT

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Quantities – The quantities set out in the Schedule of Prices are the estimated quantities of the work, but they are not to be taken as the actual and correct quantities of the Works to be executed by the Contractor in fulfilment of his obligation under the Contract.

54. WORKS TO BE MEASURED

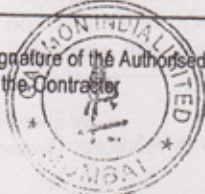
The engineer shall, except as otherwise stated, ascertain and determine by measurement the value in terms of the Contract of work done in accordance with the Contract. He shall, when he requires any part or parts of the works to be measured, give notice to the Contractor's authorized agent or representative, who shall forthwith attend or send a qualified agent to assist the Engineer or the Engineer's Representative in making such measurement, and shall furnish all particulars required by either of them. Should the Contractor not attend, or neglect or omit to send his agent on two consecutive occasions, then in the third occasion the measurement shall be made unilaterally by the Engineer which shall be taken to be the correct measurement of the work. For the purpose of measurement such permanent work as is to be measured by records and drawings at suitable intervals of such work and the Contractor, as and when called upon to do so in writing shall, within fourteen days, attend to examine and agree upon such records and drawings, with the Engineer's Representative and shall sign the same when so agreed. If the Contractor does not so attend to examine and agree upon such records and drawings on two consecutive occasions they shall be taken to be correct. If, after examination of such records and drawings, the Contractor does not agree with the same or does not sign the same as agreed, they shall nevertheless be taken to be correct, unless the Contractor shall, within fourteen days of such examination, lodge with the Engineer's Representative, for decision by the Engineer, a notice in writing giving details of the respects in which such records and drawings are claimed by him to be incorrect together with reasons thereof.

55. BILLS AND PAYMENTS

55.1 Method of Measurement: Except where any general or detailed description of the Work in bills of quantities or schedule of Works/items/quantities expressly shown to the contrary, bills of quantities shall be deemed to have been prepared and measurements shall be taken in accordance with the procedure set forth in the schedule of rates/specifications notwithstanding any provision in the relevant standard Method of Measurement or any general or local custom. In the case of items, which are not covered by the schedule of rates/specifications, measurement shall be taken in accordance with the relevant Standard specifications published by PWD, Govt. of Assam and for the works not covered in this publication; measurements shall be taken as per the codes by Bureau of Indian standards.

55.2 Records and Measurement: The Contractor shall submit to the Engineer the monthly statements of the estimated value of the work completed less than the cumulative amount certified previously. The monthly statements shall be in the bill form specified by the Engineer and it shall be submitted on or before the date instructed by the Engineer. These monthly bills shall be supported with detailed measurements for the gross quantity of the work done duly deducting the gross quantity mentioned in the previous bill. The Contractor is permitted to copy down the corrections in the bills paid as per the Engineers certification. Upon receipt of the bill and measurements by the Contractors, the Engineer shall, except as otherwise stated ascertain and determine by measurement the value in accordance with the contract of work done in accordance therewith. All items having a financial value shall be entered in measurement Book etc. as prescribed by the corporation so that a complete record is obtained of all the Works performed under the contract.

Measurements shall be taken jointly by the Engineer or his organisation representative and by the Contractor or his organisation representative. Before taking measurements of any work the Engineer or the person deputed by him for the purpose shall give a reasonable notice to the Contractor. If the Contractor fails to attend or send an organisation representative for measurement after such a notice or fails to countersign or the objection within a week from the



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date of measurement, then in any such event measurement taken by the Engineer or by the person deputed by him shall be taken to be correct measurements of the works and shall be binding on the Contractor.

The Contractor shall, without any extra charge, provide assistance with every appliance and other things necessary for measurements. Measurements shall be signed and dated by both parties each day (of taking measurement) on the site on completion of measurement.

55.3 Payments of Bills and Other Claims: The payment of bills and other claims arising out of the contract will be made by Account Payee Cheque drawn in the name of 'Contractor'.

55.4 Full Provisions: The rates inserted by the Development Authority against various items of Work detailed in various parts of scheduled shall be deemed to include every allowance necessary, without extra measurement or charge for meeting the requirement of various components/ parts of the contract documents (particular specifications, PWD of standard specifications, Assam schedule of rates, MOST specifications, BIS specifications, Special Conditions, preambles and notes to schedule of items description of schedule items which shall all be read together and any or of the following unless specifically provided for the contrary.

- a) Compliance with all the conditions of contract including Scope of work, General Conditions of Contract, schedule of rates and Quantities, Particular Specifications, Drawings including Notes thereon, Specifications in standard Specifications of PWD of Assam and relevant Indian Standard Specifications wherever applicable. However, in case of any discrepancy between drawing and tender, the tender item and specification shall prevail. If there is discrepancy in tender specifications, the order of preference shall be 1st specification of Assam State PWD, MOST and lastly BIS.
- b) All labour, materials, tool and plants, equipments and transport which may be required in preparation for and in the full and entire execution and completion of the Works including waste of materials, carriage and cartage, carrying in, return of empties, hoisting, setting, fixtures and fittings in position.
- c) Local conditions: Nature of Works, local facilities for supply of labour and materials accessibility's to sites and all other matters effecting the execution and completion of the Works.
- d) Duties etc: Payments of any Octroi, Terminal Tax, Sales Tax, Turnover Tax, Contract Sales Tax, Toll Tax, Ground Rent, Royalty, Environmental Cess, and Local Bodies Cess, Taxes or any duties on materials obtained for the Works and any duties in respect of patent rights.
- e) Supervision: Competent supervision of the Work.
- f) Labour: Reasonable terms and conditions of employment, liability to pay compensation, Wages as per statutory enactment's, temporary accommodation, sanitation, compliance with contract labour act 1970 (Regulation and Abolition).
- g) Water: Provision of all water required including temporary plumbing and connection.
- h) Temporary Work Shops, Stores, Offices, Labour Camps etc. Provisions of such structures required for efficient execution of the Works and removing and cleaning up site on completion of Works.
- i) Precautions Against Risks: Precautions to prevent loss or damage from all or any risk, insurance of sheds or any temporary accommodation provided by the Development Authority watching and lighting, provisions pertaining to the General Conditions of Contract.
- j) Notices, Fees etc.: Compliance with statutory provisions of regulations and/ or bye laws of any local authority and/ or any public service company or authority affected by the Works.
- k) Setting the Works including all apparatus required.
- l) Site Drainage: Removal of all water that may accumulate due to spring, sub soil water, flood/tides and any other causes on the site during the progress of the Work.
- m) Execution of Work in Workmanlike manner, facilities for inspection etc.
- n) Rectification of bad Work: Rectification and/ or removal and reconstruction of any Work which (as decided by the Engineer) has been executed with unsound or imperfect

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- materials or unskilled Workmanship or of a quality inferior to that contracted for, whether during construction or reconstruction prior to the expiry of the Defect Liability period.
- o) Responsibility for damages and loss of all construction materials etc., at the site until handing over to the corporation.
 - p) Removal of Rubbish: Removal of Rubbish & debris & cleaning of any dirt before handing over all completion of works.
 - q) Cleaning site and Works: Removal by the Contractor off the site, of any tools, plats & materials and sweeping building, washing floors, cleaning joineries & removal of splashes of asphalt leaving the whole site neat and tidy.
 - r) Completion: Completing the Work to the satisfaction of the Engineer on or before stipulated the date of completion.
 - s) Difficult position: Accessibility or otherwise to site, easy or difficult position in Works.
 - t) Errors: Rectification of all defects during construction & defect liability period to the satisfaction of Engineer.
 - u) Curved Works etc. Works of any quantity, size or shape whether level, inclined, curved, battered etc.
 - v) Maker's Instruction: Compliance with maker's instructions in the case of proprietary articles, factory made good of pre-cast items.
 - w) Waste: All waste laps, seams, and joints (rough or fair cutting) straight / raking, circular and making good.
 - x) Artificial Lights: To include all lighting/Kerosene or electric power as the case may be when the need arises for use of lighting while carrying out Works.
 - y) Construction of approaches to the site of Work: Making arrangements for proper access to Works in the form of stairs, ladders, lifts etc. as ordered by the Engineer for proper supervisions, testing and or inspection of Works including material during construction & defect liability period.

55.5 Interim Payment: For details of payment and mode of the same, of the 'Financial bid' should be referred to, which shall supersede all other modes mentioned anywhere else in the entire document.

55.6 Modification of Interim Certificate: An interim certificate given relating to Work done or material delivered may be modified or corrected by any subsequent interim certificate or by the final certificate. No certificate of the Engineer supporting an interim payment shall of itself be conclusive evidence that any Work or materials to which it relates is/are in accordance with the contract.

55.7 Income Tax: The Contractor shall pay Indian Income Tax on all payments made to him under the Contract, other than reimbursements made to him by the Development Authority to cover payment by Contractor of minor custom duties etc., or any other payment which the Contractor may make on the Development Authority's behalf. Under the provisions of Sec. 194-C of the Indian Income Tax Act, the Development Authority is required to deduct Tax with surcharge at source at prevailing rates from the gross amount of each bill submitted. Any expatriate site staff or staff not normally residents of India, employed by the Contractor shall pay personal Income Tax on all money earned and paid in India. The Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such laws and regulations.

55.8 Payment of Taxes: The contractor shall pay all the taxes directly to respective organizations & to the Government. The Development Authority shall not take any responsibility for any kind of tax payment to the Government or semi Government bodies at any point of time.

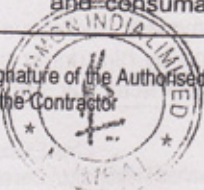
The prices quoted by the Contractor shall include all customs duties, import duties, excise duties, business taxes, income and other taxes that may be levied in accordance to the laws and regulation in-force on the Contractor's Equipment, materials, supplies (permanent, temporary and consumables) to be used on or furnished under the contract and on the services to be

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performed under the contract. Nothing in the contract shall relieve the contractor from his responsibility to pay any tax that may be levied on profits made by him in respect of the contract.

The contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such laws and regulations.

All Charges on account of Octroi, terminal or Sales Tax and other duties on material obtained for the Works from any source including the tax applicable as per Assam Sales Tax Act on the transfer of property in the goods involved in the execution of Works contract (re-enacted) Act, 1991 etc. shall be borne by the Contractor. Under the provisions of the Assam VAT Act, 2005/ Assam Sales Tax Act, the Development Authority is required to deduct Turnover Tax at source at the rates prevailing at the time of payments.

The contractor shall submit form - 31 or such other forms as are prescribed under the said act which is required to be produced by the principle employer in the events of any notice by the Sales Tax Department within one month of issue of letter of acceptance.

55.9 Deduction of Contract Sales Tax / Turnover tax: The Contractors are required to produce their registration for contract sales tax/turnover tax to the department before releasing the bill for the Work executed by them, failing which, no payment shall be released.

55.10 Provisional Sums

- (1) "Provisional sum" means a sum included in the contract and so designated in the Bill of Quantities for the execution of Work or supply of goods, materials or services or for contingencies, which sum may be used, in whole or in part, or not at all, at the direction and discretion of the Engineer. The contract price shall include only such amounts in respect of the Work, supply or service to which such provisional sum relate as the Engineer shall approve or determine in accordance with this clause.
- (2) In respect of every provisional sum the Engineer shall have power to order to execute the Work, including goods, materials or services to be supplied by the Contractor. The contract price shall include the value of such Work executed or such goods, material or services supplied determined in accordance of provision of this tender.
- (3) The Contractor shall produce all quotations, invoices, vouchers and accounts or receipts in connection with expenditure in respect of provisional sums.

55.11 Rates for Excess in Items: No claim shall be entertained for quantities of work executed being either more or less than those entered in the tender or estimate in form of extra rate.

55.12 Rates for Extra Items: No extra rates for extra item shall be allowed. Extra works cannot be taken up without written order of the Engineer.

55.13 Overpayment and Underpayment: Whenever any claim for the payment of a sum to the Development Authority rises out of or under this contract against the Contractor the same may be deducted by the Development Authority from any sum then due or which at any time thereafter may become due to the Contractor under this contract and failing that under any contract with the Development Authority or from any other sum due to the Contractor from the Development Authority (which may be available with the Development Authority) or from his security deposit/retention money, or he shall pay the claim on demand.

The Development Authority reserves the right to carry out post payment audit and technical examination of the final bill including all supporting voucher, abstracts etc. The Development Authority further reserves the right to enforce recovery of any over payment when detected.

If as a result of such audit and technical examination any overpayment is discovered in respect of any Work done by the Contractor or alleged to have been done by him under the Contract, it shall be recovered by the Development Authority from the Contractor by any or all of the

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methods prescribed above or if underpayment is discovered the amount shall be duly paid to the Contractor by the Development Authority.

Provided that the aforesaid right of the Development Authority to adjust overpayment against amount due to the Contractor under any other contract with Development Authority shall not extend beyond the period of two years from the date of payment of the final bill or in case the final bill is a "Minus" bill, from the date of the amount payable by the Contractor under the "Minus" bill is communicated to the Contractor.

Any amount due to the Contractor under this contract for underpayment may be adjusted against amount then due or which may at any time thereafter become due before payment is to the Contractor, from him to Development Authority on any other contract or account whatsoever.

55.14 Payment of Final Bill: Final joint measurement along-with the representatives of the Contractor should be taken, recorded and signed by the Contractors. Contractor should submit the final bill within 1 month of physical completion of the Work.

If the Contractor fails to submit the final bill within 1 month, the Development Authority staff will prepare the final bill based on the joint measurement within next 3 months.

Engineer's decision shall be final in respect of claims for defect and pending claims against Contractors.

No further claims should be made by the Contractor after submission of the final bill and these shall be deemed to have been waived and extinguished. Payment of those items of the bills in respect of which there is no dispute and of items in dispute, for quantities and rates as approved by the Chief Executive officer shall be made within a reasonable period as may be necessary for the purpose of verification etc.

After payment of the final bill as aforesaid has been made, the Contractor may, if he so desires, reconsider his position in respect of a disputed portion of the final bill and if he fails to do so within 84 days, his disputed claim shall be dealt with as provided in the contract.

55.15 Receipts to be signed in Firm's Name by any One of the Partners: Every receipt for money which may become payable or for any security which may become transferable to the Contractor under these present shall, if signed in the partnership name by any one of the partners, be a good and sufficient discharge to the Chief Executive officer and Development Authority in respect of the money or security purporting to be acknowledged thereby, and in the event of death of any of the partners during the tendency of this contract, it is hereby expressly agreed that every receipt by any one of the surviving partners shall, if so signed as aforesaid, be good and sufficient discharge as aforesaid provided that nothing in this clause contained shall be deemed to prejudice or effect any claim which the Chief Executive Officer or the Development Authority may hereafter have against the legal representatives of any partners so dying or in respect of any breach of any of the conditions thereof, provided also that nothing in this clause contained shall be deemed prejudice or affect the respective rights or obligations of the Contractor and of the legal representative of any deceased Contractors interest.

55.16 No Payment on Account of Price Variation of Labour, Material and POL Component: No material price variation, wages, escalation on individual item on account whatsoever and compensation for 'Force Majeure' etc. shall payable under this contract.

56. REMEDIES AND POWERS

- 1) **Default of contractor** – If the Contractor shall become bankrupt, or have a receiving order made against him, or shall present his petition in bankruptcy, or shall made an arrangement with or assignment in favour of his creditors, or shall age to carry out the

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Contract under a committee of inspection of his creditors or, being a corporation, shall go into liquidation (other than a voluntary liquidation for the purpose of amalgamation or reconstruction), or if the Contractor shall assign the Contract, without the consent in writing of the Employer first obtained, or shall have an execution levied on his goods, or if the Engineer shall certify in writing to the Employer that in his opinion the Contractor :

- a) has abandoned the Contract, or
- b) without reasonable excuse has failed to commence the Works or has suspended the progress of the Works for twenty eight days after receiving from the Engineer written notice to proceed, or
- c) has failed to remove materials from the Site or to pull down and replace work for twenty eight days after receiving from the Engineer written notice that the said materials or work had been condemned and/or rejected by the Engineer under these conditions, or
- d) despite previous warnings by the Engineer, in writing, is not executing the Works in accordance with the Contract, or is persistently or flagrantly neglecting to carry out his obligation under the Contract, or
- e) has, to the detriment of good workmanship, or in defiance of the Engineer's instructions to the contrary, sublet any part of the Contract.

Then the Employer may, after giving fourteen day's notice in writing to the Contractor, enter upon the Site and the Works and expel the Contractor therefore without thereby voiding the Contract, or releasing the Contractor from any of his obligations or liabilities under the Contract, or affecting the rights and powers conferred on the Employer or the Engineer by the Contract, and may himself complete the Works or may employ any other contractor or agency to complete the Works. The Employer or such other contractor may use for such completion so much of the Constructional Plant, Temporary Works and materials, which have been deemed to be reserved exclusively for the execution of the Works, under the provisions of the Contract, as he or they may think proper and the Employer may, at any time, sell any of the said Constructional Plant, Temporary Works used and unused materials and apply the proceeds of sale in or towards the satisfaction of any sums due or which may become due to him from the Contractor under the Contract.

- 2) **Valuation at date of forfeiture** – The Engineer shall, as soon as may be practicable after any such entry and expulsion by the Employer, fix and determine expert, or by or after reference to the parties, or after such investigation or enquiries as he may think fit to make or institute and shall certify what amount, if any, had, at the time of such entry and expulsion been reasonably earned by or would reasonably accrue to the Contractor in respect of work then actually done by him under the Contract and the value of any of the said unused or partially used materials, and Constructional Plant and any Temporary Works.
- 3) **Payment after forfeiture** – If the Employer shall enter and expel the Contractor any money on account of the Contract until the expiration of the Period of Maintenance and thereafter until the costs of execution and maintenance, damages for delay in completion, if any and all other expenses incurred by the Employer have been ascertained and the amount thereof certified by the Engineer. The Contractor shall then be entitled to receive only such sums or sums, if any, as the Engineer may certify would have been payable to him upon due completion by him after deducting the said amount. If such amount shall exceed the sum which would have been payable to the Contractor on due completion by him, then the Contractor shall, upon demand, pay to the Employer the amount of such excess and it shall be deemed a debt due by the Contractor to the Employer and shall be recoverable accordingly.

57. URGENT REPAIRS

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