



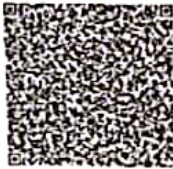
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

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Certificate Issued Date	: 21-Feb-2019 10:52 AM
Account Reference	: IMPACC (IV)/ dl015803/ DELHI/ DL-DLH
Unlque Doc. Reference	: SUBIN-DL81580300312450429238R
Purchased by	: MSDE GOVERNMENT OF INDIA
Description of Document	: Article 5 General Agreement
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: MSDE GOVERNMENT OF INDIA
Second Party	: NBCC INDIA LIMITED
Stamp Duty Paid By	: MSDE GOVERNMENT OF INDIA
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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AGREEMENT

THIS AGREEMENT made this 21st day of Feb 2019, between the **Ministry of Skill Development & Entrepreneurship, Government of India** (hereinafter called the 'Employer') and the terms 'Employer' shall mean and include its heirs, administrators, executors and assigns on **ONE PART**.

AND

NBCC (India) Limited, having its Registered Office at NBCC Bhawan, Lodhi Road, New Delhi - 110 003 (hereinafter called the 'Executing Agency') and the term the 'Executing Agency' shall mean and include its heirs, administrators, executors and assigns on the **OTHER PART**.



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Jyotsna Sitling, IFS

Ministry of Skill Development and Entrepreneurship
भारत सरकार / Govt. of India



(131)

WHEREAS, the vide its Letter of Intent (LOI) No D-11011/4 2017-GA (pt) dated 3-12-2018 as accepted by the Executive agency vide its letter No. NBCC/ED-Engg/KB/2018-19/110 dated 11-02-2019, has agreed for awarding/ entrusting the works relating to **Planning, Designing and Construction of Office Building for the Ministry of Skill Development and Entrepreneurship Government of India i.e. Kaushal Bhawan at New Moti Bagh, New Delhi** (hereinafter referred to as 'Project') to the Executing Agency as deposit work on turnkey basis on the terms and conditions as set out in the LOI and also set forth and where as the Executing Agency has agreed to undertake and complete the works accordingly.

NOW, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS UNDER:


1.0 DEFINITIONS.

In the Agreement, the following expression shall, unless the context otherwise requires, have the meaning, hereby respectively assigned to him

- i) 'Approval' means approval in writing by the designated officer of the Employer.
- ii) 'Executing Agency' means the NBCC India Limited, New Delhi.
- iii) 'Contractor' means the contractor or contractors or suppliers or agencies employed by the Executing Agency for the work or any connected work, including the Executing Agency itself in case any work is done directly by the Executing Agency.
- iv) "Completion" means when the Building(s) Structures(s) are complete in all respects along with associated services i.e ready to occupy and are actually handed over to the Employer.
- v) "CTE" means Chief Technical Examiner.
- vi) "CVC" means Central Vigilance Commission, Government of India.
- vii) "CAG" means Controller Auditor General, Government of India.


2.0 RESPONSIBILITIES OF THE EXECUTING AGENCY

- 2.1 Subsequent to signing of the agreement, the Executing Agency shall take possession of all encumbrances free site from the Employer and shall nominate a responsible Engineer for execution of the project under intimation to the Employer.
- 2.2 The planning, designing of the project shall be done by the Executing Agency. The Executing Agency shall prepare detailed estimates, detailed architectural scheme and service drawings required for execution of the Project after getting the concept and specifications approved from Employer. While detailing the scheme, Executing Agency


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- shall provide only those requirements, which can be accommodated within approved estimated cost, as per priority decided mutually between the Employer & the Executing Agency.
- 2.3 Executing Agency shall prepare preliminary estimates of cost of the various items of work as required by Employer on CPWD plinth area rates (where ever applicable) enhanced by the cost index of the area and market rate analysis for items which are not included in CPWD, PAR, to be worked out as per standard methods.
 - 2.4 Executing Agency shall execute the works at as per actual tendered cost but not exceeding sanctioned cost for project management and planning, designing, consultancy services. In case at detailed design/ execution stage, if there is an increase in this anticipated cost, the Execution Agency shall submit the details of the same with the supporting documents and technical/ administrative justification to the Employer.
 - 2.5 Executing Agency shall prepare the tender documents comprising the technical specification BOQ, General Terms and Conditions, Special Conditions etc. for inviting tenders in consultation with the Employer.
 - 2.6 Issue of Open Tender and award of works to the contractors for different packages of works for Kaushal Bhavan shall be regulated in accordance with the principles enunciated under GFR-2017.
 - 2.7 Executing Agency shall be wholly responsible for any observations/ comments/ defects pointed out by C.T.E/C.V.C/C.A.G in the planning & procedures of execution of this project.
 - 2.8 Executing Agency shall be fully responsible for the timely completion, the quality and structural safety of the construction.
 - 2.9 Any defects discovered and brought to the notice of the Executing Agency during the period aforesaid shall be rectify by the contractor appointed by the Executing Agency. Executing Agency shall ensure that in the event of the failure on the part of the Contractor, the same may without prejudice to any other rights available to it in law, be rectified by the Executing Agency at the cost and expense of the Contractor.
 - 2.10 The Executing Agency shall unless otherwise specified be fully responsible for procurement of all materials and services for the Construction activity.
 - 2.11 During the various stages of execution, Executing Agency shall submit monthly progress reports with site photographs.
- 3.0 RESPONSIBILITIES OF THE EMPLOYER.**
- 3.1 The Employer shall demarcate and make available the site for individual project free of all encumbrances or charges.


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3.2 The Employer shall exercise its responsibility as the Owner of the Project by signing the drawings required for Statutory Authorities and also by giving necessary authorization to Executing Agency to secure approvals from local bodies of statutory authorities for the planning, construction as contemplated in this agreement from time to time. However, the Employer shall help the Executing Agency to the extent of writing letters to local bodies regarding getting such approvals.

3.3 Employer or any person authorized by them may inspect and check the 'Construction Work' from time to time to see that the building are being constructed as per drawings & specifications as provided in the approved Estimate. If during the inspection, any defects or variation without the written request of the Employer are found shall be rectified by the Execution agency at their own cost.

3.4 Employer shall release the funds/payments promptly to ensure that the progress of work should not hamper due to non-availability of fund.

3.5 Employer shall make all the statutory payments to the local Government or any other statutory body or bodies relating to the project.

4.0 PAYMENT TERMS

4.1 a) Executing Agency shall work on "Deposit work basis" for this project on behalf of Employer and shall be paid the actual cost of work plus the agency charges @7% of the actual cost with ceiling of **Rs. 9.50 Crore** thereon for Project Management, Supervision, Services including Architectural Services for planning, designing, and Consultancy Services as indicated in the Letter of Intent.

b) Escalation: NBCC will provide in its contract with Contractor/Agencies, payment of escalation as per CPWD clause 10 CC.

4.2 The expression 'actual cost of works' shall include the following:

a) All the final payments made to the contractor(s), supplier(s), agency as agreed upon in the tender for the construction of all the buildings, services, related facilities etc.

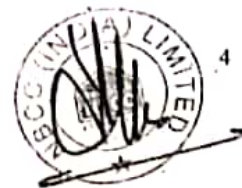
b) All costs of materials acquired for the project and used on the work, either directly or through the contractor(s) including storage charges, carriage and any other incidental charges connected with such materials but excluding the material not incorporated or not handed over to the Employer.

c) Actual cost of site survey, soil testing charges, laboratory charges for testing of any material, manufactured or built items including the cost of cartage of samples to and from the laboratory.

d) The cost towards vetting of design/drawings from any reputed/IIT Institute and/or their services for consulting any matter concerning the project.



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- e) All liabilities of the Executing Agency payable to the contractor/ Sub-Contractor, suppliers and other agencies to the extent these falls within the definition of actual cost as may be left outstanding at the time of payment of final bill provided they have been accepted by the Executing Agency as balance payment against final bill of these agencies.
- f) Service Tax, if applicable, shall be reimbursed to the Executing Agency. Any other tax levied by Govt. after signing this agreement is to be paid extra.
- g) All liabilities arising out of any court decree or arbitration award and /or any additional costs transpiring due to the direction of any Court/tribunal /statutory body and/or any other legal costs including but not limited to the cost of hiring advocates, getting legal opinions, filing of pleadings etc. for the purpose of initiating on behalf of, or defending, itself or the Employer in any suit or arbitration, in respect of any dispute arising out of the Project works done or to be done and/or freeing the site of all encumbrances and/or charges.

This Sub-Clause only addresses disputes/arbitrations/suits with any or all of the Contractors or any other person(s) body/authority. Nothing in this Sub-Clause shall be construed to cover any disputes/arbitrations/suits between the Employer and the Executing Agency, in which case, each party shall bear its own costs.

The parties hereto understand and agree that although these costs will come under actual costs and therefore be borne by the Employer, the same shall not be taken into account for the purpose of calculating the Agency charges except for such costs which as a result of an order/judgment/deccree have resulted in some form of addition or variation in the Project works

4.3 The actual final cost of work shall not include:

- a) Cost of land.
- b) Cost paid by the Employer to local Government or any other statutory body or bodies for getting approvals for the project etc.

4.4 The payments by the Employer shall be made by transfer of funds in a bank account of NBCC (India) Ltd. or through Demand Draft/Cheque/RTGS.

4.5 The Employer shall give initial deposit of 10% (Ten percent only) interest free advance of the estimate cost on signing of the Agreement. This initial deposit would be retained for adjustment against the last portion of the estimated expenditure.

4.6 Employer will further give 10% (Ten percent only) interest free advance of the awarded cost at the time of award of work to the contractor. Executing Agency will recover this advance from the

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contractor from each running bill after 2nd running account bill of the contractor.

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- 4.7 Any bank interest accrued on the deposits/advance shall be pass on to the Employer.
- 4.8 The Executing Agency shall give their monthly reimbursement bill along with their expenditure claim (including agency charges) duly certified by a representative of Executing Agency on the project, for reimbursement of expenditure incurred. The Employer shall release the payment within 15 days of submission of invoices/reimbursement bill by the Executing Agency. On completion of work, the accounts of the works shall be closed and a final statement shall be submitted for settlement along with refund of excess deposit received, if any, audited by a Chartered Accountant.

5.0 COMPLETION OF THE PROJECT

- 5.1 The date of start of the work shall be reckoned from the 15th day after the payment of advance or the date of handing over the site or sanctioned of estimate or approvals of Drawings by the statutory authorities whichever is later.
- 5.2 The work shall be completed in all respect within by 31st December 2020 as indicated in the letter of Intent.
- 5.3 The Executing Agency shall be fully responsible for observance of all labour and other laws applicable in the matter and shall indemnify and keep Indemnified the owner against effect of non-observance of any such laws.
- 5.4 The Executing Agency shall submit completion report with drawings and maintenance schedules to the Employer within 60 (Sixty) day of completion of work.
- 5.5 The defect liability period of this project shall be 12 months after completion of work or taking over of building whichever is earlier. Executing Agency shall be responsible for satisfactory rectification of defects.

6.0 LIQUIDATED DAMAGES

- 6.1 Executing Agency shall be required to complete the construction of project within the period stipulated in this MOU. In case of delay, which may occur due to the reasons beyond the control of Executing Agency, Executing Agency would approach the Employer with full details for extension in time limit for completion of the works.
- 6.2 In case, completion of the project is delayed due to reasons solely attributable to the contractors/Agencies/Suppliers engaged for the project by the Executing Agency, the Executing Agency shall impose liquidated damages @ 0.375 % (Zero point three seven five percent) on


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contract value for each week of delay subject to a maximum of 10% (ten percent) of the awarded contract value and the benefit shall be passed on to the Employer.

3. If the delay in completion is solely attributable to the Executing Agency, the Executing Agency shall be liable to pay as damages to 'EMPLOYER' a sum calculated @ 0.10% (Zero point One zero percent) of the Agency Charges for the balance work for each month of delay, subject to a maximum of 2% (Two percent) of the Agency Charges.
4. In case the project is delayed due to reasons not attributable to Executing Agency beyond the time as fixed there shall be no penalty for the purpose on Executive Agency.
- 5.5 The Executing Agency shall be fully responsible to defend any suits or arbitration cases arising out of project in connection with the work between the Executing Agency and its Contractor(s).
- 6.6 Any compensation levied by the Executing Agency due to non-fulfillment of any clause of the contract by the contractor or any such recovery from the contractor for bad work or any other reasons whatsoever shall be passed on to the Employer.

7.0 FORCE MAJEURE

The Executing Agency shall not be considered in default if delay in completion of the work occurs due to cause beyond its control such as acts of God, natural calamities, civil wars, fire, strike, frost, floods, riots and acts of unsurpassed power. The Executing Agency shall notify 'Employer' in writing within ten days from the date of such occurrence. In the event of delay due to such causes, the completion schedule will be extended for a length of time equal to the period of force majeure. Any expenditure incurred by the Executing agency during the period of force majeure shall be reimbursed by the Employer. In case of closer of work due to the force majeure, any liabilities towards contractor and/or expenditure of the Executing Agency shall be payable by the Employer.

Executing Agency shall not hold responsible any contractor/ agency for the delay/ stoppage of work due to force majeure conditions like natural calamities, civil disturbance, war, etc. and for losses suffered if any, by the Employer on this account. The Executing Agency shall also not be able in any way to bear such losses and no compensation of any kind whatsoever will be payable by the Executing Agency to The Employer. Suitable force majeure clause shall be incorporated in all the agreement entered into by the Executing Agency with the contractors/ agencies.

8.0 ARBITRATION

(For the clients where Permanent Machinery of Arbitration (PMA) is applicable)

- 8.1 In the event of any disputes or difference relating to the interpretation and application of the provisions of the contracts, (whether during the progress of the works or after their completion) the same shall be settled amicably through mutual discussions or shall be referred by either party



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Arbitration of one of the arbitrators in the Department of Public Enterprises to be nominated by the Secretary to the Government of India in charge of the Bureau of Public Enterprises. The Arbitration Act, 1996 shall not be applicable to the arbitration under this clause. The award of the Arbitrator shall be binding upon the parties to the dispute provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Govt. of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary / Additional Secretary when so authorized by the Law Secretary, whose decision shall bind the parties finally and conclusively. The parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator.

3.2 All Arbitration award(s) / court decree(s) in the favour of the contractor (s) shall be borne by the 'Employer'. However NBCC shall not charge Agency Charges on such Arbitration award(s)/ court decree(s) in the favour of contractor(s). The cost of any arbitration award or the cost as a result of any direction of any court in respect of the work done or to be done shall be borne and paid by the Employer

8.3 The Arbitration/ Court cases shall be contested by NBCC on behalf of the Owner and necessary fees and expenditure shall be borne and paid by the Employer.

9.0 JURISDICTION

This agreement is subject to the jurisdiction of ___ only.

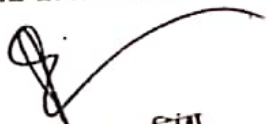
Signed at _____ on this day as mentioned above.

FOR and on behalf of

FOR and on behalf of

"THE EMPLOYER"



NBCC (I) Ltd.

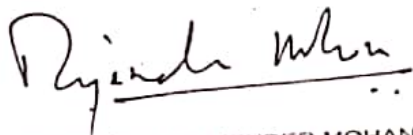

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 योगेश शर्मा / Yogesh Sharma
 कार्यकारी निदेशक / Executive Director
 एन बी सी सी (इंडिया) लिमिटेड
 NBCC (INDIA) LIMITED
 (सरकार द्वारा नियंत्रित) (A Government of India Enterprise)
 एन.बी.सी.सी. भवन, लोधी रोड, नई दिल्ली-110003
 N.B.C.C. Bhawan, Lodhi Road, New Delhi-110003

Witness:

Witness:

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 21/2/19
 Dr. BK RAY
 HOD, MSDE
 Tel: 23465850


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 राजेंद्र मोहन / RAJENDER MOHAN
 उप महासचिव (प्लानिंग) / Dy General Manager (Planning)
 एनबीसीसी (इंडिया) लि. / NBCC (INDIA) LTD.
 (सरकार द्वारा नियंत्रित) (A Govt. of India Enterprise)
 Formerly : National Building Construction Corporation Ltd.
 एन.बी.सी.सी. भवन, लोधी रोड, नई दिल्ली-110003
 N.B.C.C. Bhawan, Lodhi Road, New Delhi-110003
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