

National Highways & Infrastructure Development Corporation Limited

Project Name: Construction of various RCC infrastructure works for Ladakh Police in the Union Territory of Ladakh.

Contract Package No.: NHIDCL/Infra/Ladakh/Police/2020-21

Tender Id: 2020_NHIDC_614007_1

Amendment No. 1

Sl. No.	Reference section/clause no. of RFP	Existing Provision	Modified Provision (To be read as)
1.	Clause 46 of RFP, Page no. 65	Deleted	<p>1. Mobilisation Advance: The Authority shall make an interest-bearing advance payment (the "Advance Payment") @ "Bank Rate + 3%", not exceeding 10 % (ten percent) of the Contract Price, exclusively for mobilisation expenses, if requested by the contractor in writing within one month of the order to commence the work. "Bank Rate" means the standard rate at which Reserve Bank of India is prepared to buy or re-discount bills of exchange or other commercial paper eligible for purchase under the Reserve Bank of India Act 1934.</p> <p>The Advance Payment for mobilisation expenses shall be made in two instalments each equal to 5% (five percent) of the Contract Price. The second 5% (five percent) mobilization advance would be released after submission of utilization certificate by the Contractor for the first 5% (five per cent) advance already released earlier.</p> <p>The Contractor may apply to the Authority for the first instalment of the Advance Payment at any time after issuance of order to commence the work, along with an irrevocable and unconditional guarantee from a Bank for an amount equivalent to 110% (one hundred and ten per cent) of such instalment, substantially in the form provided at Annexure-I, to remain effective till the complete and full repayment thereof.</p> <p>2. Secured Advance against Materials: The contractor, on signing an indenture in the form attached as Annexure-II, shall be entitled to be paid during the progress of the execution of the work up to 75% of the assessed value of any materials which are in the opinion of the Authority non-perishable, non-fragile and non-combustible and are in accordance with the contract and which have been brought on the site in connection therewith and are adequately stored and/or protected against damage by weather or other causes but which have not at the time of advance been incorporated in the works. When materials on account of which an advance has been made under this sub-clause are incorporated in the work, the amount of such advance shall be recovered/ deducted from the next payment made under any of the clause or clauses of the contract.</p> <p>Such secured advance shall also be payable on other items of perishable nature, fragile and combustible with the approval of the Authority provided the contractor provides a comprehensive insurance cover for the full cost of such materials. The decision of the Authority shall be final and binding on the contractor in this matter. No secured advance, shall however, be paid on high-risk materials such as ordinary glass, sand, petrol, diesel etc. and the Authority shall always remain indemnified from losses or consequences thereto.</p>


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General Manager (Tech.)

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Annex - I: Form for Guarantee for Advance Payment

(See Clause 46)

To

_____ [name of Authority]
_____ [address of Authority]

WHEREAS:

- (A) [name and address of contractor] (hereinafter called the "Contractor") has executed an agreement (hereinafter called the "Agreement") with the [name and address of the authority], (hereinafter called the "Authority") for the construction of the.....(name of work)....., subject to and in accordance with the provisions of the Agreement
- (B) In accordance with Clause 46 of the Agreement, the Authority shall make to the Contractor an interest bearing @Bank Rate + 3% advance payment (herein after called "Advance Payment") equal to 10% (ten per cent) of the Contract Price; and that the Advance Payment shall be made in two installments subject to the Contractor furnishing an irrevocable and unconditional guarantee by a scheduled bank for an amount equivalent to 110% (one hundred and ten percent) of such installment to remain effective till the complete and full repayment of the installment of the Advance Payment as security for compliance with its obligations in accordance with the Agreement. The amount of {first/second} installment of the Advance Payment is Rs._____cr. (Rupees_____crore) and the amount of this Guarantee is Rs.____cr. (Rupees_____crore) (the "Guarantee Amount")¹.
- (C) We, through our branch at (the "Bank") have agreed to furnish this bank guarantee (hereinafter called the "Guarantee") for the Guarantee Amount.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful repayment on time of the aforesaid instalment of the Advance Payment under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Contractor, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

A letter from the Authority, under the hand of an officer not below the rank of [General Manager in the National Highways Authority of India], that the Contractor has committed default in the due and faithful performance of all or any of its obligations for the repayment of the instalment of the Advance Payment under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Contractor is in default in due and faithful performance of its obligations during and under the Agreement and its decision that the Contractor is in default shall be final and binding on the Bank, notwithstanding any differences between the Authority and the Contractor, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Contractor for any reason whatsoever

¹ The Guarantee Amount should be equivalent to 110% of the value of the applicable instalment



2. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Contractor and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
3. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Contractor before presenting to the Bank its demand under this Guarantee.
4. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Advance Payment or to extend the time or period of its repayment or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Contractor, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Contractor or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
5. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Advance Payment.
6. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
7. The Guarantee shall cease to be in force and effect on ****² Unless a demand or claim under this Guarantee is made in writing on or before the aforesaid date, the Bank shall be discharged from its liabilities hereunder.
8. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
9. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
10. This Guarantee shall come into force with immediate effect and shall remain in force and effect up to the date specified in paragraph 8 above or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

² Insert a date being 90 (ninety) days after the end of one year from the date of payment of the Advance payment to the Contractor (in accordance with Clause 19.2 of the Agreement).



11. This Guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.
12. This guarantee shall also be operatable at our.....Branch at New Delhi, from whom, confirmation regarding the issue of this guarantee or extension / renewal thereof shall be made available on demand. In the contingency of this guarantee being invoked and payment thereunder claimed, the said branch shall accept such invocation letter and make payment of amounts so demanded under the said invocation.
13. The guarantor/bank hereby confirms that it is on the SFMS (Structural Finance Messaging System) platform & shall invariably send an advice of this Bank Guarantee to the designated bank of NHIDCL, details of which is as under:

S.No.	Particulars	Details
1	Name of Beneficiary	National Highways & Infrastructure Development Corporation Limited
2	Beneficiary Bank Account No.	90621010002659
3	Beneficiary Bank Branch	IFSC SYN0009062
4	Beneficiary Bank Branch Name	Transport Bhawan, New Delhi
5	Beneficiary Bank Address	Canara Bank (erstwhile Syndicate Bank) transport Bhawan, 1st Parliament Street, New Delhi-110001

Signed and sealed thisday of . , 20 at

SIGNED, SEALED AND DELIVERED

For and on behalf of the Bank by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) The address, telephone number and other details of the head office of the Bank as well as of issuing branch should be mentioned on the covering letter of issuing branch.



INDENTURE FOR SECURED ADVANCES

(Refer clause 46)

THIS INDENTURE made theday of20.....
BETWEEN (hereinafter called the Contractor which expression shall where the context so admits or implies be deemed to include his executors administrators and assigns) of the one part and the NHIDCL (hereinafter called the Authority which expression shall where the context so admits or implies be deemed to include his successors in office and assigns) of the other part.

WHEREAS by an agreement dated.....(hereinafter called the said agreement) the Contractor has agreed AND WHEREAS the Contractor has applied to the Authority that he may be allowed advances on the security of materials absolutely belonging to him and brought by him on the site of the works the subject of the said agreement for use in the construction of such of the works as he has undertaken to execute as per contract price (inclusive of the cost of materials and labour and other charges) AND WHEREAS the Authority has agreed to advance to the Contractor the sum of Rupees.....on the security of materials the quantities and other particulars of which are detailed in the Running Account Bill for the said works signed by the Contractor onand the Authority has reserved to himself the option of making any further advance or advances on the security of other materials brought by the Contractor to the site of the said works. NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of Rupeeson or before the execution of these presents paid to the Contractor by the Authority (the receipt whereof the Contractor doth hereby acknowledge) and of such further advances (if any) as may be made to him as aforesaid the Contractor doth hereby covenant and agree with the Authority and declare as follows:-

- (1) That the said sum of Rupees.....so advanced by the Authority to the Contractor as aforesaid and all or any further sum or sums advanced as aforesaid shall be employed by the Contractor in or towards expediting the execution of the said works and for no other purpose whatsoever.
- (2) That the materials detailed in the said Account of Secured Advances which have been offered to and accepted by the Authority as security are absolutely the Contractor's own property and free from encumbrances of any kind and the contractor will not make any application for or receive a further advance on the security of materials which are not absolutely his own property and free from encumbrances of any kind and Contractor indemnifies the Authority against all claims to any materials in respect of which an advance has been made to him as aforesaid.
- (3) That the materials detailed in the said Account of Secured Advances and all other materials on the security of which any further advance or advances may hereafter by made as aforesaid (hereinafter called the said materials) shall be used by the Contractor solely in the execution of the said works in accordance with the directions of the General Manager of PMU - Leh (hereinafter called the General Manager) and in the term of the said agreement.
- (4) That the Contractor shall make at his own cost all necessary and adequate arrangements for the proper watch, safe custody and protection against all risks of the said materials and that until used in construction as aforesaid the said materials shall remain at the site of the said works in the Contractor's custody and on his own responsibility and shall at all times be open to inspection by the General Manager or any officer authorised by him. In the event of the said materials or any part thereof being stolen, destroyed or damaged or becoming deteriorated in a greater degree than is due to reasonable use and wear thereof the Contractor will forthwith replace the same with other materials of like quality or repair and make good the same as required by the General Manager.



(5) That the said materials shall not on any account be removed from the site of the said works except with the written permission of the General Manager or an officer authorised by him on that behalf.

(6) That the advances shall be repayable in full when or before the Contractor receives payment from the Authority of the price payable to him for the said works under the terms and provisions of the said agreement. Provided that if any intermediate payments are made to the Contractor on account of work done than on the occasion of each such payment the Authority will be at liberty to make a recovery from the Contractor's bill for such payment by deducting therefrom the value of the said materials then actually used in the construction and in respect of which recovery has not been made previously the value for this purpose being determined in respect of each description of materials at the rates at which the amounts of the advances made under these presents were calculated.

(7) That if the Contractor shall at any time make any default in the performance or observance in any respect of any of the terms and provisions of the said agreement or of these presents the total amount of the advance or advances that may still be owing to the Authority shall immediately on the happening of such default be repayable by the Contractor to the Authority together with interest thereon at twelve percent per annum from the date or respective dates of such advance or advances to the date of repayment and with all costs charges, damages and expenses incurred by the Authority in or for the recovery thereof or the enforcement of this security or otherwise by reason of the default of the Contractor and the Contractor hereby covenants and agrees with the Authority to repay and pay the same respectively to him accordingly.

(8) That the Contractor hereby charges all the said materials with the repayment to the Authority of the said sum of Rupees.....and any further sum or sums advanced as aforesaid and all costs charges, damages and expenses payable under these presents PROVIDED ALWAYS and it is hereby agreed and declared that notwithstanding anything in the said agreement and without prejudice to the powers contained therein if any whenever the covenant for payment and repayment herein before contained shall become enforceable and the money owing shall not be paid in accordance therewith the Authority may at any time thereafter adopt all or any of the following courses as he may deem best:-

- (a) Seize and utilize the said materials or any part thereof in the completion of the said works on behalf of the Contractor in accordance with the provisions in that behalf contained in the said agreement debiting the Contractor with the actual cost of effecting such completion and the amount due in respect of advances under these presents and crediting the Contractor with the value of work done as if he had carried it out in accordance with the said agreement and at the rates thereby provided. If the balance is against the Contractor he is to pay same to the Authority on demand.
- (b) Remove and sell by public auction the seized materials or any part thereof and out of the moneys arising from the sale retain all the sums aforesaid repayable or payable to the Authority under these presents and pay over the surplus (if any) to the Contractor.
- (c) Deduct all or any part of the moneys owing out of the security deposit or any sum due to the Contractor under the said agreement.

(9) That except in the event of such default on the part of the Contractor as aforesaid interest on the said advance shall not be payable.



(10) That in the event of any conflict between the provisions of these presents and the said agreement the provisions of these presents shall prevail and in the event of any dispute or difference arising over the construction or effect of these presents the settlement of which has not been herein before expressly provided for the same shall be referred to the Executive Director, NHIDCL, HQ at New Delhi whose decision shall be final and the provision of the Indian Arbitration Act for the time being in force shall apply to any such reference.

In witness whereof the saidandby the order and under the direction of the Authority have hereunto set their respective hands the day and year first above written.

Signed, sealed and delivered by
the said contractor in the presence of

Witness

Signature.....

Name.....

Address.....

Signed by

by the order and direction of the Authority

in the presence of



Witness

Signature.....

Name.....

Address.....