



File No.: NESTS/Civil/EMRSOrder/140/2021-22
Comp No.: - 21032

Date: 04.09.2024

To,

CMD/MD,
WAPCOS, MTDC, B&R, TCIL, NPCC, HSCL, MANIDCO and EPIL.

**Subject:- Construction of EMRS- Imposition of Liquidated Damages (LD) for
delay in construction.**

Ref: - Agreement between NESTS and PSUs.

Sir,

Detailed review of EMRS construction works assigned to PSUs has been done with them and it has been observed that the works are lagging behind the schedule altogether for months and years.

The broad reasons for such delay have been identified as under:

1. Delay in meeting the overall timeline as per construction agreement.
2. Delay due to serious quality issues & their rectification.
3. Delay due to poor supervision.
4. Delay in reporting of variation cases.
5. Unsatisfactory work and unsafe structures.

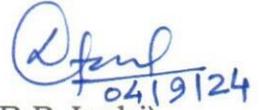
Now, therefore, it has been decided that liquidated damages shall be imposed by NESTS for delays.

The details of delays, provision for imposition of LDs in the construction agreement and amendments made in line with clause 3.22 of the construction agreement are enclosed at **Annexure -I**.

Enforcement of provisions of LDs and its amendments in the Agreement comes into force with immediate effect.

This issues with the approval of the Competent Authority.

Yours faithfully,



(R P Joshi)

Executive Engineer

Copy to: -

- i. Addl. Commissioner NESTS.
- ii. All ZMs of WAPCOS, MTDC, B&R, TCIL, NPCC, HSCL, MANIDCO, EPIL, for intimation.
- iii. PS to Commissioner NESTS.
- iv. CTC-I, NESTS.
- v. Guard File.

1. Delay in meeting the timelines as per Agreement:

As per MoU signed between Construction Agency (PSU) and NESTS, there has been inbuilt provision for imposing penalty for delay in construction. The relevant provisions of MoU are reproduced as under: -

Clause 4.2 - "If the Construction Agency fails to maintain the required progress in terms of para 4.3(a) or 4.3 (b) to complete the work and clear the site on or before extended date of completion, it shall be liable, without prejudice to any other right or remedy available under the law to NESTS on account of such breach, for compensation @ Rs. 10,000/- (Rupees Ten Thousand Only) per week of delay, subject to max. of 10% of service charges. The decision of NESTS regarding amount of compensation and period of unjustified delay shall be final and binding on the construction agency. In case CA recovers any compensation for delay or Liquidated damages from its contractor on account of any unjustified delay, the same shall be credited to NESTS"

2. Delay due to serious quality issues & rectifications:

Clause 3.6 The Construction Agency shall be fully responsible for quality, technical/ structural soundness and effective & efficient construction management of the work.

Clause 3.10 All defects noticed during the currency of the contract and, also during the defect liability period of 12 months after completion of the work except those pertaining to leakage/ dampness which are governed by clause 3.8 of the MoU shall be got completely and satisfactorily rectified by the Construction Agency immediately after notifying the defects without any extra payment for the same. In case the defects are such as cannot be rectified or the Construction Agency fails to rectify these satisfactorily and completely, the Owner reserves his right to accept the work at reduced rates (provided defects are non-structural) or to get the rectification work done at the risk and cost of the Construction Agency.

Any delay on account of corrective action due to quality issues is also covered in delay.

Amended clause 3.10 is as under: -

3.10 All defects noticed during the currency of the contract and, also during the defect liability period of 12 months after completion of the work except those pertaining to leakage/ dampness which are governed by clause 3.8 of MoU shall be got completely and satisfactorily rectified by the Construction Agency immediately after notifying the defects **without any extra payment & without any extra time** for the same. In case the defects are such nature which cannot be rectified or the Construction Agency fails to rectify these defects satisfactorily and completely, the Owner reserves his right to accept the work at reduced rates (provided defects are non-structural) or to get the rectification work done through other agency at the risk and cost of the Construction Agency. **The decision of the Owner, in this regard, shall be final and binding on the Construction Agency.**

3. Delay due to poor supervision:

One of the main reasons for cropping up quality issues time and again is poor supervision on account of non-deployment of well experienced and adequate supervisory staff at site by CA. The current provision as per extract of modified **clause 2.7** of MoU conveyed vide letter dated 04.10.2023 is reproduced as below:

In case of non-deployment of technically qualified and experienced staff as specified, recovery shall be made as notified under:

Site Engineer-Rs. 25,000/- (Rupees Twenty-Five thousand only) per month per site.

Project manager (Civil & Electrical) Rs. 35000/- (Rupees Thirty-Five Thousand only) per month per head.

Zonal Manager Rs. 60000/- (Rupees Sixty Thousand only) per month per head.

NESTS shall strictly impose liquidated damages as per above provisions for non-deployment of technical staff at site and it shall be reviewed during each and every fund release demand. List of deployed engineers on EMRS shall be provided by PSU with fund demands as & when asked by the NESTS.

4. Lapses in timely reporting of variation cases.

Due to budget constraints, the variation shall be considered as an exception only under unforeseen and unavoidable circumstances. The Construction Agencies has been advised time and again to take adequate measures to avoid positive deviation at every stage starting from estimation till execution, by ensuring proper technical scrutiny of the site conditions, proper site surveying, correctly examining of MLP/ soil investigation report, approved architectural drawings/vetted structural drawings etc. besides vigilant supervision.

The Modified MoU clause 2.3 on variation conveyed vide letter dated 04.10.2023 and is now part of MoU. As per the variation clauses:

a. The variation up to 10% of the accepted tendered value subjected to ceiling within original A/A & E/S, the deviation statement duly approved by the competent authority of CA shall be submitted to the client/owner for records and incorporating in the cost of work.

b. Variation beyond original A/A & E/S, no contractual liability shall be incurred by CA. The CA shall immediately submit a Revised Estimate (RE) with proper justification, to NESTS and further quantities of the deviated items shall be executed by the CA after approval of revised A/A & E/S and funds in respect of excess expenditure shall be released accordingly.

The cases covered under (a), if found in order, are simply being considered for incorporating in the cost of works and funds are being released accordingly subject to availability. However, the cases not covered under (a) above, prior approval of owner is must.

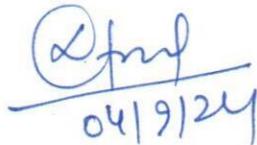
Henceforth, the cases not submitted in time for prior approval (unless delayed due to exceptional reasons) and the cases wherein exorbitant deviation in any subhead amount is noticed indicating lapses on part of CA either in improper technical scrutiny of site conditions/site surveying, deficiency in MLP/ Soil investigation reports or due to incorrect estimation of important items of the work , such cases shall not be considered for revision of project estimates and expenditure if any incurred in deviated quantities of such cases shall be the liability of the Construction Agencies only. The decision of owner in adjudicating such cases shall be final and binding.

5. Unsatisfactory work and unsafe structure:

Additional charges incurred by NESTS towards third party technical examination/audit in respect of unsatisfactory reported works shall be charged to construction agency.

6. Additionally, liquidated damages for delay in meeting the timelines shall be imposed at every stage. The recovery shall be made from PMC Charges.

NOTE: All of the modifications as mentioned above, shall become part of Construction Agreement in line with clause 3.22 of the construction agreement.


04/9/24