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MoU-1

MEMORANDUM of UNDERSTANDING  
between  
CENTRAL PUBLIC WORKS DEPARTMENT  
and  
EMPLOYEES' STATE INSURANCE CORPORATION  
for  
Construction of New Campus at Various Locations in India

This Memorandum of Understanding (hereinafter called "MoU") signed between Central Public Works Department, Govt. of India(hereinafter called "CPWD") represented by the Deputy Director General (Works) of one part,

and

Employees' State Insurance Corporation (hereinafter called "ESIC") represented by the Chief Engineer on other part.


ESIC and CPWD are also referred to individually as 'Party' and collectively as 'Parties' wherever the context so requires.


Whereas CPWD have agreed to undertake the work of Construction of Hospitals / Medical Colleges / Dispensaries etc. at various locations throughout India for ESIC on Project Management Agency (PMA) basis as a 'Deposit Work'. Now, for the Projects where Architect & Engineering (A&E) Consultants have already been appointed by ESIC, it is agreed between the Parties that:

(A)Handing Over of Works by ESIC to CPWD:

1. The ESIC will allot a project to the CPWD through a letter after due approval of competent authority along with detailed status of work already done by A&E Consultants for ESIC and all relevant available documents e.g. Drawings, Estimates, Approvals, Certificates, Reports, Presentations, Certified Copy of Agreement along with history of payment etc. for facilitating further Architectural Planning & Engineering works under the overall superintendence of CPWD. Further payments to A&E Consultants shall be made by ESIC after getting them certified by CPWD. The structural design & Drawings shall be got proof checked from an independent expert, if not already proof checked or wherever required from technical reasons as per decision of concerned ADG of CPWD and the charges for the same shall be included in the project estimates.

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2. The Architectural Planning and Designing work shall continue to be done by A&E Consultants already appointed by ESIC for the designated Projects as per Contract Agreement signed by them with ESIC wherein Detailed Scope and Items of Works to be rendered by A&E Consultants are mentioned. Preparation of Concept Designs & Plans, Detailed Estimates & Bill of Quantities, Detailed Specifications, Tender Drawings and Documents etc. are in the Scope of the A& E Consultants as per the above said Contract Agreement and CPWD shall be obliged to administer these Provisions along with all other Terms & Conditions of the Contract Agreement on behalf of ESIC for completing the Project with due diligence and well within Approved Cost and Time period. ESIC shall provide necessary mandate to CPWD in this regard, inter-alia, through utilizing appropriate provisions of Contract Agreement between the ESIC and the A & E Firm.
  3. If at any point of time or stage during the currency of the Project and before completion of the Project in all respects, A&E consultant appointed by ESIC does not perform satisfactorily in terms of the Contract Agreement; their Contract can be terminated by ESIC. In that eventuality, CPWD shall appoint another A&E consultant, if it felt necessary, by them for completion of the remaining consultancy job in consultation with ESIC in order to complete the Project as per earlier Approved Plans, Scope, Functional Requirements and Specifications. However, on the issue of termination of Contract Agreement of A& E Consultant for unsatisfactory performance, the decision of ESIC would be final and binding upon CPWD.

(B) Approval of Concept Plans / Preliminary Drawings& Preliminary Estimate,

#### Release of Fund

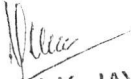
4. Concept Plans /Preliminary Drawings if not already approved by ESIC before allotting the project to CPWD, shall be prepared by A & E Consultants under the supervision of the CPWD as mentioned above based on functional & space requirements as intimated by ESIC to them and submitted to ESIC for approval, if not already approved. It would be a joint endeavor on part of both ESIC & CPWD in consultation with consultants & experts to develop Standard Plans & Specifications for Buildings & Services including Furniture, Equipments, Plants etc. pertaining to various categories of Health Infrastructure Facilities e.g. 100 / 200 / 300 / 500 Bedded Hospitals, Medical Colleges, P.G. Institutes, Dispensaries etc.


  
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5. Based on approved Concept Plans / Preliminary Drawings by ESIC, A & E Consultants shall prepare Preliminary Estimate consistent with their scope of services as given in their Contract Agreement with ESIC in accordance with norms & standards of the CPWD and submit it to CPWD along with all relevant input information, documents & drawings etc. under intimation to ESIC for intensive scrutiny & examination by them vis-a- vis approved concept plan detailing functional & space requirements of ESIC. Thereafter, CPWD will submit Preliminary Estimate (P. E.) to ESIC based on their norms & standards within 8 weeks of receipt of preliminary drawings based on approved concept plan from A& E Consultant / ESIC. Along with PE, Project specific draft MoU containing Milestones and commensurate activities to be accomplished against each Milestone & Baseline Programme in the form of CPM Network, shall also be submitted by CPWD for approval by ESIC.
6. CPWD has agreed to exempt fifty percent (50%) on their standard departmental charges for all ESIC works. Accordingly the departmental charges at the reduced rate of 50% of the extant standard departmental charges shall be levied by CPWD for ESIC works. It is also understood that Departmental Charges collected from client departments is remitted to the revenue income head of Government of India (MH: 0059 Public Works – Other receipts) and are not retained by the Central Public Works Department.
7. ESIC shall accord approval to PE, Project specific Draft MoU containing Milestones and commensurate activities to be accomplished against each Milestone & Baseline Programme in the form of CPM Network and issue Administrative Approval (A/A) & Expenditure Sanction (E/S) in about 8 weeks of its submission by CPWD.
8. ESIC shall release Initial Deposit @ 10% of the approved preliminary estimate amount to CPWD within 2 weeks of issuing A/A & E/S or signing of project specific MoU along with Milestones & Baseline Programme between Chief Engineers of ESIC & CPWD, whichever is later.
- 8.1 ESIC shall release additional deposit up to 10 % of approved preliminary estimate amount to CPWD within 2 weeks of award of first major construction contract on the basis of specific request made by CPWD in this regard along with proper reasons and justifications acceptable to ESIC for additional requirement of fund over and above already released initial deposit of 10 % of approved preliminary estimate amount in terms of Clause - 8 above.

  
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9. After the Initial and Additional Deposit as per clause 8 and 8.1 above, the subsequent release of Fund shall be in the form of recoupment of the expenditure made by CPWD on the project as per monthly expenditure statements which shall be submitted in Form CPWA - 65 as per accounting procedure prescribed in central public works accounts code. While submitting monthly expenditure statement in Form CPWA – 65 and placing demand for release of fund in the form of recoupment of the monthly expenditure already incurred on the project, CPWD will also submit a comprehensive report on progressive physical completion of various activities and Milestones vis – a – vis earlier planned activities / Milestones for the overall completion of the specific project mutually decided between ESIC & CPWD and included as part of project specific MOU for enabling ESIC to keep effective check on utilization of fund as well as physical progress of the work.
10. The fund subsequent to Initial Deposits shall be released by ESIC to CPWD within 4 weeks of submission of request by CPWD along with all documents as described in Clause - 9 above. As per the monitoring of physical and financial progress indicators, ESIC will take necessary steps for recoupment of the monthly expenditure incurred on the basis of the Fund Utilization Certificate.
11. If any fund requirement is specifically made by CPWD after the project has been allotted to CPWD for undertaking pre-construction activities related to the Project Execution etc., the same shall be released by ESIC within 2 weeks of such specific demand provided the amount is within ceiling limit of Rs. 25 Lacs. The amount so released to CPWD shall be adjusted from Initial Deposit amount.

(C) Mutual Obligations


12. CPWD shall be responsible for :

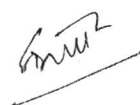
12.1 Total Project Management including day-to-day supervision of works and executing the works as per its Works Manual, Codes, Books of Specifications etc. and also in accordance with relevant and extant provisions of General Financial Rules (GFR). Works shall not be awarded by CPWD to contractors till all statutory approvals / certificates / permissions required for taking – up the work, are in place.

  
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- 12.2 Execution of Works as per prescribed guidelines, maintenance of all project records, ensuring timely completion of work as per mutually agreed time schedule / milestones and within agreed Cost. CPWD shall ensure adequate availability of men & material by their contractors.
- 12.3 Submitting Preliminary Estimate along with Project specific draft MoU, Base Line Programme in CPM Network depicting clearly Milestones, Dates of Start and Completion of the project for approval of ESIC.
- 12.4 Intimating Physical and Financial Progress of the Project and up to date Expenditure incurred on the Project on monthly basis in the accounting Performa CPWA – 65 as prescribed in Central Public Works Accounts Code along with Certificate of Utilization of Fund against Fund earlier released to CPWD by ESIC.
- 12.5 Permitting ESIC to inspect or monitor the projects, either itself or through Third Party, as and when it desires for assessing actual progress and quality of construction and any other aspects.
- 12.6 Certifying and making payment of Bills of the Contractors / Agencies engaged by them and make available Final Statement of Accounts in Standard Format to ESIC & also provide copies of Final Bills for all Contract Packages and other expenditure incurred related to Project Construction after the Completion of the Project. In addition, should ESIC ask for any other details from CPWD regarding Utilization of Fund at any stage, Detailed Estimates & Technical Sanctions, Award of Works, Running Bills etc., the same shall be provided by CPWD readily. CPWD shall use DSR for framing the Detailed Estimates. Non - DSR Items shall be incorporated in the Detailed Estimates only when these are not either readily available in DSR. Detailed reasons and justifications for including Non-DSR Items shall have to be furnished by CPWD.
- 12.7 Ensuring that its Contractor(s) implement required Health, Safety & Environmental (HSE) practices at the Construction Sites and they also comply with all statutory obligations related to workmen deployed at the Construction Site. CPWD will act as Principal Employer in respect of all Statutory Obligations related to workmen deployed at the site in execution of the Project work.

  
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- 12.8 Handing over to ESIC or its Authorized Representative completed Buildings including all Services and Facilities constructed in accordance with the Approved Plans. Specifications fulfilling all techno-functional requirements agreed with ESIC along with Inventory, As Built – Drawings, Maintenance Manual / Standard Operating Procedure(SOP) for Equipments and Plants, all Clearances / Certificates from Statutory Authorities, Local Bodies etc.
- 12.9 Redressing and complying with the observations of CTE / CVC, Auditors, Statutory Authorities, Local Bodies, Municipal Corporation etc. pertaining to the Project under intimation to ESIC. Providing all Project related information promptly to ESIC for replying to Parliament Questions, queries from various constitutional & statutory authorities.
- 12.10 Providing necessary support to A & E Consultants and ESIC in obtaining necessary Statutory Approvals / Permission / Clearances/ Certificates from the concerned Local Bodies & Statutory Authorities like Municipal Corporation, Town Planning Board, Electricity Board/ Fire Department, State/Central Pollution Control Boards, State/Central Environmental Authorities etc..as applicable including obtaining Building Completion / Occupancy Certificates & Clearance for completed Buildings and Facilities before handing over the same to ESIC for putting them to functional use.
- 12.11 Managing the Project effectively and efficiently to ensure its completion with due diligence as per approved Plans & Specifications and in Terms and Conditions of the MoUs including taking all required pro-active measures to contain Time and Cost Overruns by providing stringent and elaborate enforceable Clauses to this effect in the Contract Documents of its Contractors for achieving the objective of completing the Project within Approved Cost and Time Period.
- 12.12 Providing Progress Reports to ESIC in the form of CPM Network on monthly basis for reviewing of the progress of the work vis – a – vis Base Line Programme and taking all necessary remedial actions, after taking into account ESIC's observations made in respect of quality and progress of the work during the monthly / periodic Project Review Meetings.
- 12.13 On completion of the Project, a Project Completion Report (PCR) shall be submitted by CPWD duly bringing out the Final Project Completion Cost,

  
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Total Time period taken to complete the Project and also completed Project Components as against the approved Cost, Time and Project Components. The PCR shall be submitted along with Final Project Accounts including return of unspent balance amount to ESIC within one month of settlement of final bills of the contractors/other agencies deployed on the project by CPWD.

12.14 Intimating ESIC about any excess expenditure likely to be incurred over and above the approved Projected Cost and also about possibility of Time Overrun as soon as it comes to its knowledge along with reasons and justifications thereof for necessary approvals from ESIC before committing / incurring the extra / additional expenditure.


12.15 Monitoring of Projects from concept to commissioning effectively & efficiently to ensure that desired / proportionate pace of progress is achieved progressively vis-à-vis mutually agreed Milestones & Timelines and approved Cost i/c taking all remedial measures well in time in case of slippages on these counts.


12.16 Observing due diligence and adopting all possible pre – emptive measures at various stages of project execution so as to avoid Arbitration / Litigation and other hindrances and the Project is completed within optimum cost and time in hassle free environment.

12.17 Defending all Arbitration and Court Cases arising out of execution of the works and examining the Arbitration Award/Decree of Court of Law/Tribunal by appropriate authority in CPWD and forwarding the same along with a comprehensive report on the circumstance leading to the Arbitration/Court cases and the reasons and justifications as to why an appeal against such award/decrees was not considered necessary, briefing out inter-alia, details of the award and clear cut recommendations. The decision of the competent authority in CPWD to accept the award or challenge the same in a Court of Law will be binding on the ESIC.


13. ESIC shall be responsible for :


13.1 Approving Conceptual Plans, Initial and Revised Estimates, Milestones, Base Line Programme in the form of CPM Network, Signing of Project Specific MoU.

  
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- 13.2 Issuing necessary directions to A & E Consultants from time to time for rendering A & E Consultancy Services in accordance with terms of the Contract Agreement and under the supervision of the CPWD for executing the Project with due diligence .
- 13.3 Intimating Site Details, Space Requirements for Various Facilities, Special Requirements / Features and Broad Specifications for specialized Equipments and Plants for facilitating Project Execution by CPWD along with A & E Consultants.
- 13.4 Providing Land documents & Salient informations about the site and making the project site available free from encumbrances to CPWD.
- 13.5 Releasing Fund to CPWD as per schedule specified in Para 8 and 9 based on their demands.
- 13.6 Providing required assistance to A & E Consultants and CPWD for obtaining necessary Statutory Approvals / Permission / Clearances/ Certificates from the concerned Local Bodies & Statutory Authorities like Municipal Corporation, Town Planning Board, Electricity Board / Fire Department, State / Central Pollution Control Boards, State / Central Environmental Authority etc. as applicable including obtaining Building Completion / Occupancy Certificates & Clearances for completed Buildings and facilities before the same are handed over to ESIC for putting them to functional use.
- 13.7 Permitting drawl of Ground Water, putting up Labour Camps / Huts inside the available space for facilitating construction by contractors engaged by CPWD. CPWD and / or A & E Consultants shall provide necessary support in obtaining permission of Local Body.
- 13.8 Providing security clearance for CPWD staff / contractors and their workers for working at Project site in case these are required. CPWD and / or A & E Consultants shall provide necessary support.
- 13.9 Settling and paying the final claims which may be decreed by a Court of Law, Tribunal or by award of an Arbitrator in relation to the deposit work, based on recommendations of CPWD.
- 13.10 Settling compensation / levies, if so required to be paid based on recommendation by CPWD related to the Project works, under the

  
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Workmen's Compensation Act or any other Act or Law of the Central or the State Government.


13.11 If ESIC decides to terminate this MOU or decides to drop / abandon the Project after substantial preliminary work has been done by CPWD on the project, both CPWD and ESIC shall mutually decide the loss incurred by CPWD for payment by the latter to the former. In case of abandonment of project / work by ESIC during construction stage, ESIC shall pay to CPWD, after determining the value of the works, goods and contractors documents and any other sums due to them for work executed in accordance with the MOU, to help liquidate only such liabilities as were squarely needed towards construction / consultant agencies engaged on the project, whether actually incurred or committed, to the extent those were incurred / intended for ESIC project, in a fair and reasonable manner .

13.12 Permitting free access to CPWD appointed Contractors' Materials and Workmen to the site of work and also helping CPWD in taking connections for electricity and water required for construction.


(D) Containing Cost & Time Overruns


14. The Preliminary Estimate (PE), Milestones & Baseline Programme shall be prepared by CPWD based on mutually agreed Norms, Standards, Functional & Space Requirements, Timelines in consultation with A & E Consultant & ESIC in the most comprehensive manner and with utmost care and submitted to ESIC. The approved Initial Project Cost & Timeline should not exceed during execution of the Project except for reasons like increase in cost index during construction period, richer specifications or extra work over approved estimate carried out at the request of ESIC etc. In case of either increase in earlier approved cost or timeline, detailed reasons and justifications, based on verifiable facts and figures, shall have to be provided by CPWD along with comprehensive proposals for revision in earlier approved Project Cost & Timeline, which shall be intensively examined by ESIC in consultation with CPWD before approval is accorded to their proposals. No additional expenditure over and above the earlier approved Project Cost shall be incurred by CPWD without prior approval of ESIC. Upward Revisions in either Cost or Timeline should be an exception rather than a rule and for achieving this objective, all required efforts shall be made by CPWD.

  
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- 15. As intimated by CPWD, they have evolved system of 'Project Team Concept' with dedicated group of Engineers under single and unified command for implementation of projects from concept to completion and composite tenders are being called to reduce the number of packages for better management' It has also been intimated by them that they have adopted various Structural and procedural changes viz. opening zonal offices in state headquarter, unified command at the level of Chief Engineer, giving full powers of technical sanction to Chief Engineer and creation of Project Units headed by Chief Engineer / Superintending Engineer for projects valued Rs. 100 Crore and above. For ESIC Projects, CPWD shall be obliged to adopt all the above said measures for successful completion of the Projects within Approved Cost and agreed Time period.
  
- 16. As soon as the work is allocated, CPWD shall prepare and submit to ESIC an Integrated Programme Chart for the execution of work showing clearly all activities from the start of work to completion with details of manpower and other input information required for the fulfillment of the timelines given there in. CPWD will intimate ESIC, Project Team, both on - site and off - site, starting from Chief Engineer to Junior Engineer connected with execution of the Project .The Programme Chart should inter-alia include descriptive note explaining sequence of the various activities, CPM Network, Milestones etc. This will form Base Line Programme and the subsequent progress of the work shall be reviewed with reference to this during periodic Progress Review Meeting preferably monthly. Any increase in time period from the Base Line Value shall be construed as Time Overrun (TO). All efforts should be put by CPWD to avoid Time Overrun as time is the essence of the MoU.
  
- 17. CPWD will take all necessary actions to contain time & cost overrun in the project. However, for delays caused in the project, liquidated damages have to be levied / recovered. It is understood that penalty for delay cannot be imposed on CPWD directly being pure Central Government Department following government accounting procedure under which the fund given by ESIC to CPWD is deposited in non - interest bearing civil deposit i.e. government account eventually becoming part of Consolidated Fund of India. Thus, imposing penalty on CPWD is not feasible. However, CPWD intimated that there already exists established procedure to recover liquidated damages from their contractors / agencies in terms of Clause - 2 of the CPWD general

  
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conditions of the contracts read with Clause - 5. As per the extant provisions under Clause -2 read with Clause – 5, liquidated damages @ 1.5 % per month of delay (to computed on per day basis) subject to 10 % of the contract values of the work can be imposed by CPWD on their contractors. The liquidated damages recovered from the contractors for delay, if any, shall be credited to ESIC in the project accounts. As further agreed by CPWD, more stringent Terms & Conditions over and above usual stipulated provisions in CPWD standard contract document, shall be inserted as additional / special conditions in the contract document with contractors so as to complete the ESIC Projects without time & cost overruns.


If at any time, it appears to ESIC that the actual progress of the work does not conform to the approved programme referred above and intimated to CPWD by ESIC, detailed reasons and justifications for such delays shall have to be provided by CPWD, which shall be examined by ESIC for re-scheduling the Programme, if any.

18. Progress Review Meetings preferably monthly shall be held between CPWD and ESIC for reviewing the progress of Projects based on Base Line Programme / Milestones etc. and also for resolving co-ordination issues, including fixing priority of some buildings, facilities and services for their early completion and handing over to ESIC for putting them to use for intended purpose, if any. A&E Consultants may also participate. CPWD shall appoint a Nodal Officer at Delhi who shall coordinate with ESIC:HQ on regular basis for better co-ordination and effective monitoring of the Project. CPWD will also designate a nodal officer in respect of specific project for coordinating with ESIC and A & E Consultant. Such designated nodal officer shall be suitably empowered and authorized to take decisions in project related issues so that delays are minimized for achieving timely completion of project.

(E) Redressal of Disputes

19. As dispute resolution mechanism for implementation of the provisions of this MoU, at the first instance the issues involved shall be brought up before Chief Engineer, ESIC and concerned Chief Engineer, CPWD for their resolution. In case, however, disputes / differences between the parties do not get resolved, the matter shall be referred to a Committee comprising of a Nominee of DG, ESIC, and a Nominee of DG, CPWD who shall be above the level of CE in the respective organizations. The above said Committee shall submit a

  
वी० के० जायसवाल/V. K. JAYASWAL  
उप महानिदेशक (निर्माण)/Dy. Director General (Works)  
महानिदेशालय, के.लो.नि.वि./Dte. General, C.P.W.D.  
निर्माण भवन, नई दिल्ली/Nirman Bhawan, New Delhi

  
श्री. एम. सुश्रीप दत्ता (वी०)  
निर्माण विभाग, Chief Engineer  
महानिदेशालय, E.S.I.C. (H.Q.)  
निर्माण भवन, सी.आई.जी. मार्ग, नई दिल्ली  
Sushdeep Bhawan, CIG Marg, N. Delhi

45/12

comprehensive report and recommendation to DG, ESIC and DG, CPWD for facilitating final decision in the matter.

(F) Amendment

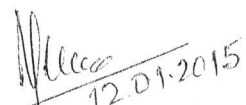
20. No amendment in Terms & Conditions of this MoU shall be valid and effective unless it is in writing and duly signed by authorized representatives of DG, ESIC and DG, CPWD. Each party shall give due consideration to any proposal for amendment / modification made by other party with proper reasoning thereof.
21. Provisions made in respect of deposit works in CPWD Works Manual shall stand modified to the extent of the stipulations made in this MoU for execution of ESIC works by CPWD.

For and on behalf of CPWD

For and on behalf of ESIC

Signature

Name

Designation :   
12.01.2015  
V.K. JAYASWAL  
Dy. Director General (Works)  
उप महानिदेशक (निर्माण)/Dy. Director General (Works)  
महानिदेशालय, के.ए.सी.नि.वि./Dte. General, C.P.W.D.  
निर्माण भवन, नई दिल्ली/Nirman Bhawan, New Delhi

Witness 1

Signature

Name


Designation :   
NIRMAL GOPAL  
Director General (Works)  
Directorate of CPWD  
Nirman Bhawan, New Delhi-110011

Date: 12.01.2015

Place: New Delhi

Signature

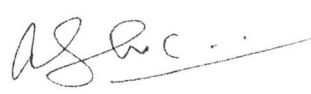
Name

Designation :   
SUDIP DUTTA  
Chief Engineer (I/c)  
सुदीप दुग्गा / SUDIP DUTTA (I/c)  
मुख्य अभियन्ता / Chief Engineer  
क.रा.बी.नि.वि.(मु) / E.S.I.C. (H.Q.)  
संचलीय भवन, सी. आई. जी. मार्ग, नई दिल्ली  
Sanchdeep Bhawan, CIG Marg, New Delhi

Witness 2

Signature

Name

Designation :   
A.K. YADAV  
S E (civil)

E S I C, H Q. New Delhi