



Court Matter Urgent  
BY FAX

GOVERNMENT OF ODISHA  
WORKS DEPARTMENT  
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12595 /W., Bhubaneswar, Dated, the  
0718020043 2012

22.12.2012

From  
Sri P.K. Rout,  
FA-cum-Additional Secretary to Government

*Je*  
*24/12*

To  
The Chief Engineer, DPI & Roads, Odisha,  
The Chief Engineer, NHs, Odisha,  
The Chief Engineer, World Bank Projects, Odisha  
The Chief Engineer, Buildings, Odisha  
Bhubaneswar.

**Sub:- W.P. ( C ) No.11889 of 2009-All Odisha Contractors Association-Vrs-  
State of Odisha & Others.**

Sir,

In inviting a reference to the subject cited above, I am directed to say that the Hon'ble High Court while disposing of the above writ petition have quashed the existing guidelines and have directed in their order dated 06.07.2012 to issue fresh guidelines treating the Contractors/Executing Agencies uniformly with regard to payment/refund of differential cost of material, wages of labour and POL irrespective of the period of contract.

It is therefore, requested that the tenders invited and under process with the existing escalation clause may be cancelled and floating of tenders may be withheld till issuance of fresh guidelines.

Yours faithfully

*P.K. Rout*  
*22.12.2012*

FA-cum-Addl. Secretary to Govt.

Memo No. 12596 /W., Dated. 22.12.12

Copy forwarded to Accounts-II Section/FA Cell for information and necessary action.

*P.K. Rout*  
*22.12.2012*

FA-cum-Addl. Secretary to Govt.

No-30-34

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Cops to all auditors for information &  
A.A. with one copy to E.B.

*Exp. Ens.*

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Government of Odisha  
Works Department

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File No. 07550400132012-12606/W

Office Memorandum

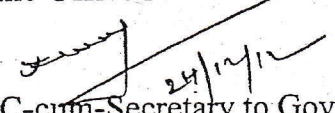
24.12.12 Bhubaneswar, the

Sub: - Amendment of Codal / contractual provisions regarding Price Variation / Escalation clause.

After careful consideration, Government have been pleased to make the amendment of codal / contractual provisions regarding Price Variation / Escalation clause due to increase or decrease in rate of minimum wages, Principal materials, POL & other materials to be incorporated in DTCN / condition of Contract as per Annexure-"A".

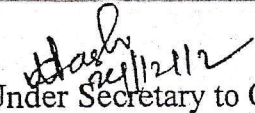
1-Works Department Circular / Letter No.5608 dt.03.4.2007 stands amended.

2- This amendment shall be a part of the relevant clauses of DTCN and Agreement and shall take effect from the date of issue of the Office Memorandum.

  
EIC-cum-Secretary to Govt.

MemoNo.....12607...../W, dated.....24.12.12.....

Copy with copy of enclosure forwarded to P.S. to Principal Secretary to Chief Minister, Odisha / O.S.D. to Chief Secretary, Odisha for favour of information and necessary action.

  
AFA-cum-Under Secretary to Govt.



PROPOSAL FOR PRICE VARIATION CLAUSE DUE TO INCREASE OR DECREASE IN RATE OF MINIMUM WAGES, PRICIPAL MATERIALS, POL & OTHER MATERIALS TO BE INCORPORATED IN CONDITION OF CONTRACT

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31. Contract price shall be adjusted for increase or decrease in rates and price of Labour, Cement, Steel, Bitumen, Pipes, POL & other material component in accordance with the following principles and procedures as per formula given below:-

31(a)(i) : REIMBURSEMENT/RECOVERY DUE TO VARIATION IN PRICES OF MATERIALS OTHER THAN (STEEL, CEMENT, BITUMEN, PIPES & P.O.L.).

If during the progress of the work the price of any materials (Excluding the cost of steel cement, bitumen & P.O.L.) incorporated in the work (not being materials supplied from the Engineer-in-Charge's store) in accordance with clause there of increases or decreases as a result of increase or decrease in the Average wholesale price Index (all commodities), and the contractor there upon necessarily and properly pays in respect of that materials incorporated in the work such increased or decreased price, then he shall be entitled to reimbursement or liable to refund, quarterly as the case may be, such an amount, as shall be equivalent to the plus or minus difference of 85% in between the Average Wholesale price Index (all commodities) which is operating for the quarter under consideration and that operated for the quarter in which the bid was received (last date of receipt) as per the formula indicated below provided that the work has been carried out within the stipulated time or extension thereof as are not attributable to him. If penalty is levied for delayed completion of the work, the contractor shall not be eligible to get price escalation on the above materials on the value of works executed during the extended period.

This clause will be applicable to the contracts where original stipulated period of completion is more than 18 months.

In the situation where the period of completion is initially stipulated in the agreement as less than 18(eighteen) months but subsequently the completion period has been validly extended on the ground that the delay in completion is not attributable to the contractor and in the result the total period including the extended period stands more than 18(eighteen)months or more, price escalation for other materials is admissible only for the remaining period excluding 18(eighteen)months there from.

**Formula to calculate the increase or decrease in the price of materials:**

Price adjustment for increase or decrease in cost of materials other than cement, steel, bitumen, pipes and POL procured by the contractor shall be paid in accordance with the following formula:

$$V_m = 0.85 \times P_m / 100 \times R \times (M_i - M_o) / M_o$$

$V_m$  = Increase or decrease in the cost of work during the quarter under consideration due to changes in rates of materials other than cement, steel, bitumen, pipes and POL.

$R$  = Value of work done during the quarter under consideration excluding the work executed under extra items if any at prevailing schedule of rate/ derived rates.



M = The all India wholesale price index (all commodities) prevailed during the quarter of last date of receipt of bids (as published by the Economic Adviser to govt. of India, Ministry of Industry and commerce, New Delhi).

M<sub>1</sub> = The all India wholesale price index (all commodities) for the quarter under consideration as published by Economic Adviser, Govt. of India, Ministry of Industry and commerce, New Delhi. In respect of the justified period extended for completion of the work, the index prevailing at the time of stipulated date of completion or the prevailing index of the period under consideration, whichever is less, shall be considered.

P<sub>m</sub> = Percentage of material component (other than cement, steel, bitumen, pipes and POL) of the work, as indicated in clause -31 (d) below.

**31(a)(ii): REIMBURSEMENT/ RECOVERY OF DIFFERENTIAL COST DUE TO VARIATION IN PRICES OF PRINCIPAL MATERIALS (STEEL, CEMENT, BITUMEN AND PIPES NOT ISSUED BY DEPARTMENT) AFTER SUBMISSION OF TENDER:**

If after submission of the tender, the prices of Steel, Cement, Bitumen and Pipes (not being supplied by the Department) increases/ decreases beyond the price(s) prevailing at the time of the last date for submission of tenders including extension for the work, the contractor shall be eligible to get differential cost due to such hike on the value of works executed during the stipulated period and during the extended period when the reason of delay in completion of the work is not attributable to the Contractor. If penalty is levied for delayed completion of the work, the contractor shall not be eligible to get price variation on the above materials on the value of works executed during the extended period.

Reimbursement in case of differential cost due to increase in prices of cement, steel, bitumen and pipes are to be made by the Executive Engineer with prior approval of tender accepting authority subject to following conditions:

- 1) Contractors have to submit the vouchers showing procurement of different materials from authorized dealers for the said work.
- 2) Differential cost will be allowed only for the works which are progressed as per the approved work programme / revised work programme duly approved by the Engineer in charge.

Recovery in case of decrease in prices of cement, steel, bitumen & pipes shall be made by concerned Executive Engineer from the Contractor immediately.

The increase/decrease in prices of cement, steel, Bitumen and Pipes for reimbursement/recovery shall be determined as follow.

**a) Adjustment towards differential cost of cement**

$V_c = (C_1 - C_0) / C_0 \times \text{Actual quantity of cement utilized in the work during the quarter under consideration} \times \text{base price of cement as prevailing on the last stipulated date of receipt of tender including extension, if any.}$

V<sub>c</sub> = Differential cost of cement i.e. amount of increase or decrease in rupees to be paid or recovered.



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C = All India Wholesale price index for cement for the quarter under consideration as published by Economic Adviser, Govt. of India, Ministry of Industry and Commerce New Delhi

C<sub>0</sub> = All India Wholesale price index ( as published by Economic Adviser, Govt. of India, Ministry of Industry and Commerce, New Delhi) for cement as prevailing on the last stipulated date of receipt of tender.

**b) Adjustment towards differential cost of Steel**

$V_s = (S_i - S_0) \times$  Actual quantity of steel utilized in the work during the quarter under consideration

V<sub>s</sub> = Differential cost of Steel i.e. amount of increase or decrease in rupees to be paid or recovered.

S<sub>i</sub> = Cost of the Steel as prevailed during the period under consideration as fixed by Steel Authority of India.

S<sub>0</sub> = Base price of Steel prevailing as on the last date of submission of tender including extension, if any.

**c) Adjustment towards differential cost of Bitumen.**

$V_b = (B_i - B_0) \times$  Actual quantity of Bitumen utilized in the work during the quarter under consideration.

V<sub>b</sub> = Differential cost of Bitumen i.e. amount of increase or decrease in rupees to be paid or recovered.

B<sub>i</sub> = Average cost of Bitumen prevailed during the period under consideration as fixed by IOCL/BPCL/HPCL.

B<sub>0</sub> = Base price of bitumen as prevailing on the last stipulated date of receipt of tender including extension, if any.

**d) Adjustment towards differential cost of pipes.**

$$V = 0.85 \times P_p / 100 \times R (P_i - P_0) / P_0$$

V<sub>p</sub> = Differential cost of pipe i.e. amount of increase or decrease in rupees to be paid or recovered during the quarter under consideration.

P<sub>p</sub> = Percentage of pipe component of the work as indicated in the clause 31 (d).

R = Value of work done during the quarter under consideration excluding the value of work executed under extra items, if any, at prevailing schedule of rates or derived rate.

P<sub>i</sub> = All India Whole sale price index for the period under consideration as published by Economic Advisor, Govt. of India, Ministry of Industry and Commerce, New Delhi, for the type of pipe under consideration.

P<sub>0</sub> = All India Wholesale price index (as published by Economic Advisor, Govt. of India, Ministry of Industry and Commerce, New Delhi ) as on the last stipulated date of receipt of tender including extension, if any, for the type of pipe under consideration.



**31(b): REIMBURSEMENT/ REFUND DUE TO STATUTORY RISE IN COST OF MINIMUM WAGES BY GOVERNMENT:**

If after submission of the tender, the wages of labour increases or decreases as a direct result of the coming into force of any fresh law, or statutory rule or order beyond the wages prevailing at the time of the last date of submission of tenders including extensions, the contractor shall be eligible to get escalation due to such hike on the value of works executed during the stipulated period and during the validly extended period when the delay in completion is not attributable to the Contractor. If penalty is levied for delayed completion of the work, the contractor shall not be eligible to get escalation on labour on the value of works executed during the extended period.

The contractor shall, within a reasonable time of his becoming aware of any alteration in the price of any such wages of labour, give notice thereof to the Engineer-in-Charge stating that the same is given pursuant to this condition together with all information relating thereto which he may be in a position to supply. Engineer-in-Charge may call books of account and other relevant documents from the contractor to satisfy himself about reasonability of increase in prices of wages and actual payment thereof. For this purpose, the labour component of the work executed during period under consideration shall be the percentage (as specified in table below) of the value of work done during that period and the increase/decrease in labour shall be considered on the cost of minimum daily wages of any unskilled Labourer, fixed by the Government of Odisha under Minimum wages act.

The compensation for escalation for labour shall be worked out as per the formula given below:

$$V_i = 0.85 \times P_i / 100 \times R \times (L_i - L_o) / L_o$$

$V_i$  = increase or decrease in the cost of work during the quarter under consideration due to changes in rates of minimum wages.

$R$  = Value of work done during the quarter under consideration excluding the work executed under extra items if any at prevailing schedule of rate/ derived rates.

$L_o$  = the minimum wages for labour as notified by State Government, as prevailing on the last stipulated date of receipt of tender including extension, if any.

$L_i$  = the minimum wages for labour as notified by State Government & as prevailed on the last date of the quarter previous to the one under consideration. In respect of the justified period extended, the minimum wage prevailing on the last date of quarter previous to the quarter pertaining to stipulated date of Completion or the minimum wage prevailing on the last date of the quarter previous to the one under consideration, whichever is less, shall be considered.)

$P_i$  = Percentage of labour component of the work, as indicated in the clause 31 (d).



**31(c): REIMBURSEMENT/REFUND DUE TO VARIATION IN PRICES OF P.O.L:**

Similarly, if during the progress of work the prices of Diesel, Petrol, Oil and Lubricants increases or decreases as a result of the price fixed there of by the Government of India and the Contractor thereupon necessarily and properly pays such increased or decreased price towards Diesel, Petrol, Oil and Lubricants used in the execution of the work, then he shall be entitled to reimbursement or liable to refund, quarterly, as the case may be such an amount as shall be equivalent to the plus or minus difference of 85% in between the price of P.O.L., which is operating for the quarter under consideration and that operated for the quarter of last date of receipt of bids as per the formula indicated below provided that the work has been carried out within the stipulated time or extension thereof as are not attributable to him. If penalty is levied for delayed completion of the work, the contractor shall not be eligible to get price escalation on POL on the value of works executed during the extended per

**Formula to calculate the increase or decrease in the price of P.O.L.**

$$V_f = 0.85 \times P_f / 100 \times R \times (F_1 - F_0) / F_0$$

$V_f$  = Increase or decrease in the cost of work during the quarter under consideration due to Changes in rates for P.O.L.

$P_f$  = Percentage of P.O.L. component of the work, as indicated in clause-31 (d) below.

$R$  = Value of work done during the quarter under consideration excluding the work executed under extra items if any at prevailing schedule of rate/ derived rates.

$F_1$  = All India Wholesale price index for Fuel, Oil & Lubricant (High Speed Diesel) for the quarter under consideration as published by Economic Adviser, Govt. of India, Ministry of Industry And Commerce, New Delhi. In respect of the justified period extended, the rates prevailing at the time of stipulated date of completion or the prevailing rates of the period under consideration, whichever is less, shall be considered.

$F_0$  = All India Whole dale price index for Fuel, oil & lubricant (High Speed Diesel) as prevailing on the last stipulated date of receipt of tender including extension, if any.

31(d): The following percentages will govern the price adjustment for the entire contract for different types of works as applicable given in the following table:

**Percentage Table**

Sl. No.	Category of works		% Component (cost wise)		
			Labour (P <sub>i</sub> )	POL (P <sub>r</sub> )	Steel+Cement+ Bitumen + Other Materials*
1	R&B works (% of component)	Road works	5	5	90
		Bridge works	25	5	70
		Building works	25	-	75
2	Irrigation works (% of component)	Structural work	20	5	75
		Earth, Canal & Embankment work	25	10	65
3	P.H.Work	Structural work	25	5	70
		Pipeline Work	5	-	Pipe - 70% *Other material-25%
		Sewer Line	10	-	Pipe- 70% *Other material-20%

**\*Note: - Further break up may be worked out considering the consumption of Cement, Steel, Bitumen and pipe in the concerned works for the period under consideration.**

**31(e): APPLICATION OF ESCALATION CLAUSE:**

(i) The contractor shall for the purpose of availing reimbursement/refund of differential cost of steel, bitumen, cement, pipe, POL and wages, keep such books of account and other documents as are necessary to show that the amount of increase claimed or reduction available and shall allow inspection of the same by a duly authorized representative of Government and further, shall at the request of the Engineer-in-charge, furnish documents to be verified in such a manner as the Engineer-in-charge may require any document and information kept. The contractor shall within a reasonable time of 15 days of his becoming aware of any alteration in the price of such material, wages of labour and/or price of P.O.L. give notice thereof to the Engineer-in-charge stating that the same is given pursuant to this condition alongwith information relating there to which he may be in a position to supply.

(ii) The compensation for escalation shall be worked out at quarterly intervals and shall be with respect to the cost of work done as per bills paid during the three calendar months of the said quarter. The first such payment shall be made at the end of three months after the month (excluding the month in which tender was accepted) and thereafter at three months interval. At the time of completion of the work, the last period for payment might become less than 3 months, depending on the actual date of completion.