No. REC/DDUGJY/SBD/16-17/686

Date: 30.06.2016

To,
All Project Implementing Agencies
RE-DDUGJY Projects

Subject: Clarifications on Statutory Tax Variations on introduction of GST.

Madam/Sir,

This has reference to WBSEDCL e-mail dated 21.06.2016 received from ED distribution seeking clarification on the query raised by M/s L&T regarding admissibility of statutory variation in Taxes in the event of introduction of proposed GST. As per SBD for Partial Turnkey Contracts, Clause 10.7 of General Conditions of Contract (GCC) under heading Taxes & Duties is reproduced as hereunder:

“For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement is based on the taxes, duties, levies and charges prevailing at the date seven (07) days prior to the last date of bid submission (hereinafter called “Tax” in this GCC Sub-clause 10.7). If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of the Contract, which was or will be assessed on the Contractor in connection with performance of the Contract, an equitable adjustment of the Contract price shall be made to fully take into account any such change by addition to the Contract price or deduction therefrom, as the case may be, in accordance with GCC Clause 31 (Changes in Laws and Regulations) hereof. However, these adjustments would be restricted to direct transactions between the Employer and the Contractor for which the taxes and duties are reimbursable by the Employer as per the Contract. These adjustments shall not be applicable on procurement of raw materials, intermediary components etc by the Contractor and also not applicable on the bought out items dispatched directly from sub-vendor’s works to site”.

Moreover the clause 31, of GCC of SBD under heading changes in Laws and Regulations is stated as hereunder:

Contd..
If, after the date seven (07) days prior to the date of Bid Opening, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed in India (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract. However, these adjustments would be restricted to direct transactions between the Employer and the Contractor and not on procurement of raw materials, intermediary components etc. by the Contractor for which the Employer shall be the sole judge. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with the Appendix-2 to the Contract Agreement.

In this connection, it is clarified that "in the event of introduction of GST in the course of performance of contract, PIA shall examine its impact on the affected transactions under the contract in totality, for equitable adjustment in the contract price, if required. The contractor shall furnish the relevant details/documents for this purpose, as may be required by PIA”.

This is for kind information and necessary action please.

Thanking You,

Yours Sincerely,

(G S BHATI)
General Manager (DDUGJY)

Copy for kind information to:
1. All ZM / CPM, REC, ZO / PO
Sri GS Bhati
General Manager (DDUGJY)
REC Corporate Office
N'Delhi.

Sub: Clarifications on allowance of Statutory Tax variations on introduction of GST.

Sir,

This is in reference to the mail dated 21/6/2016 (copy enclosed), forwarded by Director (Distribution), WBSEDCL, regarding variation in statutory taxes in the event of introduction of GST for DDUGJY projects. The query raised is reiterated as follows:

"In case of introduction/amendments of new taxes/duties like GST etc., whether the same will be paid extra at actual or not, please clarify the same."

It is requested by Director (Distribution), WBSEDCL, to offer clarification on the matter please.

Yours faithfully,

(J Banerjee)
Zonal Manager (EZ)
Sir,

Pre-Bid meeting in respect of both DDUGJY & IPDS was held in the 1st week of June, 2016. In this Pre-Bid meeting M/s Larsen & Toubro Ltd. (L&T Ltd.) has raised queries related to admissibility of statutory variation in Taxes in the event of introduction of proposed GST. The query is as follows:-

"In case of introduction/amendments of new taxes/duties like GST etc., whether the same will be paid extra at actual or not, please clarify the same."

Our observations against the above query has already been communicated to all prospective bidders including L&T Ltd. which is as follows:-

"Please refer Volume-I, Section-II, Clause no. 22.3.1 of ITB and Volume-I, Section-IV, GCC Clause no. 10.7 & 31.1"

In the meantime L&T has again submitted one appeal against the same query as noted above.

Therefore, you are requested to kindly offer your views against the above query that after introduction of GST whether the intending bidders shall be paid extra at actual or not for Bought out items.

As the last date of bid submission is scheduled on 4th July, 2016 for IPDS and 5th July, 2016 for DDUGJY, therefore, you are requested to kindly offer your views at the earliest.

With regards,
R. K. Majumder,
Director(Distribution),
WBSEDCL.