



Oil & Natural Gas Corporation

Assam Asset, Eastern Region

Office of the CGM (MM) - Head MM

ROB-II, Nazira, Sivasagar – 785685, Assam

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Website: www.ongcindia.com

Ref. No. SIB/AA/MM/2024/LMV/1351091


Date: 21.08.2024

Amendment No. 01 to Tender No. R16DC24005 for Hiring of services of Brand new 372 Nos. of Light Vehicles (Taxi) for Assam Asset for a period of 04 years on lottery basis:

S. No.	Clause No.	Existing clause	Modified Clause
1.	3.0.(c).iii under Notice Inviting tender	<u>Note: Permanent Resident Certificate (PRC) stamped as "FOR EDUCATIONAL PURPOSE" by issuing authority shall not be acceptable.</u>	-Deleted-
2.	18.6 of GCC	Termination due to change of ownership and Assignment: In case the CONTRACTOR's rights and/or obligations under this Contract and/or the CONTRACTOR's rights, title and interest to the equipment/ vehicle, are transferred or assigned without the COMPANY's written consent, the COMPANY may at its option, terminate this Contract. COMPANY shall not be however under any obligation to accord consent to the CONTRACTOR for change of ownership & assignment of the contract	Termination due to change of ownership and Assignment: In case the CONTRACTOR's rights and/or obligations under this Contract and/or the CONTRACTOR's rights, title and interest to the equipment/ vehicle, are transferred or assigned without the COMPANY's written consent, the COMPANY may at its option, terminate this Contract. COMPANY shall not be however under any obligation to accord consent to the CONTRACTOR for change of ownership & assignment of the contract. No damages will be payable by ONGC as a result of termination of contract due to change of ownership and Assignment.
3.	19.0 of GCC	DELAY IN MOBILISATION AND LIQUIDATED DAMAGES (a)... (b).... (c) If the contractor is unable to mobilize / deploy and commence the services within the period specified in sub clause (a) above, it may request ONGC for extension of the time with unconditionally agreeing for levy and recovery of LD. Upon receipt of such a request, ONGC may at its discretion, extend the period of mobilization for maximum 30 days beyond the due date of placement after the allowed mobilization period of 75 days(From NOA) and shall recover from the	DELAY IN MOBILISATION AND LIQUIDATED DAMAGES: Time and date of delivery shall be the essence of the contract. (a)... (b).... (c) If the contractor is unable to mobilize / deploy and commence the services within the period specified in sub clause (a) above, it may request ONGC for extension of the time with unconditionally agreeing for levy and recovery of LD. Upon receipt of such a request, ONGC may at its discretion, extend the period of mobilization for maximum 30 days beyond the due date of placement after the allowed mobilization period of 75

		contractor, as an ascertained and agreed Liquidated Damages, a sum equivalent to 1/2 % of annual contract value, for each week of delay or part.	days(From NOA) and shall recover from the contractor, as an ascertained and agreed Liquidated Damages, a sum equivalent to 1/2 % of annual contract value, for each week of delay or part thereof subject to a maximum of 10% of the annual contract value.
4.	Under Notice Inviting tender	Quantum of Liquidated Damage for Default in Timely Mobilization / Completion: 0.5% of estimated annualized contract value for delay per week or part thereof.	Quantum of Liquidated Damage for Default in Timely Mobilization / Completion: 0.5% of estimated annualized contract value for delay per week or part thereof subject to a maximum of 10% of the annual contract value.
5.	27.1.8 under GCC:	Arbitration The fees payable to each Arbitrator shall be as per rules framed by the High Court in whose territorial jurisdiction as per contract and seat of arbitration is situated. In case no rules have been framed, the fees prescribed may be as per Fourth Schedule of the Arbitration and Conciliation Act, 1996. <u>However, Arbitrator may fix their fees keeping the aforesaid schedule as guiding factor.</u>	The fees payable to each Arbitrator shall be as per rules framed by the High Court in whose territorial jurisdiction as per contract and seat of arbitration is situated. In case no rules have been framed, the fees prescribed may be as per Fourth Schedule of the Arbitration and Conciliation Act, 1996. Fees payable to the arbitrator(s) shall be governed by the guidelines issued on the subject by the Chief Legal Services of ONGC including those issued vide Circular no. 03/2023 dated 15.06.2023-DLH/Arbitrators' Fees/SC Judgement/2023 dated 15.06.2023. The Circular is attached at Annexure 1.
6.	Heading at clause No.21 of Special Conditions of the Contract:	LIQUIDATED DAMAGES / <u>PENALTY CLAUSE:</u>	<u>SPECIAL</u> LIQUIDATED DAMAGES
7.	The word "Penalty" wherever appearing in the Special Conditions of Contract is to be replaced with Liquidated damages.	<u>Penalty</u>	Liquidated Damages

Note: All other existing terms & conditions of the tender have to be read in consonance with the above amendments.

	<p>OIL AND NATURAL GAS CORPORATION LIMITED Office of Chief Legal Services, Corporate Legal Department, Deendayal Urja Bhawn, 5A-Nelson Mandela Marg, Vasant Kunj, New Delhi 110070</p> <p style="text-align: right;">Phone No.: 011-26754007/4097</p>
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DLH/Arbitrators' Fees/SC Judgement/2023

Dated: 15.06.2023

Circular no. 3/2023

Sub: Guidelines regarding payment of fees to the arbitrators in ad-hoc arbitration matters as per the judgment dated 30.08.2022 passed by Hon'ble Supreme Court in the matter of 'Oil and Natural Gas Corporation Ltd. vs. Afcons Gunanusa JV; Arbitration Petition (Civil) No. 05 of 2022'

The unilateral fixation of the fees by the Arbitrators in ad-hoc arbitration matters has been an area of concern since long, especially for Public Sector Undertakings (PSU) like ONGC.

This issue has been deliberated and settled by the Hon'ble Supreme Court in the landmark judgment dated 30.08.2022 in the case of *Oil & Natural Gas Corporation Ltd. vs. Afcons Gunanusa JV*. The judgment addresses the issues regarding exorbitant costs and inordinate delays and has further paved the way in bringing clarity and transparency with respect to fixation of arbitral fees in ad-hoc arbitrations in India.

The main findings of the Hon'ble Supreme Court in above mentioned judgment are as follows:

1. Arbitrators do not have the power to unilaterally issue binding and enforceable orders determining their own fees.
2. The fees of the arbitrators must be fixed at the inception to avoid unnecessary litigation and conflicts between the parties and the arbitrators at a later stage.
3. The parties and the arbitral tribunal shall hold 'preliminary hearings' with a maximum cap of four hearings amongst themselves to finalise the 'Terms of Reference' of the arbitral tribunal setting out the components of its fee, which would serve as a tripartite agreement between the parties and the arbitral tribunal. Once the 'Terms of Reference' have been finalised and issued, it would not be open for the arbitral tribunal to vary, either the fee fixed or the heads under which the fee may be charged.
4. In cases where the arbitrator(s) are appointed by parties in the manner set out in the arbitration agreement, the fees would be payable in accordance with the arbitration agreement. However, if the arbitral tribunal considers that the fee stipulated in the arbitration agreement is unacceptable, the fee proposed by the arbitral tribunal must be indicated with clarity in the course of the preliminary hearings. If any of the parties object to the fee proposed by the arbitrator(s) and no consensus can be arrived at between such a party and the tribunal or a member of the tribunal, then the tribunal or the member of the tribunal should decline the assignment.
5. When one or both parties, or the parties and the arbitral tribunal are unable to reach a consensus about the fees, it is open to the arbitral tribunal to charge the fee as stipulated in the Fourth

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Schedule of the Arbitration & Conciliation Act 1996 (Act), which is the default fee schedule binding on all.

6. The 'sum in dispute' referred in the Fourth Schedule of the Act shall be considered separately for claim and counter-claim, and not cumulatively. Therefore, the arbitrator's fee will be calculated separately for the claim and counter-claim, and the fee ceiling of Rs.30,00,000/- contained in the Fourth Schedule will separately apply to both claim and counter claim.
7. The fee ceiling of Rs.30,00,000/- under the Fourth Schedule is applicable to each individual arbitrator, and not the arbitral tribunal as a whole, where it consists of three or more arbitrators. In the event the arbitral tribunal consists of a sole arbitrator, they would be entitled to 25 per cent over and above the fee payable to an arbitrator under the Fourth Schedule.

In view of the above, all work centres need to adhere to the guidelines (summarised above) laid down by the Supreme Court, specifically mentioned at para 158 read with paras 104 and 105 of the 'ONGC vs. Afcons' judgment dated 30.08.2022.

Sandhya Yadav
15.6.23

(Sandhya Yadav)

GM-Legal, Chief Legal Services (Off.)

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