

## DEFECTS LIABILITY PERIOD AND PUBLIC

In the recent days, we, the common people in Kerala are privileged to hear about Defects Liability Period (DLP) in PWD works, especially for road works, though it is there in existence since very long time.

Is this DLP has any significance to the public? What it is? Where is it used? What is its relevance? How is it connected to our life? How is it associated with the public?

Recently the kerala PWD minister made statements in our Legislative Assembly, to medias and in press conference about Defects Liability Period. This was in the context of a road collapse and reportedly deteriorated hill highways to Sabarimala. Apparently, the same road has been constructed and commissioned few years back and the Defects Liability Period is still in force. The miserable part of the incident is that the same aforesaid road under valid DLP have been included in Sabarimala Road Renovation Project causing considerable financial loss to the department and obviously it's the public money. For this incident department announced an investigation and the PWD minister said, stringent action will be taken against those responsible.

However, after the incident some decisions which would have taken many years back have come into existence.

1. The telephone numbers of the Contractor and the concerned officer will be published and displayed at the sides of the roads constructed under DLP.
2. People can complain about any defects or damages directly.
3. The details of roads being constructed in Kerala which includes the terms and conditions of DLP will be published on the official website.

He added the "public should be on guard and not spectators"

How we public going to guard our common assets? Does awareness help? Probably to some extend...

### Defects Liability / Defects Liability Period (DLP)

#### References:

- **FIDIC Conditions of Contract for Construction.**

**FIDIC** is the French acronym for the International Federation of Consulting Engineers.

*(Federation Internationale des Ingenieurs Conseils).*

Widely used on GCC especially United Arab Emirates (UAE) and in many other Countries worldwide.

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- **Standard Bid Document, Public Works Department, Government of Kerala**

#### **What is Defects Liability Period?**

Defects Liability Period (DLP) is the period stated in the Conditions of Contract for which the Contractor is liable for the completion of outstanding works and remedying defects. Under this Clause on the Conditions of Contractor the Contractor is responsible for,

- a) Complete any works which is outstanding on the date stated in the Taking-Over Certificate, within such reasonable time as instructed. For example, there are cases wherein the road / bridge is opened for traffic, however there will be outstanding works which do not affect the free flow of traffic (road markings, sign boards, under bridge painting etc...) are yet to be completed.
- b) Execute all works required to remedy defects or damage, as may be notified by the Employer or on his behalf (Fair wear and tear excepted). If a defect appears or damage occurs, the Contractor shall be notified accordingly by the Employer or on his behalf.

### **Cost of Remedying Defects?**

The works covered under the defects liability condition shall be executed at the risk and cost of the Contractor. Note, any works which is not there in the original Contract and is additional shall be claimed separately.

### **Failure to Remedy Defects?**

If the Contractor fails to remedy the defects or damage within a reasonable time, a date may be fixed by the Employer on or his behalf by which the defects or damage is to be rectified. The Contractor shall be given reasonable notice of this date.

If the Contractor fails to remedy the defects or damage by this notified date, the Employer / Engineer-in-charge may carry out the works by himself or by others at the Contractor's cost. The Contractor is subject to pay to the Employer the cost reasonably incurred by the Employer in remedying the defects or damage. There is different mechanism under the Contract to recoup the cost incurred by the Employer / Engineer-in-charge.

### **Importance of Successful Completion of Defects Liability Period.?**

In accordance with FIDIC, "The Contract shall not be considered as completed until a Defects Liability Certificate have been issued after expiration of Defects Liability Period, stating that the Contractor have completed his obligations to execute and complete the Works and remedy any defects therein to the satisfaction of the Engineer".

Reference to the Standard Bid Document of the PWD, "The Work shall be considered as finally complete at the end of the Defects Liability Period subject to the Contractor having replaced and/or rectified and made good all the defective items of work and defects and hand over the Work as per the Contract, to the satisfaction of the Engineer-in-Charge, and provided that the Contractor has performed all his obligations and fulfilled all his liabilities under the Contract, and when the Engineer-in-Charge has certified in writing that the Work are finally complete".

Therefore, failure to remedy any defects or the Contractors obligations under the contract shall affect the Contractor's Security Deposit, Retention Money, Performance Bond, and Contractor's Final Bill. Any default from the Contractor shall be recovered through any of the above.

### **Often Confused with Defects Liability and Warranty?**

Defects liability is a condition set out in the Contract that, the Contractor is liable to execute all works required to remedy any defects or damage, as may be notified by the Employer or on his behalf within the stipulated time as mentioned in the Contract. Conditions of Defects Liability mainly used for 'works' and this Defects Liability guarantees against Contractor's Security Deposit, Retention Money, Performance Bond and the amount due to the Contractor or to become due to the Contractor.

Whereas an articulated warranty will furnish a guarantee that a 'product' or 'material' will meet certain quality and performance. Normally in Construction projects, warranty is a covenant given by the Contractor that the completed works will be performed in accordance with the standards and specification stated in the contract.

### **Significance of Defects Liability Period?**

Defects Liability Period is a clause / condition set out under the Conditions of Contract of a project awarded. Under this clause the Contractor is liable to rectify any damage arises due to his plant, material, or workmanship. If we can strictly impose these conditions, the Contractor's will be forced to maintain the quality of construction and thereby reducing maintenance considerably.

### **How it is Associated with the Public?**

This is directly associated with the public in the case of PWD works. The end users of the works executed by the Public Works Department are the public, and if we have a maintenance free / minimal maintenance infrastructure (roads, bridges etc...) to move around, this will improve the quality of life of

public, saves time and moreover saving lives by minimising road accidents. It reduces the financial burden of the authorities and thereby saving the taxpayers, the public's wealth.

Prepared by:

Ezytch

Fit out, contracting and consulting company

Kerala- India, United Arab Emirates

About Ezytch

Ezytch is a fit out, contracting and consulting company established in 2020.

Though the base of EzyTch is in Cochin- India, we serve a larger customer from all over India, United Arab Emirates (UAE) and Middle East.

The aim of EzyTch is to provide customer their best service, support and after work services on associated works in a budget friendly way. The completed and ongoing projects and services of Ezytch is a testimony to our vision. We are reachable via email at [contact@ezytch.com](mailto:contact@ezytch.com) or simply visit our website [www.ezytch.com](http://www.ezytch.com) and enter your contact details.

