



ANNEXURE IV

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

- a) "Company" shall mean Bharat Heavy Electrical Limited Bhopal, a company incorporated under the companies Act' 1956, and having its registered office at BHEL House, Siri Fort, New Delhi – 110045 here in after referred to as BHEL and includes a duly authorized representative of the company or any other person empowered in this behalf by the company to discharge all or any of its functions.
- b) "Accepting Authority" shall mean the Head of the WE&CS – Mechanical Section or any other person authorized by him.
- c) "Contract" shall mean the notice inviting Tender and acceptance thereof & formal agreement if any, executed between Bharat Heavy Electricals Ltd. Bhopal & contractor together with documents referred to therein including these conditions, & any special conditions, specifications, designs, drawings etc. These documents taken shall be deemed to form one contract and shall be complementary to one another.
- d) "Contractor" shall mean the individual or firm or company whether incorporated or not, undertaking the work & shall include legal representatives of such individual or persons composing such firm or incorporated company or successors of such person, as the case may be and permitted of such individual or firm or company.
- e) "Contract sum" shall mean the lump sum for which the tender is accepted in the case of lump sum contract and in the case of item rate the total cost of the works arrived after extension of quantities shown in schedule of quantities by the item rates quoted by the tenderer for various item.
- f) "Day" shall mean a day of 24 hours from midnight to mid night, irrespective of the number of hours worked in that day.
- g) A week shall mean seven days without regard to the number of hours worked in any day in the week.
- h) "Work" shall mean work to be executed in accordance with contract or part(s) thereof as the case may be and shall include all extra, additional, altered or substituted Work or temporary & urgent work as required for performance of contract.
- i) "Engineer-in-Charge" shall mean the Engineering officer appointed by the Accepting Authority, who shall direct, supervise & be in-charge of work for purpose of contract.

2. CONTRACT DOCUMENTS

The contractor shall be furnished free of charge, two Certified true copies of the contract documents. He shall keep one copy of this document on the site in good order, and the same shall as all, reasonable times, be available or inspection and use by the Engineer-in-charge, his representatives or by other Inspecting Officers.

- a) None of the documents shall be used by contractor for any purpose other than that of this contract.

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- b) The contractor shall take necessary steps to ensure that all persons employed on any work in connection with this contract have noticed that Indian Official Secrets Act, 1923, applies to them and shall continue so to apply even after the execution of such work under the contract.

3. WORK TO BE CARRIED OUT

The detail scope of work (annexure I) is provided with contract document. The tools and tackles required to carry out work will scope of contractor.

4. INSPECTION OF WORK BEFORE SUBMISSION OF TENDER

The contractor shall examine the quantum of work and shall satisfy himself before submitting his tender. He shall himself assess the requirement of materials, contingencies and other circumstance which may affect or influence his tender, no extra charges on any misunderstanding or otherwise shall be allowed.

5. SUFFICIENCY OF THE TENDERERS

The contractor shall be deemed to have satisfied himself before tendering as to correctness and sufficiency of his tender, the work and prices. This shall except as otherwise provided all obligation under the contracts all matters and things necessary for the proper completion and maintenance of the works.

6. DISCREPANCIES AND ADJUSTMENT OF ERRORS

The several documents forming the contract are to be taken as mutually explanatory of one another. If there are varying or conflicting provisions made in any document forming part of contract, the accepting authority shall be the deciding authority with regard to the intention of the document. Any error in description, quantity or rate or any omission these form shall not initiate the contract or release the contractor from execution of whole or any part of work comprised. These and according to drawings & specification or from any of his obligation under the contract.

7. EARNEST MONEY DEPOSIT

- a) Earnest Money is to be paid by each Tenderer. Electronic receipt/MR is to be submitted along with the tender documents in a sealed envelope. The rate of earnest Money deposit shall be as per mentioned in NIT.

Modes of Deposit

The EMD may be accepted only in the following forms :

- (i) Cash deposit as permissible under the extend income Tax Act (before Tender Opening)
- (ii) Electronic Fund Transfer credited in BHEL Account (before Tender Opening)
- (iii) Banker's cheque/Pay order/ Demand Draft , in favour of BHEL (along with offer)
- (iv) Fixed Deposit receipt(FDR) issued by Schedule banks/Public Financial Institutions as defined in the companies Act(FDR should be in the name of the Contractor ,a/c BHEL)

In addition to above , The EMD amount in excess of Rs Two Lakh may also be accepted in the form of Bank Guarantee from schedule bank. The Bank Guarantee in such cases shall be valid for atleast six months .

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- b) EMD can be deposited in electronic mode . The procedure of depositing EMD is as follows:
- i. For depositing amount online, depositor has to open SB-Collect through Online E-Payment option available on Internet (www.bhelbpl.co.in under caption new link). After reading the instruction for depositing the amount, open SBI's SB-Collect site. Please select State of Corporation as " Madhya Pradesh" and type of Corporation as " Industry" and then click on "Go" appearing on the screen. Now select " Bharat Heavy Electricals , Bhopal" from the dropdown table appearing against "Industry Name" and click Submit. Now select category from the dropdown table appearing against "Select category" under which you need to deposit amount with BHEL, Bhopal.
 - ii. EMD and Tender Fee may please be deposit together under EMD module where the EMD & Tender Fee both are applicable.
 - iii. After the successful payment DU no. shall be generated from the banking system.
 - iv. After depositing the amount, Depositor has to fill Deposit slip available on Internet (www.bhelbpl.co.in under caption new link) by selecting required Enquiry number. Tender Fee and EMD may please be enter separately.
 - v. As and when credit received in BHEL account, automatic mail sent to the depositor.
 - vi. After submitting the deposit slip a control number will be generated through system which can be used for getting print out from system.
- 7.1 EMD by the Tenderer will be forfeited as per tender documents. If:
- i)After opening the tender, the tenderer revokes his tender within the validity period or increases his earlier quoted rates.
 - ii)The tenderer does not commence the work within the period as per LOI /Contract. In case the LOI / Contract is silent in this regard, then within 15 days after award of contract.
- 7.2 EMD shall not carry any interest.
- 8. SECURITY DEPOSIT (SD)**
- 8.1 The total amount of Security Deposit will be 3% of the contract value. EMD of the successful tenderer shall be converted and adjusted towards the required amount of Security Deposit.
 - 8.2 The Security Deposit will be collected before start of the work by the contractor.
 - 8.3 Security Deposit may be furnished in any one of the following forms:
 - 8.4 Security Deposit can also be recovered from the running bills. However in such cases at least 50% of the S D should be collected before start of work and the balance 50% may be recovered from the running bills.
 - 8.5 EMD of the successful tenderer shall be converted & adjusted against the S D.
 - 8.6 The Security Deposit shall not carry any interest.
 - 8.7 The Security Deposit deducted will be refunded to the tenderer after the completion of the work. In the meantime any discrepancy is found in the work the SD can be detained for further period or may be forfeited. This Security Deposit shall be liable to be returned to the contractor after termination of the contract or at the end of it, subject to deduction on account of company dues, non-deposit of statutory dues etc. no interest shall be payable on S D.
 - 8.8. Electronic transfer: The procedure of depositing SD is as follows:
 - i. For depositing amount online, depositor has to open SB-Collect through Online E-Payment option available on Internet (www.bhelbpl.co.in under caption new link). After reading the instruction for depositing the amount, open SBI's SB-Collect site. Please select State of

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Corporation as “Madhya Pradesh” and type of Corporation as “Industry” and then click on “Go” appearing on the screen. Now select “Bharat Heavy Electricals, Bhopal” from the dropdown table appearing against “Industry Name” and click Submit. Now select category from the dropdown table appearing against “Select category” under which you need to deposit amount with BHEL, Bhopal.

- ii. After the successful payment DU no. shall be generated from the banking system.
- iii. After depositing the amount, Depositor has to fill Deposit slip available on Internet (www.bhelbpl.co.in under caption new link) by selecting required Enquiry number.
- iv. As and when credit received in BHEL account, automatic mail sent to the depositor.
- v. After submitting the deposit slip a control number will be generated through system which can be used for getting print out from system.

(Note: In case of (a) small value contracts not exceeding 20 lakhs or (b) SAS jobs, work can be started before the required Security Deposit is collected. However, payment can be released only after collection/ recovery of initial 50% Security Deposit).

9. TIME AND EXTENSION FOR DELAY

The time allowed for execution, which shall be mutually agreed between BHEL and contractor, and mentioned in Work Order, along with these conditions shall be of the essence of the contract. The execution of work shall commence immediately and not later than 15th day after the date on which the Engineer-in-charge issues written order to commence work or from date of handing over the plant whichever is later unless specified otherwise elsewhere. If contractor commits default in commencing the execution of work as aforesaid, Company/Corporation shall without prejudice to any other right or remedy be at liberty to cancel the order and forfeit the earnest money/ security Deposit.

- 9.1 As soon as possible after the contract is awarded, the Engineer-in-charge and the contractor shall agree upon a time and progress chart. The chart shall be prepared in direct relation to the time stated in the contract document for completion of work.

It shall indicate forecast of dates of commencement & completion of various activities to be done for completion of work as per contract. This may be amended as necessary by agreement between Engineer-in-charge & contractor within limitations of time imposed in contract document & further to ensure good progress during execution of work.

- 9.2 If the work is delayed by :

- a) Force majeure, or
- b) Serious loss or damage by fire, or
- c) Delay on the part of other contractor or company/ corporation in executing work not forming part of contractor.
- d) Non-availability / release of the machines which is in the responsibility of company / corporation or,
- e) Any other case, which is in the absolute discretion of the accepting authority and is beyond contractor's control.

Then upon the happening of any such delay, contractor shall immediately give notice thereof in writing to the Engineer-in-charge but shall never lose constantly his best endeavors to prevent or make good the delay and shall do all that may be reasonably required to the satisfaction of the Engineer-in-charge to proceed with the work.

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- 9.3 Request for extension of time to be eligible for consideration shall be made by the contractor in writing within seven days of the happening of the event causing delay. The contractor may also, if practicable, indicate in such a request the period for which the extension is required.
- 9.4 The accepting authority may give a fair and reasonable extension of time for completion work. Such extension shall be communicated to contractor by Engineer-in-Charge in writing within the month of the date of the receipt of such request.

10. INSPECTION AND APPROVAL

- a) All work embracing more than one process shall be subject to Examination and approval at each stage there of and the contractor shall give due notice to the Engineer-in-charge or his authorized representative when each stage is ready.
- b) No work shall be covered up or put out of view without the approval of Engineer-in-charge or his representative and the contractor shall afford full opportunity for examination of any work, which is about to be covered up or put out of view. In the event of the failure of the contractor to do as aforesaid, if required by Engineer-in-charge he shall uncover such work at contractor's own expenses.
- c) Company officer concerned with the contract shall have powers at any time to inspect and examine any part of the work and the contractor shall give such facilities as may be required for such inspection and examination.

11. COMPENSATION OF DELAY

- a) If the contractor fails to maintain fulfill schedule as per work order and fails to start the work as per schedule date given by BHEL and fails to maintain the required progress in work as per terms of Work Order, he shall without prejudice to any other right or remedy of company/ corporation on account of such breach, pay as agreed compensation amount calculated as stipulated below:
- b) 0.5% (Half) percent per week of contract value.
- c) Provided always that the total amount of compensation for delay to be paid under this condition shall not exceed 10% of the total contract value.

12. CONTRACTOR'S LABOUR / WORKER WHILE WORKING INSIDE

- a) The contractor shall ensure sufficient staff of the quality to ensure work-man-ship of the degree specified in the contract and to the satisfaction of the Engineer-in-charge. Contractor shall not employ indirectly or through sub-contractor any staff what-so-ever. Written consent of the contractor in this behalf has to be incorporated in to the offer, or otherwise the Contract is liable to be rejected.
- b) Contractor shall furnish to Engineer-in-charge a complete list of persons engaged on the work giving the following details.
- | | | |
|---------|---------|-----------|
| a) Name | (b) Age | (c) Trade |
|---------|---------|-----------|
- Change-over, if any, shall be furnished by the contractor to the Engineer-in-charge.
- c) Contractor shall comply with Contractor's Obligations & Statutory Compliances for work contract as per Annexure-IV & it shall be the part of agreement of this contract.

13. NUISANCE

Contractor shall not any time do, cause or permit any nuisance on the work site or do anything shall cause unnecessary disturbance or inconvenience to other workers.

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ANNEXURE IV**14. GENERAL TERMS**

- a) BHEL shall have the privacy of the contract with the contractor only and will give instructions to the contractor or his authorized representative. BHEL will have nothing to do or be concerned with the employment of employees working for the contractor. The relationship between BHEL and the contractor will be that of independent entities and nothing herein contained will amount to joint venture, partnership or an employer-employee relationship.
- b) The contractor shall maintain regular contact with the designated employee(s) of BHEL and will interact on matters relating to the work awarded under this contract.
- c) You will be liable for compensation to BHEL in the event of abandoning the work before expiry of the contract period to maximum of 10% of the contract value.

The work or part of the work so abandoned will be done by BHEL or through subcontracting at risk and cost of the contractor .

15. TERMS OF PAYMENT

- * 100% Payment shall be made completion of work, on the basis of actual work done period, duly certified by Engineer – in charge (CMX-GGX); WE&CS. Accompanied by Incharge –Blk/bay respective User department.
- * Payment shall be made against the submitted bill as per BHEL specified norms on 100% Completion of work basis as per the standard terms. Payment to the contractor will be on within 90 days after submission of bills. (In case of MSME it will be 45 days).
- * Any loss of tax credit on additional liability on BHEL due to the reason attributable to the contractor shall be recovered from them.

16. DEFECTS LIABILITY PERIOD – GUARANTEE

The contractor shall guarantee executed work for satisfactory performance for one year from date of handing-over with major impairment, mal-operation & accident.

17. RIGHTS & OBLIGATION OF BHEL

- a) In case the contractor does not carry out the Contractual/Statutory obligations or the services rendered by him are found to be unsatisfactory, BHEL shall bring the same to his notice and he will be obliged to discharge the obligations and rectify the deficiency/anomaly within three days time failing which, BHEL reserves the right to terminate the contract without assigning any reason whatsoever. In such an event, no damages will be payable for short closure of the contract.
- b) If the Contractor commits default in complying with any of the terms conditions of the contract and does not remedy it or take effective steps to remedy in within three days after a notice in writing is given by Engineer-in-charge failing which BHEL reserves the right to terminate the contract without giving any reasons thereof.
- c) Cancellation of contract may be either for whole or part of contract at BHEL's option. In event of termination of contract in whole or part BHEL may procure upon such terms and in such manner as deemed appropriate, supplies or services similar to those so terminated and contractor shall be liable to BHEL for any excess costs for such similar supplies or services provided that the contractor shall continue the performance of this contract to extent not terminated under provision of this clause.
- d) The decision of BHEL regarding interpretation of any terms and conditions set forth in the Agreement shall be final and binding on the contractor. The award of the arbitrator shall be final and binding on both the Parties. The venue of the Arbitration shall be Bhopal in India.
- e) The Award to be given by the Arbitration shall be a speaking award. All questions, disputes, differences arising under, out of or in connection with this contract shall be to the exclusive jurisdiction of Bhopal Courts.

ANNEXURE IV**18. TAXES**

Goods and Service Tax (GST) or any other new tax introduced by GOI shall be considered as applicable. Any loss/delay of tax credit to BHEL shall be recovered from contractor if the reason for the same is attributable to contractor. Income Tax deduction at source will be as applicable from time to time.

19. ARBITRATION & LAW

Except where otherwise provided for contract, all questions and disputes relating to meaning of specifications, designs, drawings, & instruction herein before mentioned and as to quality of workmanship of materials used on work or as to any other, question, claim, right, matter or thing whatsoever in any way arising out of or relating to contract, design, drawing, specifications, estimates, instructions, orders, or these conditions or otherwise concerning the works, or the execution or failure to execute same whether arising during the progress of work or after completion or abandonment thereof shall be referred to sole arbitration of General Manager (WEX), BHEL, Bhopal and if General Manager is unable or unwilling to act to the sole arbitration, of some other person appointed by General Manager willing to act as such arbitrator. There will be no objection if arbitrator appointed is an employee of BHEL & that had to deal with matters to which the contract relates & that in course of his duties, as such he had expressed views on all or any of the matters in dispute or difference.

Arbitrator to whom matter is originally referred being transferred or vacating his office or being unable to act for any reason, such General Manager as aforesaid at time of such transfer, vacation of office or inability to act, shall appoint another person to act as arbitrator in accordance with terms of contract. Such person shall be entitled to proceed with reference from the stage at which his predecessor left it. It is also a terms of this contract that no person other than person appointed by such General Manager as aforesaid should act as arbitrator & if for any reason that is not possible, matter is not to be referred to arbitration at all. In all case where amount of claim in dispute is ₹ 50,000/- (*Rupees Fifty Thousand*) & above, arbitrator shall give reason for award.

Subject as aforesaid provision of Arbitration Act, 1940, or any statutory modification/reconditioning or reactant thereof and the rules made there-under and for the time being in force shall apply to arbitration proceeding under this clause.

It is a term of the contract that party involving arbitration shall specify dispute or disputes to be referred to arbitration under this clause together with amount or amount claimed in respect of each dispute. Arbitrator(s) may from time to time will consent of the parties enlarge time for making and publishing award.

The work under Contract shall if reasonably possible continue during arbitration proceedings and no payment due or payable to contractor shall be withheld on account of such proceedings. Arbitrator shall be deemed to have entered in reference on the date of first hearing. Arbitrator shall give a separate award in respect of such dispute or difference referred to him. Venue of arbitration shall be such place as may be fixed by arbitrator in his sole discretion. Award of arbitration shall be final, conclusive and binding all parties to this contract. The jurisdiction in all cases shall be at Bhopal.

20 CONCILIATION CLAUSE FOR CONDUCTING CONCILIATION PROCEEDINGS UNDER THE BHEL CONCILIATION SCHEME, 2018

The Parties agree that if at any time (whether before, during or after the arbitral or judicial proceedings), any Disputes (which term shall mean and include any dispute, difference, question or disagreement arising in connection with construction, meaning, operation, effect, interpretation or breach of the agreement, contract or the Memorandum of Understanding (delete whichever is inapplicable), which the Parties are unable to settle mutually), arise inter-se the Parties, the same may, be referred by either party to Conciliation to be conducted through Independent Experts Committee to be appointed by competent authority of BHEL from the BHEL Panel of Conciliators.

Notes:

1. No serving or a retired employee of BHEL/Administrative Ministry of BHEL shall be included in the BHEL Panel of Conciliators.
2. Any other person(s) can be appointed as Conciliator(s) who is/are mutually agreeable to both the parties from outside the BHEL Panel of Conciliators.
The proceedings of Conciliation shall broadly be governed by Part-III of the Arbitration and Conciliation Act 1996 or any statutory modification thereof and as provided in Annexure----- to this GCC.
The Annexure ----- together with it's appendices will be treated as if the same is part and parcel hereof and shall be as effectual as if set out herein in these GCC.

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