

TRANSMISSION BUSINESS GROUP
SUB CONTRACTS MANAGEMENT
LODHI ROAD, NEW DELHI

SPECIAL TERMS & CONDITIONS FOR SERVICES (for Services - BOQ Part II)

1.0 INTEREST BEARING RECOVERABLE ADVANCES

- 1.1 Normally no advance is payable to the contractor. However, advance payment in exceptional circumstances shall be interest bearing and secured through an equivalent Bank Guarantee and shall be limited to a maximum of 5% of contract value.
- 1.2 In exceptional circumstances, with due justification, Competent Authority of BHEL is empowered to approve proposals for payment of additional interim interest bearing advance against matching Bank Guarantee, for resource augmentation towards expediting work for project implementation.
- 1.3 Payment and recovery of Interest Bearing Recoverable advance shall be at the sole discretion of BHEL and shall not be a subject matter of arbitration.
- 1.4 The rate of interest applicable for the above advances shall be the prime lending rate of State Bank of India prevailing at the time of disbursement of the advance + 2%, and such rate will remain fixed till the total advance amount is recovered.
- 1.5 Unadjusted amount of advances paid shall not exceed 5% of the total contract value at any point of time. Recovery of advances shall be made progressively from each Running Bill such that the advance amounts paid along with the interest is fully recovered by the time the contractor's billing reaches 80% of contract value.
- 1.6 Recovery rate per month shall not be less than sum of following (except for last adjustment where total amount to be adjusted may be less than the sum of following):
 - a. 10% of Running Bill amount
 - b. Simple interest up to the date of RA Bill on the outstanding Principle amount/amounts.
- 1.7 Contractor to submit Bank Guarantee as per prescribed formats for each of the advance and shall be valid for at least one year or the recovery duration or the balance contract period whichever is later. In case the recovery of dues does not get completed within the aforesaid BG period, the contractor shall renew the BG or submit fresh BG for the outstanding amount and the remaining recovery period.
- 1.8 BHEL is entitled to make recovery of the entire outstanding amount in case the contractor fails to comply with the BG requirement.

2.0 SECURITY DEPOSIT:

2.1 Upon acceptance of tender, the successful tenderer must deposit the security Deposit before commencement of work. The rate of Security Deposit will be as below:

Work upto Rs. 10 Lakhs	:10%
Above Rs. 10 Lakhs upto Rs. 50 Lakhs	:1Lakh+7.5%of the amount exceeding 10 Lakhs.
Above Rs. 50 Lakhs	:Rs. 4 Lakhs + 5 % of the amount exceeding Rs. 50 Lakhs.

The SD must be deposited within 15 days from date of issue of LOI in anyone of the following forms given in (i) to (v) below:

- i) Cash (as permissible under the Income Tax Act).
- ii) Pay Order, Demand Draft in favour of BHEL.
- iii) Local cheques of scheduled banks / Nationalized banks, subject to realization.
- iv) Bank Guarantee from Nationalized banks / scheduled Banks/ Public Financial Institutions as defined in the Companies Act. The Bank Guarantee format should be as per Annexure H " Proforma for BG for Security deposit. Bank Guarantee from Co-operative bank will not be accepted. Also, the Bank Guarantees should be enforceable in the town/city in which the sector/project is located.
- v) Fixed Deposit receipt issued by Scheduled Bank / Public Financial Institutions as defined in the Companies Act. The FDR should be in the name of the contractor, A/C BHEL, duly discharged on the back.
- vi) Security deposit can also be recovered at the rate of 10% from the running bills. However in such cases at least 50% of the Security Deposit should be collected before start of the work and the balance 50% may be recovered from the running bills.
- vii) EMD of the successful tenderer can be converted and adjusted against the security deposit.
- viii) The security deposit shall not carry any interest.
- ix) Security deposit shall not be refunded to the contractor except in accordance with the terms of the contract.
- x) The Head of Unit may waive the Security Deposit in respect of Public Sector Undertaking particularly on a reciprocal basis.

Note : 1) Acceptance of Security Deposit against Sl. No. (v) above will be subject to hypothecation or endorsement on the documents in favour of BHEL. However, BHEL will not be liable or responsible in any manner for the collection of interest or renewal of the documents or in any other matter connected therewith.

2) The BG shall be submitted only through the Banker and direct submission by the party will not be accepted. Along with the BG, the Bank shall also furnish a letter of confirmation (as per prescribed format).

- 3) The validity of the Bank Guarantee furnished towards Security Deposit under (iv) above shall be up to three months more than the period of completion of work as stipulated in the LOI and the same will be kept valid by proper renewal till the completion of the work.
- 2.2 If the value of the work done at any time exceeds the accepted agreement value, Security Deposit shall be correspondingly enhanced and the extra Security Deposit shall be immediately deposited by the contractor or recovered from the payments due to him.
- 2.3 Failure to deposit the Security Deposit within the stipulated time, may lead to forfeiture of EMD and cancellation of the award of work.
- 2.4 BHEL reserves the right of forfeiture of Security Deposit in addition to other claims and penalties in the event of the contractor's failure to fulfill any of the contractual obligations or in the event of termination of contract as per terms and conditions of the contract. BHEL reserves the right to set off the Security Deposit, against any claims of any other contracts with BHEL.
- 2.5 RETURN OF SECURITY DEPOSIT: If the contractor duly performs and completes the work in all respects to the entire satisfaction of BHEL and presents an absolute "No demand certificate" in the prescribed form and returns properties belonging to BHEL, taken, borrowed or hired by him for carrying out the said works, Security Deposit will be released to the contractor after deducting all costs, expenses and other amounts that are to be paid to BHEL under this contract or other contracts entered into with the contractor. It may be noted that in no case the Security Deposit shall be refunded/released prior to passing of final bill.
- 2.6 No interest shall be payable by BHEL on Security Deposit or on any money due to the contractor.

3.0 TERMS OF PAYMENT

A. For item No. 1 of BOQ Part-II

1. 95% payment on submission of documents as per technical specification and after final approval of design by BHEL/Customer..
2. Last 5% of payment (retention money) shall be released on completion of guarantee period. However, this retention money can be released on submission of B.G. (as per clause no. 10.0) of equivalent amount valid till guarantee period.

B. For other items of BOQ Part-II:

1. The contractor shall be paid monthly running bill to a maximum of 90% as progressive payment of the works actually executed at site. Next 5 % of payment shall be released after completion of all activities covered under the scope of this contract. Last 5% of payment (retention money) shall be released on completion of guarantee period. However, this retention money can be released on submission of B.G. (as per clause no. 10.0) of equivalent amount valid till guarantee period.

2. The Engineer shall after a measured bill allow and certify payment to the contractor on the basis of abstract measurement bill submitted by contractor. However, the usual recoveries would be affected from bill.
3. All intermediate payments shall be regarded as advance against the final payment only and shall not be considered as an admission of the due performance of the contract or any part thereof in any respect of the occurring of any claim whatsoever. Such intermediate payments shall not conclude, determine or affect in any way the powers of the Engineer as to the final settlement and adjustment of the account of otherwise, or in any way vary of affect the contract. To this affect the contractor shall submit the final bill, which shall contain the complete up-to-date measurements for the total work done.
4. Any certificate relating to the work done may be modified by any subsequent interim certificates or by the final certificate and no certificate of the Engineer supporting an advance payment shall of itself be conclusive evidence that any work or materials to which it relates are in accordance with the contract.

4.0 Interest Liability- In case of any delay in payment due to any reason, BHEL shall not pay any interest on delayed payment.

5.0 Taxes and Duties:

- 5.1 BHEL shall be releasing payments against this work order after deduction of applicable taxes at source as per requirements of tax rules and BHEL will issue appropriate certificates in this regard.
- 5.2 Prices are inclusive of all taxes, duties and levies etc. including sales tax / works tax /all other taxes Except service tax. etc. Vendor are required to indicate applicable % in Price Bid /Un Price Bid . Any increase by Government at any stage during execution of contract shall be borne by contractor. All charges on account of Octroi, Terminal Tax, Entry Tax and/or other taxes and duties on materials obtained for the work shall be borne by the contractor. The Contractor shall pay all taxes, fees, license charges, deposits, duties, tolls, royalty, commissions or other charges which may be Leviable on account of any of his operations connected with this contract.
- 5.3 Service Tax (including Educational Cess) wherever applicable as legally leviable & payable by the contractor under the provisions of applicable law/ act shall be paid by BHEL as per contractor's bill. However, contractor shall have to submit proof of Service Tax deposited by them immediately after the deposit but not later than the next bill submitted after the due date of deposit. The contractor shall furnish proof of Service Tax registration with Central Excise Division covering the services covered under this contract. Registration should also bear endorsement for the premises from where the billing shall be done by contractor on BHEL for this project. The contractor shall obtain prior approval of BHEL before billing the Service Tax amount.

- 5.4 With introduction of CENVAT credit rules 2004 which came into force wef 10-09-04, Excise Duty paid on input goods including capital goods used for providing the output service & service tax paid on input service can be taken credit of against the Service Tax payable on output service. As such, while offering the rates, contractors may take into account benefit of above provisions as the cost of input to contractors will be cost net of Excise Duty & Service Tax and adjust their offer price accordingly to make it more competitive.
- 5.5 Service tax rules, and any changes made therein by Government shall be complied with. Vendor shall obtain prior approval before opting for applicable scheme for execution of contract.
- 5.6 Contractor should be registered under State VAT Act of concerned state, if applicable. They should produce their Registration No and copy of Registration Certificate as proof of registration and contractor shall produce proof of payment of VAT so that BHEL as main contractor can get the benefit of deduction of input credit from the contractual transfer price under concerned state VAT Act. Contractors should produce Tax Invoice, copy of tax paid challan, copy of returns of the bidder showing BHEL portion of job value separately and other necessary documents to BHEL as required under VAT Act/ Rules so that BHEL can avail input credit under VAT Act.
- 5.7 Tender rates are inclusive of all taxes, duties and levies except service tax. Any increase by Government at any stage during execution of contract in any of taxes except service tax shall be borne by contractor. However, regarding newly introduced taxes (i.e. taxes introduced by Govt. after tender opening date), reimbursement will be made by BHEL subject to following:
- (i) Reimbursement will be made only if tax becomes directly applicable on rates specified. No reimbursement will be made for taxes / duties not directly levied on items specified in Bill of Quantities.
 - (ii) Further, if the new tax introduced by Central/State Govt. becomes directly applicable on items specified in Bill of Quantities but is in substitution / abolition / reduction of any of present taxes, BHEL will reimburse to the extent it has additional burden on contractor. For verification of working of additional burden, which will be calculated with reference to tax rate structure prevailing as on date of tender opening, contractor will have to provide such documents, details, information as considered fit by BHEL.

6.0 INSPECTION:

As per quality assurance plan and procedures finalized between vendor and BHEL.

7.0 COMPLETION TIME:

All the activities associated with the above package are to be completed as per project milestone schedule given below:

- (i) DC Hall -1- 20 March'13.
- (ii) DC Hall -2- 20 July'13
- (iii) DC Hall-3 –20 Dec'13
- (iv) DC Hall -4- 20 March'14

8.0 LIQUIDATED DAMAGE :

If the contractor fails to complete the work within the time specified contractual period or extension thereof granted by the engineer, liquidated damage will be imposed on the contractor for delay in completion of the work @ 0.5% (half percent) of the contract value, per calendar week, subject to ceiling of 5% of the contract value.

9.0 GUARANTEE: (For Services, BOQ Part-II)

Even though the work will be carried under the supervision of BHEL Engineers, the contractor will be responsible for the quality of the workmanship and shall guarantee the work done for a period of 12 months from the date of putting the complete system into commercial operation/ issuance of operation acceptance certificate or 18 months from the date of system is declared completely erected duly tested and accepted by customer whichever is later and shall rectify free of cost all defects due to faulty erection detected during the guarantee period starting from the date of the completion of rectification. In the event of the contractor failing to repair the defective works within the time specified by the Engineer, BHEL may proceed to undertake the repairs of such defective works at the contractor's risk and expense without prejudice to any other rights and recover the same from Security Deposit/other dues.

10.0 PERFORMANCE BANK GUARANTEE (For Services, BOQ Part-II)

The contractor shall submit Bank Guarantee of an approved Nationalized Bank / Scheduled Bank as per BHEL proforma for an amount equal to 5 % of the total contract value as performance bond to get 5% retention money released at the discretion of the engineer before release of Security Deposit as per the special terms & conditions of NIT. The performance Bank Guarantee shall remain valid up to successful completion of performance and guarantee tests of the station and taking over of the plant by BHEL/client of BHEL. Notwithstanding the provisions of any other clause(s) of General Conditions of Contract, the contractor shall continue to be responsible to execute all such works of repair, rectification and making good of defects, imperfections of other faults as may be required of the contractor in writing by the Engineer for the period as stated above.

11.0 ADDITIONAL EXPENDITURE DUE TO FAULTY EXECUTION:

In case any additional expenditure is incurred in the works arising out of the faulty execution of the works by the contractor, such additional expenditure shall be borne by the contractor.

12.0 SUBCONTRACTING:

Further subcontracting of BHEL order or part thereof is not allowed in this contract.

13.0 **SAFETY MEASURES:**

Safety plan of customer is given in the tender. All safety rules and codes as applicable / may become applicable to work shall be followed without exception.

14.0 **PRICE VARIATION: (Only for BOQ Part-II)**

- 14.1 In order to take care of variation in cost of execution of work on either side, due to variation in the index of LABOUR and HIGH SPEED DIESEL OIL, Price Variation Formula as described herein shall be applicable.
- 14.2 85% component of Contract Value shall be permitted to be adjusted for variation in various relevant indices during execution of work. The remaining 15% shall be treated as fixed component.
- 14.3 The basis for calculation of price variation in each category, their component, Base Index, shall be as under:

Sl. No.	Category	Base Index	Component (K)
1	Labour	'MONTHLY ALL-INDIA AVERAGE CONSUMER PRICE INDEX NUMBERS FOR INDUSTRIAL WORKERS' published by Labour Bureau, Ministry of Labour and Employment, Government of India. (Website: labourbureau.nic.in)	80
2	High Speed Diesel Oil	Name of Commodity : HSD OIL. Type : INDIVIDUAL COMMODITY (See Note A)	5

Note:

- A) As per the 'MONTHLY WHOLE SALE PRICE INDEX' for the respective Commodity and Type, published by Office of Economic Adviser, Ministry of Commerce and Industry, Government of India. (Website : www.eaindustry.nic.in)
- 14.4 Payment/recovery due to variation in index shall be determined on the basis of the following notional formula without any initial absorption, in respect of the identified components viz LABOUR and HIGH SPEED DIESEL

$$P = K \times R \times \frac{(X_N - X_0)}{X_0}$$

Where

P = Amount to be paid/recovered due to variation in the Index for Labour & High Speed Diesel Oil

K = Percentage component applicable for Labour & High Speed Diesel Oil

R = Value of work done for the billing month (Excluding Taxes and Duties if payable extra)

X_N = Revised Index No for Labour & High Speed Diesel Oil for the billing month under consideration

X_0 = Index no for Labour & High Speed Diesel Oil as on the Base date.

- 14.5 Base date shall be calendar month of the latest date of submission of Tender.
- 14.6 PVC shall not be payable for the ORC amount, Supplementary/Additional Items, Extra works executed on manday rates basis.
- 14.7 The contractor shall furnish necessary monthly bulletins for the necessary indices from the relevant websites along with his Bills.
- 14.8 The contractor will be required to raise the bills for price variation payments on a monthly basis along with the running bills irrespective of the fact whether any increase/decrease in the index for relevant categories has taken place or not. In case there is delay in publication of bulletins (final figure), the provisional values as published can be considered for payments and arrears shall be paid/recovered on getting the final values.
- 14.9 PVC shall be applicable for the entire original contract period plus the extended period. However the Total Quantum of Price Variation amount payable/recoverable shall be regulated as follows:
- i) For the portion of backlog attributable to the contractor, the PVC will be based on the average of the indices for the period of the original contract period.
 - ii) For the period of Force Majeure, the PVC will be limited to the indices applicable at the beginning of the force majeure period.
 - iii) For the portion of backlog attributable to BHEL, the PVC will be as per the indices applicable for the respective months.
 - iv) The total amount of PVC shall be limited to 20% of executed contract value. Executed contract value for this purpose is exclusive of PVC, ORC, Supplementary/Additional Items, Extra works executed on manday rates basis.

15.0 OVER ALL CONTRACT PRICE VARIATION

The individual quantity can vary to any extent or may be deleted for which no compensation will be payable to the contractor and the rates will remain firm. Also the rate of each item remains firm as long as the variation in the total value of work executed under the contract including extra items if any remains within plus/minus 30 percent of the contract value. In case the actual value of executed work including extra work on completion of work becomes less than 70% of the basic/original contract value then the following method shall be adopted.

The actual executed value shall be raised by 7% (For arriving at the final payment against work executed) subject to the condition that total value of work executed plus increase by 7% as above shall be limited to 70% of the basic/original contract value. The rate quoted shall be firm irrespective of any upward variation in the contract price. It is further clarified that the enhancement/rate revision on the basic rate as per PVC clause (if any) shall not be accounted for the purpose of operating this clause.

16.0 RISK & COST:

In case successful bidder fail to start the work or fails to comply with terms & conditions of the Work Order / LOI, BHEL reserves the right to the work done, whether by itself or from any other agency, at risk and cost of the successful bidder. Rights of BHEL shall be as per B.7 of ' Conditions of Contract'

17.0 ADJUSTMENT OF RECOVERY:

Any amount payable by the contractor under any condition of this contract, shall be liable to be adjusted against any amount payable to this contractor under any other works/contract/purchase order awarded to him by any BHEL unit or from security deposit of any other work / contract / purchase order with any unit of BHEL or by encashment of bank guarantee furnished by contractor with any unit of BHEL pertaining to any works / contract / purchase order. This is without prejudice to any other action as may be deemed fit by BHEL or any other right of BHEL mentioned elsewhere in this tender.

18.0 FORCE MAJEURE:

The following shall amount to force majeure conditions:

throughout the acts of God, Act of any Government, war, sabotage, riots, civil commotion, Police action, revolution, flood, fire cyclone, earthquake, epidemic and other similar causes over which the contractor has no control.

If the contractor suffers delay in the due execution of the contract, due to delays caused by force majeure conditions, as defined above, the agreed time of completion of the work covered by this contract may be extended by a reasonable period of time in consultation and after agreement of BHEL's clients/owner, provided that on the occurrence of any such contingency, the Contractor immediately reports to BHEL in writing the causes of delay. The Contractor shall not be eligible for any compensation on this account.

19.0 ARBITRATION :

Except where otherwise provided for in the contract all questions and disputes relating to the meaning of the specification designs, drawings and instruction herein before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings specifications, estimates, instructions, orders of these conditions or otherwise concerning the works, of the execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof shall be referred to the sole arbitration of the Head, TBG, BHEL, New Delhi and if the Head, TBG is unable or unwilling to act, to the sole arbitration of some other person appointed by the Head, TBG willing to act as such arbitrator. There will be no objection if the arbitrator so appointed is an employee of BHEL, New Delhi and that he had to deal with the matters to which the contract relates and that in the course of his duties as such he had expressed views on all or any of the matters in dispute of difference. The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason such Head, TBG as aforesaid at inability to act shall appoint (see note) another person to act as arbitrator in accordance with the terms of the contract such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is also a term of this contract that no person other than a person appointed by such Head, TBG as aforesaid should act as arbitrator and if for any reason that is not possible the matter is not to be referred to arbitration at all, in all cases where the amount of the claim dispute is Rs. 50,000/- (Rupees fifty thousand) and above the arbitrator shall give reasons for the award.

Subject as aforesaid the provisions of the arbitration Act, 1940 or any statutory modification or re-enactment thereof and the rules made there under and the time being in force shall apply to the arbitration proceeding under this clause.

It is a term of the contract that the party involving arbitration shall specify the dispute or disputes to be referred to arbitration under this clause together with the amounts claimed in respect of each dispute.

The arbitrator (s) may from time to time with consent of the parties enlarge the time for making and publishing the award.

The work under the contract shall, if reasonably possible, continue during the arbitration proceedings and no payment due or payable to the contractor shall be withheld on account of such proceedings.

The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties fixing the date of the first hearing.

The Arbitrator shall give a separate award in respect of each dispute or difference referred to him.

The Venue of arbitration shall be such place as may be fixed by the Arbitrator in his sole discretion.

The award of the arbitrator shall be final, conclusive and binding all parties to this contract.

Laws governing the Contract:

The contract shall be governed by the Indians Laws for the time being in force.

NOTE: - The Authority appointing the arbitrator should not be lower in rank than the Authority accepting the Agreement.