

## **TERMS & CONDITIONS**

### **1.0 EARNEST MONEY DEPOSIT**

- 1.1 "Every Tender must be accompanied by the Earnest Money Deposit as specified in NIT in cash (as permissible under Income Tax Act), Pay order or Demand Draft only"
- 1.2 CASH: The amount should be remitted by the party to the cashier of Bharat Heavy Electricals Limited, Industry Sector, Integrated Office Complex Lodhi Road, New Delhi .and "Cash Receipt" issued shall be enclosed along with the tender.
- 1.3 Demand Draft or Pay Order: From State Bank of India/ Nationalised Banks in favour of Bharat Heavy Electricals Limited, payable at New Delhi.
- 1.4 Tenders received without Earnest Money in full or in the manner prescribed above will not be considered.
- 1.5 **EMD of the successful tenderer shall be returned after the completion of tenure of the Rate Contract.**
- 1.6 In the case of unsuccessful tenderer the Earnest Money will be refunded to them after finalisation of the tender.
- 1.7 BHEL reserves the right of forfeiture of Earnest Money Deposit in case the successful tenderer:
  - a) After opening of tender, revokes / withdraw his tender within the validity period revises / alters his earlier quoted rates / conditions.
  - b) Fails to communicate unqualified acceptance of Letter of Intent within fifteen days from the date of issue of Letter of Intent.
  - c) Fails to submit 50% of the total Security Deposit before start of the work.
  - d) Fails to start the work as may be indicated in the Letter of Intent/ Work Order.

### **2.0 SECURITY DEPOSIT:**

- 2.1 **Vendor will be required to submit separate security deposit for each project awarded to him based on the contract value of the particular project.**
- 2.2 Upon acceptance of tender, the successful tenderer must deposit the Security Deposit before commencement of work and separately for each order placed on them. The rate of Security Deposit will be as below :
- 2.3 acceptance of tender, the successful tenderer must deposit the security Deposit before commencement of work.

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 Security Deposit shall be deposited within 15 days from the date of award of work or before commencement of work whichever is earlier in any one of the following forms:

- i) Cash (as permissible under the Income Tax Act).
- ii) Pay Order, Demand Draft in favour of BHEL.
- iii) Local cheques of scheduled banks, subject to realization.
- iv) Securities available from Post Offices such as National Savings Certificates, Kisan Vikas Patras etc.  
(Certificates should be held in the name of Vendor furnishing the security and duly pledged in favour of BHEL and discharged on the back).
- v) Bank Guarantee from scheduled Banks/ Public Financial Institutions as defined in the Companies Act. The Bank Guarantee format should be as per prescribed proforma. Bank Guarantee from Co-operative bank will not be accepted.
- vi) Fixed Deposit Receipt issued by Scheduled Bank / Public Financial Institutions. The FDR should be in the name of the vendor, A/C BHEL, duly discharged on the back.
- vii) Security deposit can also be submitted at the rate of 10% from the running bills. However in such cases at least 50% of the Security Deposit should be submitted before start of the work and the balance 50% will be recovered from the running bills.
- viii) The security deposit will not carry any interest.
- ix) Security deposit will not be refunded to the vendor except in accordance with the terms of the contract.

**Note :**

- 1) The validity of the Bank Guarantee furnished towards Security Deposit under (v) above shall be up to three months more than the contract period. If the rate contract is extended, the vendor shall extend the Bank Guarantee.
- 2) Acceptance of Security Deposit against Sl. No. (iv) and (vi) 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.
- 3) 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 (format as per Annexure –L for the BG issued).

- 2.4 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 vendor or recovered from the payments due to him.
- 2.5 Failure to deposit the Security Deposit within the stipulated time, may lead to forfeiture of EMD and cancellation of the award of work.
- 2.6 BHEL reserves the right of forfeiture of Security Deposit in addition to other claims and penalties in the event of the vendor'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.
- 2.7 Security deposit will be returned along with the final bill of the vendor after the completion of all activities as per work order of the particular project.**
- 2.8 No interest shall be payable by BHEL on Security Deposit or on any money due to the vendor.

### **3.0 TERMS OF PAYMENT**

As per clause no. 7.0.0 "Payment Schedule" of 'scope & specific technical requirements' enclosed with tender documents.

### **4.0 TAXES & DUTIES:**

- 4.1. TDS under Income Tax, etc. if any, shall be deducted at prevailing rates on Gross Value of invoice from the running bills unless Exemption certificate from the appropriate Authority/Authorities is furnished.
- 4.2. All taxes (Except service Tax including Cess/surcharge etc on service tax as applicable) duties, charges, royalties, duties etc. any State or Central Levy and other taxes for materials for execution of the contract shall be borne by the consultant and shall not be payable extra. Any increase of the same at any stage during execution of the contract shall have to be borne by the consultant. Quoted price of the bidder shall be inclusive of all such requirements.
- 4.3. Consultants have to make their own arrangement at their cost for completing the formalities, if any, for bringing their plant, machinery, instrument, equipment etc. at site for the execution of contract. Road permit / way bill, if required shall be arranged by the consultants and BHEL will not supply any road permit / way bill for this purpose.
- 4.4. Service Tax (including Cess/surcharge etc on service tax as may be applicable) as legally leviable & payable by the consultants under the provisions of applicable law/ act, shall be paid by BHEL extra as per provision of applicable law. The consultant must be duly registered service provider under service tax law. The invoice shall be a Tax invoice under service tax law and it should clearly depict following (i) the service tax registration number of the consultant (ii) the amount of service tax (iii) the rate of service tax (iv) any other requirement specified by law.

BHEL will not be held to be responsible for any non-compliance of the consultant in respect of various service tax rules, being framed from time to time.

consultant will be required to provide all necessary documents / certificates as may be necessary for availment of input credit by BHEL.

4.5. Tender rates are inclusive of all taxes, duties levies etc except service tax. Any increase by the government in any of taxes except service tax shall be borne by consultant. Service tax as per Clause No. 4.4 above will be paid extra as per Contract. However, regarding newly introduced taxes (i.e. taxes introduced by government after tender opening date) reimbursement will be made subject to following

- (a) if new tax introduced by Central Govt. /state Govt./ /Municipality becomes directly applicable on items specified in Bill of Quantities and as per the scheme announced by the government and new tax is neither in lieu of substitution nor in lieu of abolition, reduction of any of present taxes but is altogether a new tax , full reimbursement will be made provided it becomes directly applicable on items specified in BOQ.
- (b) If 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 present taxes other than service tax, no reimbursement will be made to that effect.
- (c) *If new tax introduced by Central /state Govt becomes directly applicable on items specified in Bill of Quantities but EITHER is in substitution /abolition of service tax OR is in substitution /abolition of service tax as well as any or all of present taxes, reimbursement will be made only to the extent service tax rate, which the consultant is entitled as per contract on the date immediately prior to date on which rate of new tax announced by Government becomes applicable/effective. New tax shall be paid at actual restricted to service tax rate which the consultant is entitled on the date immediately prior o date on which rate of new tax announced by the Govt. becomes applicable/effective, will have to be borne by consultant .If required, unit rates specified in BOQ may have to be appropriately adjusted for the work/bills pertaining to period after new tax becomes applicable.*

It is further clarified in any of above cases, no reimbursement of any new tax shall be considered unless new tax becomes directly leviable on items specified in BOQ.

## **5.0 OVER RUN CHARGES:**

5.1. No over run charges shall be payable under this contract.

## **6.0 COMPLETION SCHEDULE:**

6.1. As per the clause 6.0.0 "Time Schedule" of 'scope & specific technical requirements' enclosed with tender documents.

## **7.0 LIQUIDATED DAMAGE :**

- 7.1. If the vendor 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 vendor for delay in completion of the work @ 0.5% (half percent) of the contract value of each work order, per calendar week, subject to ceiling of 10% of the contract value of the each work order.

## **8.0 VARIATION**

### **8.1. PRICE VARIATION**

Price will be firm and no price escalation is payable throughout the execution / extended period of the rate contract.

### **8.2. QUANTITY VARIATION**

The quantities indicated in "Bill of Quantity" attached with the tender are indicative only and individual quantity may vary up to any extent.

## **9.0 FINALIZATION OF RATE CONTRACT AND ALLOCATION OF JOB:**

The rate contract will be awarded for entire quantity to one party on overall L1 basis. The detailed project specific BOQ will be furnished to successful bidder on case to case basis.

## **10.0 DISCREPANCIES AND ADJUSTMENT OF ERRORS:**

- 10.1. If on check there are found to be differences between the rates given by the vendor in words and figures or in the amount worked out by him in the schedule of quantities and general summary, the same shall be adjusted in accordance with the following rules :
- a) If, in the price structure quoted for the required services, there is discrepancy between the unit price and the total price (which is obtained by multiplying the unit price by the quantity), the unit price shall prevail and the total price corrected accordingly, unless in the opinion of the BHEL there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price corrected accordingly.
  - b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
  - c) If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject of (a) and (b) above.
  - d) If there is such discrepancy in an offer, the same shall be conveyed to the bidder with target date upto which the bidder has to send his acceptance on the above lines and if the bidder does not agree to the decision of the purchaser, the bid is liable to be ignored.

### **11.0 VALIDITY OF OFFER:**

The offer shall be kept open for acceptance for a minimum period of four months from the date of opening of tenders. In case BHEL calls for negotiations, such negotiations shall not amount to cancellation or withdrawal of the original offer which shall be binding on the tenderer.

### **12.0 PERIOD OF RATE CONTRACT:**

The rate contract shall be valid for 2 year, effective from the date of issue of LOI. However, BHEL may renew the contract for a further one year with mutual consent. BHEL shall reserve the right and option to effect premature termination of this rate contract at any point of time, if felt necessary.

The contract shall be valid for the project where services sought in the duration of the Rate contract.

A separate work order shall be issued for each particular project. The project specific BOQ shall be furnished to successful bidders on case to case basis. The contract value for each project specific case will be work out as per the rate quoted by the vendor in their offer.

### **13.0 RIGHTS OF BHEL:**

BHEL reserves to itself the following rights without entitling the Vendor for any compensation.

- 13.1. To get the work done through another agency at the risk and cost of the Vendor, in the event of poor progress, or the vendor's inability to progress the work for completion as stipulated in the Contract, poor quality of work, persistent disregards of instructions of BHEL, assignment, transfer, subletting of the contracted work without written permission of BHEL, non fulfilment of any contractual obligations etc. and to claim/recover compensation for such losses from the vendor from Security Deposit/other dues.
- 13.2. To withdraw any portion of work and/or to restrict/alter quantum of work as indicated in the contract during the progress of construction and get it done through other agency to suit BHEL's commitment to its customer or in case BHEL decides to advance the date of completion period due to other emergent reasons/BHEL's obligations to its customer.
- 13.3. To terminate the contract after due notice and forfeit Security Deposit and recover the loss sustained in getting the balance work done through other agencies in addition to liquidated damages/penalty in the events of
  - a) Vendor's continued poor progress.
  - b) Withdrawal from or abandonment of the work before completion of the work.
  - c) Corrupt or illegal act of the Vendor.
  - d) Insolvency of the Vendor.
  - e) Persistent disregard of the instructions of BHEL.
  - f) Assignment, transfer, subletting of the contract work without BHEL's written permission.

g) Non-fulfilment of any contractual obligations.

- 13.4. To recover any moneys due from the Vendor, from any moneys due to the vendor under this or any other contract or from the Security Deposit.
- 13.5. To claim compensation for losses sustained in case of termination of Contract and to levy Liquidated Damage/Penalty for delay in completion of work, at the rate of 1/2% (Half percent) of the contract value of each work order per week of delay or part thereof subject to ceiling of 10 % of the contract value of each work order.
- 13.6. To terminate the Contract or to restrict the quantum of work and pay only for the portion or work done in case BHEL's contract with its customer is terminated/altered/deferred/disputed/frustrated for any reasons.
- 13.7. To effect recoveries from any amounts due to the Vendor under this or any other contract or in any other form the moneys which BHEL is forced to pay to anybody due to vendor's failure to fulfil any of his obligations.
- 13.8. To restrict or increase the quantity and nature of work to suit project requirements, since the tender specification is based on preliminary documents and quantities furnished therein are indicative and approximate and the rates quoted shall not be subject to revision.
- 13.9. While every endeavour will be made by BHEL to this end, BHEL can not guarantee uninterrupted work due to conditions beyond its control. The vendor will not be entitled to any compensation/extra payment on this account. No idle charges will be payable by BHEL in any case.
- 13.10. In the event of any dispute of technical nature, the decision of BHEL shall be final and binding on the Vendor.

**14.0 CONSEQUENCES OF CANCELLATION:**

Whenever BHEL exercises its authority to terminate the contract/withdraw a portion of work, the work may be got completed by any other means at the vendor's risk and cost provided that in the event of the cost of completion (as certified by the BHEL's Engineer which shall be final and binding on the vendor) being less than the contract value, the advantage shall accrue to BHEL. If the cost of completion exceeds the money due to the Vendor under the Contract, the Vendor shall either pay the excess amount demanded by BHEL or the same shall be recovered from the vendor. This will be in addition to the forfeiture of Security Deposit and recovery of liquidated damages as per relevant clauses.

**15.0 FORCE MAJEURE:**

- 15.1. The following shall amount to force majeure conditions:

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 vendor has no control.

15.2. If the vendor 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 Vendor immediately reports to BHEL in writing the causes of delay. The Vendor shall not be eligible for any compensation on this account.

## **16.0 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 General Manager BHEL, New Delhi and if the General Manager is unable or unwilling to act, to the sole arbitration of some other person appointed by the General Manager 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 General Manager 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 General Manager 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 vendor 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.

#### **17.0 LAW GOVERNING THE CONTRACT AND COURT JURISDICTION:**

The Contract shall be governed by the Law for the time being enforced in the Republic of India. The Civil Court at Delhi having ordinary Original Civil Jurisdiction shall alone have exclusive jurisdiction in regard to all claims in respect of this contract.