

## **ANNEXURE TO CONDITIONS OF CONTRACT FOR ETC WORKS**

The following terms and conditions shall form a part of the tender document. If any discrepancies found between below mentioned clauses and clauses in the Conditions of Contract for Erection Works, DOC. NO. – TB-ETC-GCC,REV.-02, dated 20th JUNE, 2005, the clauses mentioned in this annexure shall prevail.

### **1. Condition of Contract for Erection works (DOC. NO. – TB-ETC-GCC, REV.-02, 20th June, 2005):**

#### **A. Clause No. C.17.0 “Over-run Charges” stands deleted. Now this clause shall be read as below.**

**Over-run compensation-** If the contract is extended beyond the contract period (including grace period) for any reason (including due to extra work/additional quantity) other than those attributable to the contractor or force majeure conditions, the contractor will be compensated by payment of over-run charges at the rate of 0.2 percent (point two percent) of the executed contract value per month after the expiry of grace period. Executed value as on last day of respective month(s) will be taken for purpose of calculation of overrun compensation.

The over run compensation will be payable for the eligible period of time extension on account of reasons attributable to BHEL only. No over run will be payable for the extension on account of reasons attributable to contractor and/or force majeure conditions.

Part of Extension attributable to the contractor, if any, in total contract extension shall be exhausted first i.e. immediately after end of grace period. This shall be followed by Extension on account of force majeure conditions, if any and lastly on account of BHEL.

The compensation will be payable for the extended eligible period in months and days as applicable.

Any compensation paid to the contractor against over run charges during the eligible extended period of the project will be recovered from the contractor or any payment on this account payable to the contractor will be cancelled if further extension is required due to the reasons attributable to the contractor or situation of risk & cost arises due to failure of the contractor to complete the work.

If the delay is attributable to the contractor LD will be imposed as per the provision in the contract.

**Total Over Run Compensation shall be limited to 10% of the executed contract value as certified in Final Bill. For this purpose executed contract value excludes PVC, ORC, Supplementary/Additional Items and Extra Works done.**

**Grace period-** The grace period will be defined in the Tender Document based on the calculation as one month for every six month (or part thereof) of the contract period. The prices quoted by the contractor will remain firm till the contract period plus the grace period including extended period if any.

**B. Clause No. B.16.3 shall be read in conjunction with the following**

**Extra works** - Extra works that arise on account of contractor's fault will have to be carried out by the contractor free of cost including the supply of consumables etc.

After eligibility of extra works is established and finally accepted by BHEL Engineer/Designer, payment will be decided on the following rates

**Man-day rate for eligible extra works:**

Single man-day rate (for Skilled manpower & un-skilled manpower) for carrying out rework/repairs/rectification/fabrication and other such works for a man-day of 8 hours as may arise during the course of erection will be limited to minimum wages of skilled/un-skilled manpower prevailing at the time of execution of the extra work as notified by the state Government. Contractor has to submit notification published by the concerned state Govt. regarding minimum wage applicable for the period of execution of the extra work.

The above man day rate includes overtime if any, other site expenses and incidentals, consumables, tools and tackles etc.

As mentioned above, no payment will be made if an item of work lasts less than eight man hours.

- C. Over all 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.

**D. Clause No. C.30.0 "INCOME TAX/SALES TAX/WORKS TAX/VAT" stands deleted. Now this clause shall be read as below.**

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.
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 contractor 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 contractor. Quoted price of the bidder shall be inclusive of all such requirements.
3. Contractors have to make their own arrangement at their cost for completing the formalities , if required, with state Vat Authorities, for bringing their material, plant & machinery at site for the execution of contract, road permit / way bill, if required shall be arranged by the contractor and BHEL will not supply any road permit / way bill for this purpose.

4. Service tax: Contractor shall obtain prior approval of BHEL for adopting the scheme for payment of service tax for this contract before the first bill is raised by the contractor. BHEL reserves the right to disagree with the scheme proposed by the contractor. The decision of BHEL shall be final and the contractor shall be bound to adopt the scheme of service tax as finalized by BHEL.

Service Tax (including Cess/surcharge etc on service tax as may be applicable) as legally leviable & payable by the contractor under the provisions of applicable law/ act, shall be paid by BHEL extra as per provision of applicable law. The contractor 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 contractor (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 contractor in respect of various service tax rules, being framed from time to time.

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

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 contractor. Service tax as per Clause No. D (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 contractor 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 contractor is entitled on the date immediately prior to date on which rate of new tax announced by the Govt. becomes applicable/effective, will have to be borne by contractor. 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.

**E. Clause No. A.17.0 shall be read in conjunction with the following**

**Conditions for acceptance of bank guarantees**

Contractors are advised to obtain Bank Guarantee preferably from any of the following BHEL consortium banks

| Sl. No. | Nationalised Bank         |    | Nationalised Bank                                     |
|---------|---------------------------|----|-------------------------------------------------------|
| 1       | Allahabad bank            | 19 | Vijaya Bank                                           |
| 2       | Andhra bank               |    | <b>Public Sector Banks</b>                            |
| 3       | Bank of Baroda            | 20 | IDBI                                                  |
| 4       | Canara Bank               |    | <b>Foreign bank</b>                                   |
| 5       | Corporation bank          | 21 | CITI Bank N.A                                         |
| 6       | Central bank of India     | 22 | Deutsche Bank AG                                      |
| 7       | Indian Bank               | 23 | The Hongkong and Shanghai Banking Corporation Limited |
| 8       | Indian Overseas Bank      | 24 | Standard Chartered Bank                               |
| 9       | Oriental bank of Commerce | 25 | The Royal Bank of Scotland N.V.                       |
| 10      | Punjab National Bank      | 26 | J P Morgan                                            |
| 11      | Punjab & Sindh Bank       |    | <b>Private bank</b>                                   |
| 12      | State Bank of India       | 27 | Axis Bank                                             |
| 13      | State Bank of Hyderabad   | 28 | The Federal Bank Limited                              |
| 14      | Syndicate Bank            | 29 | HDFC                                                  |
| 15      | State Bank of Travancore  | 30 | Kotak Mahindra Bank                                   |
| 16      | UCO Bank                  | 31 | ICICI                                                 |
| 17      | Union Bank of India       | 32 | Indusind Bank                                         |
| 18      | United Bank of India      | 33 | Yes Bank                                              |

Conditions for acceptance of Bank Guarantees from Banks outside BHEL's consortium shall be as below:

The Bank Guarantees of all Public sector banks can be accepted (in addition to consortium banks)

**The Bank Guarantees of Co-operative banks shall not be accepted.**

Bank Guarantees of other than consortium bank and public sector bank can be accepted subject to an overall exposure limit (at New Delhi) of Rs. 10 crores for banks with networth of more than Rs. 500 crores as on last balance sheet date and Rs 5 crores for banks with net worth between Rs. 350 to Rs 500 crores (A certificate and copy of latest Balance Sheet to be given by the Bank at the time of submission of Bank Guarantees).

In case of private sector banks a clause to be incorporated in the text of Bank Guarantee that it can be enforceable by being presented at any branch of the bank.

In case of foreign vendors the bank guarantees issued by foreign banks may be confirmed by our consortium bank in India.

**In case of Bank Guarantees given by Non-Consortium banks (Private sector or Public sector), the Bank Guarantees are to be enforceable in New Delhi or the town/ city in which the sector/ project is located.**

**F. DELAY AND EXTENSION OF TIME:**

If, in the opinion of the Engineer, the work is delayed

- i) by reason of abnormally bad weather, or
- ii) by reason of serious loss or damage by fire, or
- iii) by reason of civil commotion, local combination of workmen, strike or lockout, affecting any of the trades employed on the work, or
- iv) by delay on the part of the agency or tradesman engaged by the BHEL in executing work not forming part of the contract, or
- v) by reason of any other cause which in the absolute discretion of the Engineer is beyond the contractor's control, then in any such case, the Engineer (or higher authority) may make fair and reasonable extension in the completion dates of the individual items of work of the contract as whole. Such extension which will be communicated to the contractor by the Engineer in writing shall be final and binding on the contractor.
- vi) **In case of delay in execution of work for reasons attributable to either BHEL or Contractor only provisional time extension for delay in completion of total work or part thereof shall be provided to the contractor and running/ interim payments to the contractor will be released without deduction of LD subject to submission of additional Bank guarantee equivalent to maximum LD amount valid till completion of work and grant of final time extension.**
- vii) **During provisional time extension period ORC/ PVC shall not be payable to the contractor.** The Final Delay analysis shall be prepared on completion of the work. In case of delay is not attributable to contractor as per final delay analysis the ORC/ PVC shall be released along with the final bill without any interest charges attributable to BHEL.
- viii) In case of delay attributable to contractor, LD shall be deducted for that period in line with clause "Compensation/ LD/ Penalty for delay in execution" of conditions of contract and balance ORC/ PVC (if any) shall be released along with the final bill without any interest charges attributable to BHEL.

- ix) PVC/ ORC shall be governed by respective clauses in the NIT.
- x) Upon the happening of any such event causing delay the contractor shall immediately give notice thereof in writing to the Engineer but shall nevertheless use constantly his best endeavour to prevent or make good the delay and shall do all that may reasonably be required to the satisfaction of the Engineer to proceed with the work. No other claim in this respect for compensation, idle labour or otherwise howsoever is admissible unless specified elsewhere in contract.

**All other terms and conditions of tender shall remain unchanged.**