

BHARAT HEAVY ELECTRICALS LIMITED
TRANSMISSION BUSINESS GROUP
SUBCONTRACTS MANAGEMENT
SECTOR-142, EXPRESSWAY NOIDA-201305

Terms & Conditions of Contract

1.0 EARNEST MONEY DEPOSIT

- a) EMD is NIL for this tender

2.0 SECURITY DEPOSIT:

- 2.1 Upon acceptance of tender, the successful tenderer must deposit the Security Deposit of Rs. 50,000/- before commencement of work.

The Security Deposit shall be 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 (As per prescribed format for the BG issued).

- 2.2 Failure to deposit the Security Deposit within the stipulated time, may lead to cancellation of the award of work.
- 2.3 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.
- 2.4 Security deposit will be returned after successful completion of all works covered under this rate contract.**
- 2.5 No interest shall be payable by BHEL on Security Deposit or on any money due to the vendor.

3.0 SCOPE OF WORK & MODALITIES

Scope of work shall be as per technical specification enclosed with the NIT.

4.0 SECRECY/ CONFIDENTIALITY

The work executed by the Contractor shall be the property of BHEL & shall not be passed on / leaked to any person or agency out-side BHEL, TBG division. This shall be the responsibility of the contractor & his representatives. Non-compliance of this condition shall lead to prosecution under the law of the land.

5.0 TERMS OF PAYMENT

100% payment shall be made within 30 days against the submission of following documents

- (i) Invoice
- (ii) Certification of plotting/ Xeroxing/ scanning work by BHEL Engineer (S)

The payment shall be made on monthly basis after the work has been certified by dealing engineer(s) of BHEL

6.0 TAXES & DUTIES:

- 6.1 BHEL shall be releasing payments against this work order after deduction of Income Tax at source as per requirements of Income Tax Rules and BHEL will issue appropriate certificates in this regard.
- 6.2 All taxes including sales tax / works tax / service tax, etc., if any shall be to the vendor's account. It may be noted that no reimbursement shall be made on account of increase in rates of existing taxes, duties etc. (as on latest date of offer submission to TBG, BHEL, Noida) and also on account of imposition of any new tax and duties subsequently by statutory authority during contract period.

7.0 QUANTITY AND PRICE VARIATION

The quantities indicated in "Bill of Quantity" attached with the tender are indicative only and individual quantity may vary up to any extent. Unit price will be firm and no price escalation is payable throughout the execution / extended period of the rate contract.

The total contract value is subject to variations depending upon the actual requirement. However, total executed value should not exceed beyond 30% of total contract value.

8.0 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.

9.0 DISCREPANCIES AND ADJUSTMENT OF ERRORS:

9.1. 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.

10.0 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.

11.0 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 without any financial implication on BHEL.

12.0 RIGHTS OF BHEL

- 12.1 BHEL reserves to itself the following rights without entitling the Vendor for any compensation.
- 12.2 To withdraw any portion of work and/or to increase or decrease the quantum of work at any stage during the tenure of the contract.
- 12.3 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 due to any of reasons mentioned below:
- a) Vendor's continued poor progress.
 - b) Withdrawal from or abandonment of the work before completion of the work.
 - c) Corrupt or illegal or unlawful act of the vendor/assigned nominees.
 - d) Persistent disregard of the instructions of BHEL.
 - e) Assignment, transfer, subletting of the contract work without BHEL's written permission.
 - f) Non-fulfilment of any contractual obligations.
- 12.4 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.
- 12.5 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.
- 12.6 In the event of any dispute of technical nature, the decision of BHEL shall be final and binding on the Vendor.

13.0 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.

14.0 FORCE MAJEURE:

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.

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.

15.0 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.

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.