

## ANNEXURE TO CONDITIONS OF CONTRACT FOR CIVIL 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 Civil Works, Doc.No.-TB-Civil-GCC, Rev-02, the clauses mentioned in this annexure shall prevail.

1. **Clause C-27.0 of “Over run charges”** under special conditions of contract is now deleted. No overrun charges are payable under the contract.
2. **Clause C-35.0 “secured advance”** under special conditions of contract is now deleted. No advance on materials shall be payable under the contract.
3. **Clause C- of “C-29.7 ”** under special condition of contract is now deleted and now this clause should be read as below.
  - a. TDS under Income Tax, VAT etc. if any, shall be deducted at prevailing rates on Gross Value of invoice from the running bills unless Exemption certificate form the appropriate Authority/Authorities is furnished.
  - b. All taxes (Except service Tax including Cess/surcharge etc on service tax as applicable) WCT under VAT act, 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. Contractor is responsible to furnish all documentary evidences towards payment of works contract Tax and other documents in connection with State VAT Act, as may be required from time to time as and when required by BHEL. Submission of Tax Invoice is a must after Grossing up Bills as the price is inclusive of VAT.
  - c. 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. Contractor must be a Registered as Dealer with the state VAT Act, if not registered yet, then get registered as a dealer. A copy of the said Registration along with TIN must be provided to BHEL.
  - d. Service Tax: Finance Act 2007 introduced a new sub clause (zzzza) to section 65 (105) which provided for levying service tax on execution of works contract with effect from 01.06.2007.

Notification No 32/2007- Service Tax provides an option (of Composition) to the person liable to pay service in relation to works contract service to pay amount equal to percentage of the gross amount charged for the works contract under the composition scheme in which current prevailing rate is 4.8% plus 3% cess on service tax i.e. 4.944%, instead of normal rate provided in the section 66 of the act. However, this option of paying service tax as above on gross value can be exercised prior to payment of service tax in respect of said contract and the option so exercised shall be applicable for the entire works contract and shall not be withdrawn until the completion of said work contract.

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 gross value of bill in accordance with above

provision of applicable law. The invoice shall be a Tax invoice under service tax and it should clearly depict following (i) the service tax registration number of the contractor (ii) the amount of service tax separately (iii) the rate of service tax (iv) the nature of service provided (v) any other requirement specified by law. 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.

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.

You are allowed to include the value of free issue of materials mainly steel and cement based on monthly consumption basis for enabling compliance with notification 23/2009-ST for arriving at gross amount charged.

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

- e. 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 under option of composition as referred to in Clause No. 3(d) 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
  - i. 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.
  - ii. 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.
  - iii. 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 is announced by Government becomes applicable/effective. New tax if in excess of service tax rate which the contractor is entitled as above, 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 .
  - iv. 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.

4. **Clause C-26.0 “Price Variation”** under special conditions of contract is now deleted and now this Clause should be read as below.
- In order to take care of variation in cost of execution of work on either side, due to variation in the index of LABOUR, HIGH SPEED DIESEL OIL, CEMENT, STEEL, MATERIALS, and Price Variation Formula as described herein shall be applicable.
  - 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.
  - 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')
i)	Labour (ALL CATEGORIES)	“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)	25
ii)	HIGH SPEED DIESEL OIL	Name of Commodity: HSD OIL. Type : INDIVIDUAL COMMODITY (See Note )	3
iii)	CEMENT	Name of Commodity: CEMENT Type: INDIVIDUAL COMMODITY(See Note )	20
iv)	STRUCTURAL AND REINFORCEMENT STEEL	Name of Commodity: a1. IRON & STEEL Type: GROUP ITEM (See Note)	25
v)	MATERIALS (Other than Cement & Steel)	Name of Commodity: ALL COMMODITIES Type: GROUP ITEM (See Note F)	12

Note:

- 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](http://www.eaindustry.nic.in))
- d. 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, HIGH SPEED DIESEL, CEMENT, STEEL, MATERIALS

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

Where

P = Amount to be paid/recovered due to variation in the Index for Labour, High Speed Diesel Oil, Cement, Steel and Materials

$K$  = Percentage component applicable for Labour, High Speed Diesel Oil, Cement, Steel and Materials

$R$  = 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, Cement, Steel and Materials for the billing month under consideration

$X_o$  = Index no for Labour, High Speed Diesel Oil, Cement, Steel and Materials as on the Base date.

- e. Base date shall be calendar month of the latest date of submission of Tender.
- f. PVC shall not be payable for the ORC amount, Supplementary/Additional Items, Extra works executed on manday rates basis.
- g. The contractor shall furnish necessary monthly bulletins for the necessary indices from the relevant websites along with his Bills.
- h. 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.
- i. 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 10% 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.

**5. 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 than 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 shall not be accounted for the purpose of operating this clause.

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