

## 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 original awarded contract value per month after the expiry of grace period. The original awarded contract value will be considered firm for calculation purpose of over run 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.

Over run compensation for the eligible period shall be in proportion to the progress achieved against the plan for respective period.

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.

**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 average man-day rate 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

- i) For Skilled manpower                      Rs 200/- per day
- ii) For Un-skilled                                Rs 125/- per day

(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 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.

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

- a) This Project is located in SEZ Area. Service Tax for services fully consumed with in SEZ is exempt.
- b) Bidders may note that Project is located in DAHEJ Special Economic Zone Area. Name of main client is ONGC Petro Additions Limited (OPAL). OPAL is a Unit in Special Economic Zone. OPAL has awarded contract to BHEL.

Bidders are requested to quote their prices considering the exemptions/benefits , which they are entitled to avail , as regards VAT (Gujarat VAT) , Service Tax , CST , Custom Duty, Works Contract Tax (WCT), Excise Duty for performing work with in SEZ Area. Responsibility for completion of all documentation and formalities etc. as may be applicable from time to time, required for availing necessary exemptions, shall solely lie with bidders. BHEL will also assist in documentation /signing of papers wherever required as per law.

- c) Bidders are requested to make themselves fully aware & conversant with prevailing law , rules , procedures & practices , formalities and documentation required for (a) exemptions/benefits which they may avail (b) Entry of Goods in SEZ (c ) Taking the goods out of SEZ (c) Performing activities within SEZ .In case BHEL; /OPAL has to bear any fine/penalty/duty /taxes /any other costs by whatsoever name called , for contravention/violation of any rules/ ,undertakings given by them ,or due to any of their acts or deeds, whatsoever nature , contractor shall be liable to make good the loss to BHEL . BHEL shall be at its liberty to deduct the amount from payment of contractor

Bidders are requested to indicate the formalities/documentation, which the bidders would require to be completed by BHEL /OPAL, if any, for availing exemption, separately in technical bid.

- d) Variations in taxes, duties etc :

i. Regarding Newly Introduced taxes:

As regards newly introduced taxes (i.e. taxes introduced by Govt. after tender opening date), No reimbursement will be made for taxes / duties not directly levied on items specified in Bill of Quantities. However for newly introduced taxes, which become directly leviable on items specified in BOQ, reimbursement will be made by BHEL subject to following:

- a) Provided no reimbursement will be made if exemption in respect of new tax can be availed as per law/SEZ Policy prevailing at that time.
- b) In case as per law/ SEZ Policy prevailing at that time , no exemption can be availed or only partially exemption is available in respect of new tax, reimbursement will be limited to the extent it has additional burden on contractor
- c) In case tax newly 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. While arriving at the amount of new tax, it shall be presumed that contractor will/has availed the applicable benefit as per modified law/SEZ Policy prevailing at that time. It shall be responsibility of bidder to comply with formalities/ documentation required for availing applicable taxation benefit. For old taxes, contractors past trend /record of availment of benefit may also be taken into consideration.
- d) For verification of working of additional burden(if any), additional burden will be calculated with reference to tax rate structure/Taxation benefits prevailing as on date of tender opening, contractor will have to provide such documents, details, information as considered fit by BHEL for verification of working.
- e) However, in case period of additional burden falls beyond the contractual period of contract, reimbursement will be made only if delay is not attributable to the contractor.

ii. Regarding Present Taxes:

- a) As regards present taxes other than :(a) VAT (Gujarat VAT) (b) Service Tax (c) CST (d) Custom Duty(e) , Works Contract Tax (WCT) (f) Excise Duty:

In case of change in tax rates, no increase or decrease in prices shall be admissible. The prices are inclusive of all such taxes.

- b) As regards withdrawal /change of taxation benefits in respect of VAT (Gujarat VAT) , Service Tax , CST, Custom Duty , works Contract tax & Excise Duty :

- (i) BHEL will reimburse to the extent it has additional burden on contractor. While arriving at the amount, it shall be presumed that contractor will/has availed the applicable benefit as per modified law/SEZ Policy prevailing at that time. It shall be responsibility of bidder to comply with formalities/ documentation required for availing applicable taxation benefit. While arriving at the differential amount, contractors past trend /record of availment of benefit for these taxes may also be taken into consideration
- (ii) For verification of working of additional burden(if any), additional burden will be calculated with reference to tax rate structure/Taxation benefits prevailing as on date of tender opening, Contractor will have to provide such documents, details, information as considered fit by BHEL for verification of working .
- (iii) However, in case period of additional burden falls beyond the contractual period of contract, reimbursement will be made only if delay is not attributable to the contractor.

**E. 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. No other claim in this respect for compensation, idle labour or otherwise howsoever is admissible unless specified elsewhere in contract. 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 endeavor 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.

All other terms and conditions of tender shall remain unchanged.