

TRANSMISSION BUSINESS GROUP
SUB CONTRACTS MANAGEMENT
LODHI ROAD, NEW DELHI

SPECIAL TERMS & CONDITIONS FOR CIVIL WORKS (BOQ for Civil Works - Part B)

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" in favour of 'Bharat Heavy Electricals Limited' payable at New Delhi.
- CASH: The amount should be remitted by the party to cashier of Bharat Heavy Electricals Limited at BHEL, Industry Sector, Integrated Office Complex Lodhi Road, New Delhi and "Cash Receipt" issued shall be enclosed along with tender.
- Demand Draft or Pay order: From Nationalised Banks/ Scheduled Banks in favour of "Bharat Heavy Electricals Limited" payable at New Delhi.
- 1.2 No other form of EMD remittance shall be acceptable to BHEL.
- 1.3 Bidder may opt to deposit "One Time EMD" of Rs. 2 lakhs (Rupees Two lakhs only) with BHEL: Transmission Business Group, which will enable them to participate in all the future tender enquiries in respect of Civil and ETC tenders issued by BHEL: Transmission Business Group.
- 1.4 Bidders who have already deposited such "One Time EMD" of Rs. 2 lakhs are exempted from submission of EMD for this tender.
- 1.5 Tenders received without Earnest Money in full or in the manner prescribed above will not be considered.
- 1.6 EMD of the successful tenderer can be converted and adjusted against the security deposit.
- 1.7 EMD shall not carry any interest.
- 1.8 In the case of unsuccessful bidders, the Earnest Money will be refunded to them within a reasonable time after acceptance of award by successful tenderer.
- 1.9 BHEL reserves the right of forfeiture of Earnest Money deposit in case the successful tenderer:
- a) After opening of Tender, revokes/withdraws his tender within the validity period or revises/alters his earlier quoted rates/conditions.
 - b) Fails to communicate unqualified acceptance of letter of intent within 15 days from the date of issue of Letter of Intent.
 - c) Fails to submit required Security Deposit before start of the work.
 - d) Fails to start the work as indicated in the Letter of Intent.

2.0 SECURITY DEPOSIT:

- 2.1 Upon acceptance of tender, the successful tenderer must deposit the security Deposit before commencement of work. The rate of Security Deposit will be as below:
- | | |
|------------------------|------|
| 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 SD must be deposited within 15 days from date of issue of LOI in anyone of the following forms given in (i) to (v) below:

- i) Cash (as permissible under the Income Tax Act).
- ii) Pay Order, Demand Draft in favour of BHEL.
- iii) Local cheques of scheduled banks / Nationalized banks, subject to realization.
- iv) Bank Guarantee from Nationalized banks / scheduled Banks/ Public Financial Institutions as defined in the Companies Act. The Bank Guarantee format should be as per Annexure H “ Proforma for BG for Security deposit. Bank Guarantee from Co-operative bank will not be accepted. Also, the Bank Guarantees should be enforceable in the town/city in which the sector/project is located.
- v) Fixed Deposit receipt issued by Scheduled Bank / Public Financial Institutions as defined in the Companies Act. The FDR should be in the name of the contractor, A/C BHEL, duly discharged on the back.
- vi) Security deposit can also be recovered at the rate of 10% from the running bills. However in such cases at least 50% of the Security Deposit should be collected before start of the work and the balance 50% may be recovered from the running bills.
- vii) EMD of the successful tenderer can be converted and adjusted against the security deposit.
- viii) The security deposit shall not carry any interest.
- ix) Security deposit shall not be refunded to the contractor except in accordance with the terms of the contract.
- x) The Head of Unit may waive the Security Deposit in respect of Public Sector Undertaking particularly on a reciprocal basis.

Note : 1) Acceptance of Security Deposit against Sl. No. (v) 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.

2) 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).

3) The validity of the Bank Guarantee furnished towards Security Deposit under (iv) above shall be up to three months more than the period of completion of work as stipulated in the LOI and the same will be kept valid by proper renewal till the completion of the work.

2.2 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 contractor or recovered from the payments due to him.

- 2.3 Failure to deposit the Security Deposit within the stipulated time, may lead to forfeiture of EMD and cancellation of the award of work.
- 2.4 BHEL reserves the right of forfeiture of Security Deposit in addition to other claims and penalties in the event of the contractor'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.
- 2.5 RETURN OF SECURITY DEPOSIT: If the contractor duly performs and completes the work in all respects to the entire satisfaction of BHEL and presents an absolute "No demand certificate" in the prescribed form and returns properties belonging to BHEL, taken, borrowed or hired by him for carrying out the said works, Security Deposit will be released to the contractor after deducting all costs, expenses and other amounts that are to be paid to BHEL under this contract or other contracts entered into with the contractor. It may be noted that in no case the Security Deposit shall be refunded/released prior to passing of final bill.
- 2.6 No interest shall be payable by BHEL on Security Deposit or on any money due to the contractor.

3.0 TERMS OF PAYMENT

A. No mobilization advance shall be paid.

B. Payment Terms:

- a. The contractor shall be paid monthly running bill to a maximum of 90% as progressive payment of the works actually executed at site. Next 5 % of payment shall be released after completion of all activities covered under the scope of this contract including charging of line. Last 5% of payment (retention money) shall be released on completion of guarantee period. However, this retention money can be released on submission of B.G. (as per clause no. 12.0) of equivalent amount valid till guarantee period.
- b. The Engineer shall after a measured bill allow and certify payment to the contractor on the basis of abstract measurement bill submitted by contractor. However, the usual recoveries would be affected from bill.
- c. All intermediate payments shall be regarded as advance against the final payment only and shall not be considered as an admission of the due performance of the contract or any part thereof in any respect of the occurring of any claim whatsoever. Such intermediate payments shall not conclude, determine or affect in any way the powers of the Engineer as to the final settlement and adjustment of the account of otherwise, or in any way vary or affect the contract. To this affect the contractor shall submit the final bill, which shall contain the complete up-to-date measurements for the total work done.
- d. Any certificate relating to the work done may be modified by any subsequent interim certificates or by the final certificate and no certificate of the Engineer supporting an advance payment shall of itself be conclusive evidence that

any work or materials to which it relates are in accordance with the contract.

- 4.0 Interest Liability-** In case of any delay in payment due to any reason, BHEL shall not pay any interest on delayed payment.
- 5.0** Permission for carrying out the survey in the site area will have to be obtained from M/s PPCL through BHEL.
- 6.0** Contractor shall obtain necessary permission for use of private/ forest/ canal service roads for transportation of materials, constructional personals etc. In case of difficulty BHEL provide necessary help for the same wherever possible under the rules. Any charges levied by the concerned authorities for use of such roads etc. shall be borne by the contractor.

7.0 Taxes and Duties:

- 7.1 BHEL shall be releasing payments against this work order after deduction of applicable taxes at source as per requirements of tax rules and BHEL will issue appropriate certificates in this regard.
- 7.2 Prices are inclusive of all taxes, duties and levies etc. including sales tax / works tax /all other taxes Except service tax. etc. Vendor are required to indicate applicable service tax % in Price Bid /Un Price Bid . Any increase by Government at any stage during execution of contract shall be borne by contractor. All charges on account of Octroi, Terminal Tax, Entry Tax and/or other taxes and duties on materials obtained for the work shall be borne by the contractor. The Contractor shall pay all taxes, fees, license charges, deposits, duties, tolls, royalty, commissions or other charges which may be Leviable on account of any of his operations connected with this contract.
- 7.3 Service Tax (including Educational Cess) wherever applicable as legally leviable & payable by the contractor under the provisions of applicable law/ act shall be paid by BHEL as per contractor's bill. However, contractor shall have to submit proof of Service Tax deposited by them immediately after the deposit but not later than the next bill submitted after the due date of deposit. 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. The contractor shall obtain prior approval of BHEL before billing the Service Tax amount.
- 7.4 With introduction of CENVAT credit rules 2004 which came into force wef 10-09-04, Excise Duty paid on input goods including capital goods used for providing the output service & service tax paid on input service can be taken credit of against the Service Tax payable on output service. As such, while offering the rates, contractors may take into account benefit of above provisions as the cost of input to contractors will be cost net of Excise Duty & Service Tax and adjust their offer price accordingly to make it more competitive.
- 7.5 Service tax rules, and any changes made therein by Government shall be complied with. Vendor shall obtain prior approval before opting for applicable scheme for execution of contract

- 7.6 Contractor should be registered under State VAT Act of concerned state. They should produce their Registration No and copy of Registration Certificate as proof of registration and contractor shall produce proof of payment of VAT so that BHEL as main contractor can get the benefit of deduction of input credit from the contractual transfer price under concerned state VAT Act. Contractors should produce Tax Invoice, copy of tax paid challan, copy of returns of the bidder showing BHEL portion of job value separately and other necessary documents to BHEL as required under VAT Act/ Rules so that BHEL can avail input credit under VAT Act.
- 7.7 Tender rates are inclusive of all taxes, duties and levies except service tax. Any increase by Government at any stage during execution of contract in any of taxes except service tax shall be borne by contractor. However, regarding newly introduced taxes (i.e. taxes introduced by Govt. after tender opening date), reimbursement will be made by BHEL subject to following:
- (i) Reimbursement will be made only if tax becomes directly applicable on rates specified. No reimbursement will be made for taxes / duties not directly levied on items specified in Bill of Quantities.
 - (ii) Further, if the 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 of present taxes, BHEL will reimburse to the extent it has additional burden on contractor. For verification of working of additional burden, which will be calculated with reference to tax rate structure prevailing as on date of tender opening, contractor will have to provide such documents, details, information as considered fit by BHEL.

8.0 COMPLETION TIME:

All works under the scope of this contract are to be completed within 7 months from the date of issue of Letter of Intent.

9.0 OVER RUN CHARGES:

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 % (point two percent) of the original awarded contract value per month after the expiry of grace period subject to ceiling of 5 % of the contract value. 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 there of) 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.

10.0 LIQUIDATED DAMAGE :

If the contractor 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 contractor for delay in completion of the work @ 0.5% (half percent) of the contract value, per calendar week, subject to ceiling of 5% of the contract value.

11.0 GUARANTEE:

Even though the work will be carried under the supervision of BHEL Engineers, the contractor will be responsible for the quality of the workmanship and shall guarantee the work done for a period of 12 months from the date of putting the complete system into commercial operation or 18 months from the date of system is declared completely erected duly tested and accepted by customer whichever is later and shall rectify free of cost all defects due to faulty erection detected during the guarantee period starting from the date of the completion of rectification. In the event of the contractor failing to repair the defective works within the time specified by the Engineer, BHEL may proceed to undertake the repairs of such defective works at the contractor's risk and expense without prejudice to any other rights and recover the same from Security Deposit/other dues.

12.0 PERFORMANCE BANK GUARANTEE.

The contractor shall submit Bank Guarantee of an approved Nationalized Bank / Scheduled Bank as per BHEL proforma for an amount equal to 5 % of the total contract value as performance bond to get 5% retention money released at the discretion of the engineer before release of Security Deposit as per the special terms & conditions of NIT. The performance Bank Guarantee shall remain valid up to successful completion of performance and guarantee tests of the station and taking over of the plant by BHEL/client of BHEL. Notwithstanding the provisions of any other clause(s) of General Conditions of Contract, the contractor shall continue to be responsible to execute all such works of repair, rectification and making good of defects, imperfections of other faults as may be required of the contractor in writing by the Engineer for the period as stated above.

13.0 ADDITIONAL EXPENDITURE DUE TO FAULTY EXECUTION:

In case any additional expenditure is incurred in the works arising out of the faulty execution of the works by the contractor, such additional expenditure shall be borne by the contractor.

14.0 SAFETY MEASURES:

All safety rules and codes as applicable / may become applicable to work shall be followed without exception.

15.0 PRICE VARIATION:

Prices will be firm for total contract period and extended period, if any, and no price escalation / price variation will be applicable.

16.0 RISK & COST:

In case successful bidder fail to start the work or fails to comply with terms & conditions of the Work Order / LOI, BHEL reserves the right to the work done, whether by itself or from any other agency, at risk and cost of the successful bidder.

17.0 ADJUSTMENT OF RECOVERY:

Any amount payable by the contractor under any condition of this contract, shall be liable to be adjusted against any amount payable to the contractor under any other works/contract/purchase order awarded to him by any BHEL unit or from security deposit of any other work / contract / purchase order with any unit of BHEL or by encashment of bank guarantee furnished by contractor with any unit of BHEL pertaining to any works / contract / purchase order. This is without prejudice to any other action as may be deemed fit by BHEL or any other right of BHEL mentioned elsewhere in this tender.

18.0 FORCE MAJEURE:

The following shall amount to force majeure conditions:

throughout the 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 contractor has no control.

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

19.0 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 Head, TBG, BHEL, New Delhi and if the Head, TBG is unable or unwilling to act, to the sole arbitration of some other person appointed by the Head, TBG 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 Head, TBG 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 Head, TBG 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 contractor 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.

1. Other terms & conditions of the tender shall be governed by the “conditions of contract for civil works” enclosed.
2. **If any discrepancies found between these “special terms & conditions” and “condition of contract for civil works” the clauses mentioned in these “special terms & conditions” shall prevail.**