

**BHARAT HEAVY ELECTRICALS LIMITED**  
**Transmission Business Group**  
**Subcontract Management**

**Terms & Conditions**

The following terms and conditions shall form a part of the tender document.

**1.0 EARNEST MONEY DEPOSIT**

Every tender must be accompanied by the prescribed amount of Earnest Money Deposit (EMD) mentioned in NIT.

**1. Mode of EMD deposit:**

EMD can be submitted in any one of the following modes:

- i) Cash deposit as permissible under the extant Income Tax Act (before tender opening),
- ii) Electronic Fund Transfer credited in BHEL account (before tender opening). Details of BHEL account mentioned in tender document.
- iii) Banker's cheque/Pay order/Demand Draft, in favour of 'BHEL' and payable at New Delhi (Along with offer)
- iv) Fixed Deposit Receipt (FDR) issued by schedule Banks/Public Finance Institutions as defined in the companies ACT (FDR should be in the name of the contractor, a/c BHEL

*In addition to above, the EMD amount in excess of Rs Two lakh may also be accepted in the form of Bank Guarantee from scheduled bank. The Bank Guarantee in such cases shall be valid for at least six months.*

**B.** No other form of EMD remittance shall be acceptable to BHEL.

**1. Forfeiture of EMD**

EMD by the bidder will be forfeited as per NIT conditions, if

- i) After opening the tender and within the offer validity period, the bidder revokes his tender or makes any modification in his tender which is not acceptable to BHEL.
  - ii) The contractor fails to deposit the required Security deposit or commence the work within the period as per LOI/contract.
2. EMD by the tenderer shall be withheld in case any action on the tenderer is envisaged under the provision of extant "Guidelines on Suspension of business dealing with supplier/contractors" and forfeited/ released based on the action as determined under these guidelines.
  3. In the case of unsuccessful bidders, the Earnest Money will be refunded to them within a reasonable time after award of work.
  4. EMD shall not carry any interest.

5. EMD of successful bidder shall be retained as part of Security Deposit.

6. Bidders may please note that “One Time EMD” provision stands deleted. Hence, bidders who have deposited Rs. 2 Lakh as ‘One Time EMD’ with BHEL are also required to submit the requisite amount of EMD.

**7. Exemption from submission of EMD is applicable for MSME bidders. Please refer clause no. 16 (facilities provided to MSEs) for detail.**

## **2.0 SECURITY DEPOSIT**

Security Deposit means the security provided by the Contractor towards fulfilment of any obligations in terms of the provision of the contract.

Upon acceptance of Tender, the successful Tenderer should deposit the required amount of Security Deposit for satisfactory completion of work. **The total amount of Security Deposit will be 5 % of the Contract Value. EMD of the successful tenderer shall be converted and adjusted towards the required amount of Security Deposit.**

### **2.1 Mode of Security deposit:**

The security Deposit should be furnished before start of the work by the contractor.

“Bidders agrees to submit performance security required for execution of the contract within the time period mentioned. In case of delay in submission of Performance security, enhanced performance security which would include interest (SBI rate + 6%) for the delayed period, shall be submitted by the bidder. Further, if performance security is not submitted till such time the first bill becomes due, the amount of performance security due shall be recovered as per terms defined in NIT / Contract, from the bills along with due interest”.

The balance amount to make up the required Security Deposit of 5% of the contract Value may be furnished in any of the following forms:

- i) Cash (as permissible under the extant Income Tax Act)
- ii) Local cheques of scheduled banks (subject to realization) / Pay Order / Demand Draft / Electronic Fund Transfer, in favour of BHEL.
- iii) Bank Guarantee from Scheduled Banks / Public Financial Institutions as defined in the Companies Act. The Bank Guarantee format for Security Deposit shall be in the prescribed formats enclosed with general conditions of contract.
- iv) Fixed Deposit Receipt issued by Scheduled Banks / Public Financial Institutions as defined in the Companies Act. The FDR should be in the name of the contractor, A/C BHEL and duly discharged on the back.
- v) Securities available from Indian Post Offices such as National Savings Certificates, Kisan Vikas Patras etc. (Certificates should be held in the name of Contractor furnishing the security and duly endorsed/hypothecated/pledged, as applicable, in favour of BHEL and duly discharged on the back).

(NOTE: 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)

## **2.2 Submission of Security Deposit:**

- i) At least 50 % of the required Security Deposit, including the EMD, shall be submitted before start of work. Balance of the Security Deposit can be submitted by way of deduction of 10% of the gross amount progressively from each running bills of the contractor till the total amount of the required Security Deposit is collected.
- ii) If the value of work done at any time exceeds the contract value, the amount of Security Deposit shall be correspondingly enhanced and the additional Security Deposit shall be immediately deposited by the Contractor or it shall be recovered from payment/s due to the Contractor.
- iii) The recoveries made from running bills (cash deduction towards balance SD amount) can be released against submission of equivalent Bank Guarantee in acceptable form, but only once, before completion of work, at the discretion of BHEL.
- iv) The BG shall be submitted only through the Banker. Along with the BG, the Bank shall also furnish a letter of confirmation (in the prescribed formats enclosed with general conditions of contract).
- v) The validity of the Bank Guarantee furnished towards Security Deposit 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.
- vi) 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 fulfil 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.

## **2.3 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	J P Morgan
10	Punjab National Bank		
11	Punjab & Sindh Bank		<b>Private bank</b>
12	State Bank of India	26	Axis Bank
13	State Bank of Hyderabad	27	The Federal Bank Limited
14	Syndicate Bank	28	HDFC
15	State Bank of Travancore	29	Kotak Mahindra Bank
16	UCO Bank	30	ICICI
17	Union Bank of India	31	Indusind Bank
18	United Bank of India	32	Yes Bank

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 office is located.**

#### **2.4 RETURN OF SECURITY DEPOSIT:**

If the contractor duly performs and completes the work in all respects to the entire satisfaction of BHEL, 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.

#### **2.5 Bank Account Details for submission of EMD/ Security Deposit through electronic fund transfer mode.**

<b>NAME OF THE COMPANY</b>	<b>BHARAT HEAVY ELECTRICALS LTD</b>
<b>ADDRESS OF THE COMPANY</b>	<b>TRANSMISSION BUSINESS GROUP, 10TH FLOOR, JOY TOWER, PLOT NO. C-20, 1/1A, C BLOCK, PHASE 2, INDUSTRIAL AREA, SECTOR-62, NOIDA – 201301 (U.P.)</b>
<b>NAME OF BANK</b>	<b>STATE BANK OF INDIA</b>
<b>NAME OF BANK BRANCH</b>	<b>CAG-II NEW DELHI (17313)</b>
<b>CITY</b>	<b>NEW DELHI</b>
<b>ACCOUNT NUMBER</b>	<b>00000030206227732</b>
<b>ACCOUNT TYPE</b>	<b>CASH CREDIT</b>
<b>IFSC CODE</b>	<b>SBIN0017313</b>

### **3.0 TERMS OF PAYMENT**

- 3.1 As per clause no. 7 “Payment Schedule” of ‘Specification for consultancy for fabrication drawings’ enclosed with tender documents.

### **4.0 TAXES & DUTIES:**

- 4.1 All taxes (except GST), duties, charges, royalties, cess and any other levies by Central/ State/local authorities for the 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 be borne by the contractor. Quoted price of the same shall be inclusive of all such requirements.
- 4.2 Contractors have to make their own arrangement at their cost for completing the formalities, if required with relevant taxation authorities, for bringing their material, plant and machinery at site for the execution of the contract. Road permits / way bill, if required shall be arranged by the contractor.
- 4.3 The Contractor is responsible to furnish documentary evidence towards GST Registration of the State wherein the site is located or any other documents as per GST Act which may be required from time to time. BHEL will not be held to be responsible for any non-compliance of the Contractor in respect of GST laws as framed from time to time.
- 4.4 Goods and Service Tax (GST) will be reimbursed to the Contractor subject to the following conditions: -
- Submission of valid GST Compliant Tax Invoice as per the GST Invoice Rules.
  - The Invoice raised by the Contractor should indicate the BHEL GST Registration Number.
- 4.5 The GST amount shall get reflected within prescribed time limit in the GSTN for BHEL to avail the input credit. If the GST Credit is reversed/ denied/ delayed to BHEL due to non-receipt/delayed receipt of Services and/or tax invoice or due to expiry of timeline prescribed in GST law or due to any other factor for availing such Input Tax Credit (ITC) or for any other reason arising out of the act directly attributable to the Contractor, GST amount shall be recoverable from Contractor from any dues payable to the Contractor along with any interest levied/ leviable on BHEL.
- 4.6 Statutory variation, if any, on account of GST will be payable by BHEL at actuals on submission of documentary evidence.
- 4.7 TDS under Income Tax Act/ GST Act shall be deducted as per applicable rates unless Exemption certificate, if applicable, from the appropriate Authority is furnished to BHEL along with the Invoice.

### **4.8 New Taxes & duties (Introduced after tender opening date): -**

If any new tax or duty is levied by the Central/State Government/ Municipality/Local Authority and becomes directly applicable on items specified in the Bill of Quantities, full reimbursement shall be made subject to submission of documentation as per statute.

#### **5.0 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.

#### **6.0 FINALIZATION OF RATE CONTRACT AND ALLOCATION OF JOB:**

- 6.1 BHEL does not bind itself to accept the lowest or any tender but reserves the right to accept /reject any tender without assigning any reason thereof. The offer will be evaluated on overall L1 basis. The detailed project specific BOQ will be furnished to successful bidder on case to case basis.

#### **7.0 PERIOD OF RATE CONTRACT:**

The rate contract shall be valid for 2 years, effective from the date of issue of LOI. However, BHEL may renew the contract for a further three months/ or part thereof 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.

A separate work order shall be issued for each particular project. The project specific BOQ shall be furnished to successful bidders on case to case basis. The contract value for each project specific case will be work out as per the rate contract. The quantities given in project specific BOQs will be tentative and may vary to any extent.

#### **8.0 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.

#### **9.0 LD / Penalty**

If the vendor fails to complete the work within the specified contractual period or extension thereof granted by the engineer, liquidated damage will be imposed on the vendor for delay in completion of the work @ 0.5% (half percent) of the contract value of individual work order, per calendar week, subject to ceiling of 10% of the contract value of the individual work order along with applicable GST (if any). Amended/ revised contract value of the individual work order shall be considered for calculating LD/ penalty.

## **10.0 DELAY AND EXTENSION OF TIME**

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

- i) by reason of civil commotion, local combination of workmen, strike or lockout, affecting any of the trades employed on the work, or
- ii) by delay on the part of the agency or tradesman engaged by the BHEL in executing work not forming part of the contract, or
- iii) by reason of any other cause which in the absolute discretion of the Engineer is beyond the vendor'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 vendor by the Engineer in writing shall be final and binding on the vendor.
- iv) In case of delay in completion of work BHEL reserve the right to grant time extension under the following options depending upon the performance of the vendor:
  - a. Time extension without levy of LD in case it is found that delay is not attributable to the vendor.
  - b. Time extension with deduction of applicable LD in line with Liquidity Damage clause if the delay is solely attributable to the vendor.
  - c. In case facts of delay is not settled, BHEL reserve the right to grant provisional time extension for delay in completion of total work or part thereof and running/ interim payments to the vendor will be released without deduction of LD subject to submission of additional Bank guarantee equivalent to maximum LD amount of particular project work order valid till completion of work under their scope and grant of final time extension.

The Final Delay analysis shall be prepared on completion of the work. In case of delay attributable to vendor, LD shall be deducted for that period in line with clause "Liquidated Damage" from the final bill.

## **11.0 RIGHTS OF BHEL**

BHEL reserves to itself the following rights without entitling the Vendor for any compensation

- 11.1 To get the work done through another agency at the risk and cost of the Vendor, in the event of poor progress, or the vendor's inability to progress the work for completion as stipulated in the Contract, poor quality of work, persistent disregards of instructions of BHEL, assignment, transfer, subletting of the contracted work without written permission of BHEL, non fulfilment of any contractual obligations

etc. and to claim/recover compensation for such losses from the vendor from Security Deposit/other dues.

- 11.2 To withdraw any portion of work and/or to restrict/alter quantum of work as indicated in the contract during the progress of construction and get it done through other agency to suit BHEL's commitment to its customer or in case BHEL decides to advance the date of completion period due to other emergent reasons/BHEL's obligations to its customer.
- 11.3 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 in addition to liquidated damages/penalty in the events of
  - a) Vendor's continued poor progress.
  - b) Withdrawal from or abandonment of the work before completion of the work.
  - c) Corrupt or illegal act of the Vendor.
  - d) Insolvency of the Vendor.
  - e) Persistent disregard of the instructions of BHEL.
  - f) Assignment, transfer, subletting of the contract work without BHEL's written permission.
  - g) Non-fulfilment of any contractual obligations.
- 11.4 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.
- 11.5 To claim compensation for losses sustained in case of termination of Contract and to levy Liquidated Damage/Penalty for delay in completion of work, at the rate of 1/2% (Half percent) of the contract value of individual work order per week of delay or part thereof subject to ceiling of 10 % of the contract value of individual work order.
- 11.6 To terminate the Contract or to restrict the quantum of work and pay only for the portion or work done in case BHEL's contract with its customer is terminated/ altered/ deferred/ disputed/ frustrated for any reasons.
- 11.7 To effect recoveries from any amounts due to the vendor under this or any other contract or in any other form the moneys which BHEL is forced to pay to anybody due to vendor's failure to fulfil any of his obligations.
- 11.8 To restrict or increase the quantity and nature of work to suit project requirements, since the tender specification is based on preliminary documents and quantities furnished therein are indicative and approximate and the rates quoted shall not be subject to revision.
- 11.9 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.
- 11.10 In the event of any dispute of technical nature, the decision of BHEL shall be final and binding on the Vendor.

## **12.0 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.

### **13.0 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.

### **14.0 FORCE MAJEURE:**

2.1 The following shall amount to force majeure conditions:

3.1 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.

4.1 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 Model Conciliation Clause For Conducting Conciliation Proceedings Under The BHEL Conciliation Scheme, 2018**

The Parties the if at any time (whether before, during or after the arbitral or judicial proceedings), any Disputes (which terms shall means and include any dispute, difference, question or disagreement arising in connection with construction, meaning, operation, effect, interpretation or breach of the agreement, contract or the Memorandum of Understanding (delete whichever is inapplicable), which the parties unable to settle mutually), arise inter-se the Parties, the same may, be refereed by either party to conciliation to be conducted through Independent Experts Committee to be appointed by competent authority of BHEL from the BHEL Panel of Conciliators.

Notes:

1. No serving or a retired employee of BHEL/Administrative Ministry of BHEL shall be included in the BHEL Panel of Conciliators.

2. Any other person(s) can be appointed as Conciliator(s) who is/are mutually agreeable to both the parties from outside the BHEL Panel of Conciliators.

The proceedings of Conciliation shall broadly be governed by Part-III of the Arbitration and Conciliation Act 1996 or any statutory modification thereof and as provided **in Annexure-A**.

- (i) Except where otherwise provided for in the contract all questions & 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, Noida 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.

A party wishing to commence arbitration proceeding shall invoke Arbitration Clause by giving 60 days notice to the other party. The notice invoking arbitration shall specify all the points of disputes with details of the amount claimed to be referred to arbitration at the time of invocation of arbitration and not thereafter.

There will be no objection if the arbitrator so appointed is an employee of BHEL and he had to deal with the matters to which the contract relates, in the course of his duties. 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 the time of such transfer vacation of office or 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.

The provisions of Indian Arbitration and Conciliation Act 1996 or any statutory modification or re-enactment thereof and the rules made thereunder 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 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 at New Delhi.

The award of the arbitrator shall be final, conclusive and binding all parties to this contract, subject to the provisions of the Arbitration and Conciliation Act, 1996.

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.

- (ii) In case of Contract with Public Sector Enterprise (PSE) or a Government Department through Permanent Machinery of Arbitrators (PMA) in the department of Public Enterprises, the following shall be applicable:

In the event of any dispute or difference relating to the interpretation and application of the provisions of the Contract, such dispute or difference shall be referred to by either party to the arbitration of one of the arbitrators in the department of public enterprises. The award of the arbitrator shall be binding upon the parties to the dispute, provided, however, any party aggrieved by such award may make further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law and Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary or Additional Secretary when so authorized by the Law Secretary, whose decision shall bind the parties hereto finally and conclusively.

- (iii) The cost of arbitration shall be equally by the parties.

- (iv) Neither party shall be entitled for any interest including pre-reference or pendent-lite interest on its claims and any claim for such interest made by any party shall be void.

#### **16.0 FACILITIES PROVIDED TO MSEs**

(i) Following facilities shall be provided to MSEs

**a) Exemption from submission of EMD for MSME bidders.**

(ii) "MSE suppliers can avail the intended benefits only if they submit along with the offer, attested copies of either EM II certificate having deemed validity (five years from the date of issue of acknowledgement in EM II) or valid NSIC certificate or Udyog Aadhar Memorandum/ Udyam Registration Certificate or or EM-II certificate along with attested copy of a CA certificate applicable for the relevant financial year (latest audited). Date to be reckoned for determining the deemed validity will be the date of bid opening (Part 1 in case of two part bid). Non submission of such documents will lead to consideration of their bid at par with other bidders. No benefit shall be applicable for this enquiry if any deficiency in the above required documents are not submitted before price bid opening. If the tender is to be submitted through e-procurement portal, then the above required documents are to be uploaded on the portal. Documents should be notarized or attested by a Gazetted officer.

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