

TRANSMISSION BUSINESS GROUP
SUB CONTRACTS MANAGEMENT
NOIDA

SPECIAL TERMS & CONDITIONS (SUPPLY PART)

1.0 TERMS OF PAYMENT

- a. 75% of payment on receipt of the material at site, proper storage and physical verification. The invoice must contain following documents in 3 sets (Original+2 copies). Payment for Lattice structure shall be considered only after supply of full individual tower material including hardware.
 - Proof of receipt at site/ Receipted LR.
 - Transit insurance certificate from under writers or copy of intimation of transit insurance duly endorsed by under writers.
 - Excise invoice
 - Delivery challan/ Packing list (Casewise)
 - Dispatch clearance given by BHEL (MDCC)
 - Guarantee certificate.
 - All test reports and inspection reports
- b. 15% after completion of equipment/ material erection on the basis of per unit equipment/ material erected as certified by site in-charge.
- c. 10% payment shall be paid after commissioning of the work and issuance of Operational Acceptance Certificate by the authorized Project Manager of the Principal Employer and after complete handing over to the principal employer/customer along with submission of as built drawings.
- d. 'Commissioning' for the purpose of payments shall mean satisfactory completion of supply, civil works, erection, commissioning checks and successful completion of all site tests and charging of the transmission line at rated voltage as per the contract and to the satisfaction/approval of the BHEL/ Customer.
- e. In case, for any reason solely attributable to the Employer/BHEL, the commissioning/ handing over of line is delayed beyond 120 days of successful completion of final checking and testing of line for the purpose of commissioning, the balance 10% payment shall be released against an unconditional & irrevocable bank guarantee of equivalent amount valid till guarantee period in prescribed proforma of BHEL as per clause no. 09 of special terms & conditions of contract for supply part.

2.0 Interest Liability- In case of any delay in payment due to any reason, BHEL shall not pay any interest on delayed payment.

3.0 Final Engineering Documentation: Final documentation as called in the specification is to be submitted within 3 months from the dated of dispatch of material.

- 4.0 Inspection:** BHEL /customer/third party shall inspect equipment/material before dispatch. Stage inspection during manufacturing may also be carried out. Material to be dispatched only after getting Dispatch clearance from BHEL.

Supplier shall send inspection call on prescribed format only, with an advance notice of 15 days. Vendor shall forward all inspection and test reports for issue of MICC by BHEL.

5.0 Dispatch Documents:

Following Dispatch documents are to be immediately send to purchaser on dispatch

- Copy of LR/ proof of receipt at site
- Copy of Delivery challan/ Packing list
- Insurance certificate
- Guarantee certificate

6.0 Consignee:

All the equipments/ materials after port clearance in case of imported items and material dispatch clearance in case of indigenous items shall be dispatched to Nabinagar site and name of consignee will be notified later.

7.0 TAXES AND DUTIES:

- 7.1 Prices to be quoted by bidder shall be inclusive of all taxes, duties and levies etc. Any increase by Government at any stage during execution of contract shall be borne by bidder. All charges on account of Octroi, Terminal Tax, Entry/ Exit Tax and/or other taxes and duties, what so ever on materials obtained for the work shall be borne by the supplier. The bidder 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.
- 7.2 Though the Prices to be quoted are inclusive of all taxes & duties on FOR Destination Basis. Bidders are required to give break up in the following manner
- (a) Ex Works Price –EX Works Price including packing and forwarding.
 - (b) Sales Tax : ST/VAT/CST (Against C Form) : bidders should also mention applicable CST/VAT in unprice bid and price bid. In case of sale in transit, supplier will have to provide E1/E2 form.
 - (c) Freight & Insurance: Freight & insurance for Door delivery upto destination is to be quoted
- 7.3 Excise Duty-
- 7.3.1 Since the project enjoys MEGA PROJECT STATUS, Excise Duty is exempted. Necessary documents/ papers (from BHEL and customer) will be handed over to vendor before dispatch from their factory/ works.

- 7.3.2 Bidders are requested to mention names of suppliers in their technical bid from whom they are planning to procure the materials. The name of vendor including their suppliers shall be forwarded to customer for issuing necessary certificate for availing ED exemption. If there is any change in material supplier during execution stage to that as proposed during tendering stage, the bidders shall inform to BHEL before dispatch of materials for taking up with the customer for issuing necessary certificate for availing ED exemption. BHEL may also explore option to directly place purchase order on material supplier on specific request of the bidder without any contractual/ financial liability on BHEL.
- 7.3.3 The commercial invoice should contain the name of ultimate consignee, i.e. customer as specified in the order/ contract as well as A/C BHEL.
- 7.3.4 Supply of goods by main/ sub-vendors shall be regarded as 'Deemed Exports' under FTP-2009-2014, under 8.2 (f) of FTP benefits to supplier is governed by 8.4.4 (i) & 8.6.1 . Eligibility for refund of drawback: supplies will be eligible for Deemed Export Drawback in terms of Para 8.3 (b) of FTP on Central Excise paid on inputs/ components, provided CENVAT credit facility/ rebate has not been availed by the applicant, i.e. the vendor. Necessary P.A.C issued by Project Authority and Payment Certificate by BHEL will be issued to the Vendor to facilitate availment of Mega Power benefit. Bidder may please note that availing Deemed Export benefit as per F.T.P 2009-2014 under 8.2 (f) of F.T.P is the sole responsibility of Vendor and no claim on account of such benefit will be entertained by BHEL at a later date.
- 7.4 Entry Tax in Jharkhand: Presently no Entry Tax is applicable in Jharkhand as the applicability of Entry Tax has been quashed by Honable Jharkhand High Court. If, however, Entry Tax is leviable same shall be in bidder's scope.
- 7.5 Tender rates are inclusive of all taxes, duties and levies. Any increase by Government at any stage during execution of contract shall be borne by bidder. However, regarding newly introduced taxes (i.e. taxes introduced by Govt. after technical bid opening date), reimbursement will be made by BHEL subject to following:
- (i) Reimbursement will be made only if tax becomes directly applicable on items specified in the BOQ. 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 vendor. For verification of working of additional burden, which will be calculated with reference to tax rate structure prevailing as on date of tender opening, vendor will have to provide such documents, details, information as considered fit by BHEL.

8.0 GUARANTEE:

The material shall be guaranteed for 18 months from the date of delivery or 12 months from the date of commissioning, whichever is later. The defective material /component shall be replaced free of cost at site.

9.0 **PERFORMANCE BANK GUARANTEE:**

The vendor shall submit Bank Guarantee of an approved Nationalized Bank / Scheduled Bank as per BHEL proforma for an amount equal to 10 % of the total value of purchase order within a period of 30 days from the date of issue of LOI. Bank guarantee should be initially valid for a period of 21 months (18 months + 3 months claim period) and shall be kept valid till expiry of guarantee period.

The BG shall be released only after ensuring submission of documents as per technical specification.

CONDITIONS FOR ACCEPTANCE OF BANK GUARANTEES

Vendors 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		Public Sector Banks
3	Bank of Baroda	20	IDBI
4	Canara Bank		Foreign bank
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	The Royal Bank of Scotland N.V.
10	Punjab National Bank	26	J P Morgan
11	Punjab & Sindh Bank		Private bank
12	State Bank of India	27	Axis Bank
13	State Bank of Hyderabad	28	The Federal Bank Limited
14	Syndicate Bank	29	HDFC
15	State Bank of Travancore	30	Kotak Mahindra Bank
16	UCO Bank	31	ICICI
17	Union Bank of India	32	Indusind Bank
18	United Bank of India	33	Yes Bank

Conditions for acceptance of 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/ project is located.

10.0 DELIVERY PERIOD:

The delivery must be completed within 04 months from the date of issue of LOI. Date of receipt of material at site shall be considered as delivery date.

11.0 DELAYED DELIVERY:

In case of delay in execution of order beyond the lot wise contractual delivery, an amount of ½ % of total Ex-Works Value of delayed Lot per week or part there-of subject to maximum of 5% of total Ex-Works value of P.O. will be withheld.

12.0 LEGAL SETTLEMENT:

All suits / claims in respect of this contract shall be in the courts having jurisdiction at New Delhi.

13.0 SUBCONTRACTING:

In case further subcontracting on BHEL order or part thereof is envisaged by supplier, the same can be done after written permission is obtained from BHEL. However, it shall not absolve the supplier of the responsibility of fulfilling BHEL purchase order requirements.

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 EVALUATION:

Evaluation shall be on the basis of total cost to BHEL. Total input credit in respect of VAT (available to BHEL as per law), as indicated by the bidders in their price bid, shall be deducted from the cost for purpose of ascertaining total cost to BHEL for purpose of evaluation.

17.0 RISK & COST:

In case successful bidder fail to supply the material or fails to comply with terms & conditions of the tender / Purchase Order / LOI, BHEL reserves the right to procure such material / component / equipment / system whether by itself or from any other agency, at risk and cost of the successful bidder. Rights of BHEL shall be as per clause no. B.7 of conditions of contract for civil/ erection work.

18.0 ADJUSTMENT OF RECOVERY:

Any amount payable by the supplier under any condition of this contract, shall be liable to be adjusted against any amount payable to the supplier 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 supplier 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.

19.0 PRICE VARIATION:

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

20.0 OVER ALL CONTRACT PRICE VARIATION

The quantity of individual item can vary to any extent or may be deleted for which no compensation will be payable to the vendor 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.

21.0 TRANSPORTATION, UNLOADING, STORAGE AND WATCH & WARD

21.1 Transportation, unloading at site, storage and watch & ward of equipments/ materials covered in this NIT shall be in the scope of the vendor. The Contractor shall maintain an accurate and exhaustive record detailing out the list of all equipments received and keep such record open for the inspection of the Owner/BHEL at any time.

- 21.2 Watch and ward by authorized agency for the safe custody of the materials at site shall be responsibility of the vendor till handing over to BHEL/ Customer
- 21.3 It is the responsibility of the vendor to dismantle and take away all the materials of his office accommodation as soon as the project is handed over to BHEL and debris are cleared off.

22.0 DELAY AND EXTENSION OF TIME

If, in the opinion of the Engineer, the supply 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 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 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. No other claim in this respect for compensation, idle labour or otherwise howsoever is admissible. Upon the happening of any such event causing delay the vendor shall immediately give notice thereof in writing to the Engineer but shall nevertheless use constantly his best endeavour 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.
- vi) In case of delay in completion of delivery of material 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 (5%) valid till supply of all material at site under their scope and grant of final time extension.

The Final Delay analysis shall be prepared on completion of supply of all material at site under their scope. In case of delay attributable to vendor, LD shall be deducted for that period in line with clause "delayed delivery" for delay in supply of material.

23.0

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 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.

24.0

ARBITRATION :

- 24.1 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 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 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.

24.2 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.

24.3 The cost of arbitration shall be borne equally by the parties.

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

25.0 FACILITIES PROVIDED TO MSEs

25.1 Following facilities shall be provided to MSEs

a) Exemption from submission of EMD

25.2 "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 EM II certificate along with attested copy of a CA certificate (Format enclosed at Annexure -1 where deemed validity of EM II certificate of five years has expired) 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.

Certificate by Chartered Accountant on letter head

This is to Certify that M/S
(hereinafter referred to as 'company') having its registered office at
is registered under MSMED Act 2006, (Entrepreneur
Memorandum No (Part-II) dtd:.....,
Category: (Micro/Small)). (Copy enclosed).

Further verified from the Books of Accounts that the investment of the company as per the latest audited financial year as per MSMED Act 2006 is as follows:

1. **For Manufacturing Enterprises:** Investment in plant and machinery (i.e. original cost excluding land and building and the items specified by the Ministry of Small Scale Industries vide its notification No.S.O.1722(E) dated October 5, 2006 :
Rs.....Lacs
2. **For Service Enterprises:** Investment in equipment (original cost excluding land and building and furniture, fittings and other items not directly related to the service rendered or as may be notified under the MSMED Act, 2006:
Rs.....Lacs

(Strike off whichever is not applicable)

The above investment of Rs.....Lacs is within permissible limit of Rs.....Lacs forMicro / Small (Strike off which is not applicable) Category under MSMED Act 2006.

Or

The company has been graduated from its original category (Micro/ Small) (Strike off which is not applicable) and the date of graduation of such enterprise from its original category is (dd/mm/yyyy) which is within the period of 3 years from the date of graduation of such enterprise from its original category as notified vide S.O. No. 3322(E) dated 01.11.2013 published in the gazette notification dated 04.11.2013 by Ministry of MSME.

Date:



(Signature)

Name -

Membership number -

Seal of Chartered Accountant