

BHARAT HEAVY ELECTRICALS LIMITED
Transmission Business Group
Subcontract Management
Terms & Conditions of contract

1.0 EARNEST MONEY DEPOSIT

- 1.1 "Every Tender must be accompanied by the Earnest Money Deposit as specified in NIT in Pay order or Demand Draft only"
- 1.2 Demand Draft or Pay Order: From State Bank of India/ Nationalised Banks in favour of Bharat Heavy Electricals Limited, payable at New Delhi.
- 1.3 Tenders received without Earnest Money in full or in the manner prescribed above will not be considered.
- 1.4 EMD given by all unsuccessful tenderers shall be refunded after acceptance of award of work by the successful tenderer.
- 1.5 BHEL reserves the right of forfeiture of Earnest Money Deposit in case the successful tenderer:
- a) After opening of tender, revokes / withdraw his tender within the validity period, revises / alters his earlier quoted rates / conditions.
 - b) Fails to communicate unqualified acceptance of LOI/work order or refused to give unqualified acceptance of LOI/ work order within fifteen days from the date of issue of LOI/ Work order
 - c) The tenderer does not commence the work within the period as per LOI /Work Order.

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.

- 2.2 The Security Deposit should be deposited in any one of the following forms:

- i) Pay Order, Demand Draft in favour of BHEL.
- ii) Local cheques of scheduled banks, subject to realization.
- iii) Securities available from Post Offices such as National Savings Certificates, Kisan Vikas Patras etc.

(Certificates should be held in the name of Vendor furnishing the security and duly pledged in favour of BHEL and discharged on the back).

- iv) Bank Guarantee from scheduled Banks/ Public Financial Institutions as defined in the Companies Act. The Bank Guarantee format should be as per prescribed proforma. Bank Guarantee from Co-operative bank will not be accepted.
- v) Fixed Deposit Receipt issued by Scheduled Bank / Public Financial Institutions. The FDR should be in the name of the vendor, A/C BHEL, duly discharged on the back.
- vi) Security deposit can also be submitted at the rate of 10% from the running bills. However in such cases at least 50% of the Security Deposit should be submitted before start of the work and the balance 50% will be recovered from the running bills.
- vii) EMD of successful tenderer can be converted and adjusted against the security deposit.
- viii) The security deposit will not carry any interest.
- ix) Security deposit will not be refunded to the vendor except in accordance with the terms of the contract.

Note:

- 1) The validity of the Bank Guarantee furnished towards Security Deposit under (iv) above shall be up to three months more than the contract period. If the rate contract is extended, the vendor shall extend the Bank Guarantee.
- 2) Acceptance of Security Deposit against Sl. No. (iii) and (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.
- 3) 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 for the BG issued).
- 2.3 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 vendor or recovered from the payments due to him.
- 2.4 Failure to deposit the Security Deposit within the stipulated time, may lead to forfeiture of EMD and cancellation of the award of work.
- 2.5 BHEL reserves the right of forfeiture of Security Deposit in addition to other claims and penalties in the event of the vendor'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.
- 2.6 Security deposit will be returned after successful completion of all activities covered under this NIT.**
- 2.7 No interest shall be payable by BHEL on Security Deposit or on any money due to the vendor.

2.8 **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.

3.0 TERMS OF PAYMENT

<u>S.No.</u>	<u>Condition</u>	<u>Payment</u>
(1)	Advance	NIL
(2)	After submission of design / Drawing and it's approval from customer.	75% of item rate
(3)	After successful type testing of towers (to be done by BHEL) (During type testing some modification/ corrections in design / drawing may be required to be done by bidder)	20% of item rate
(4)	On submission of "Type-Tested" mkd drawing/documents & final documentation.	5% of item rate

4.0 TAXES & DUTIES:

- 4.1 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.
- 4.2 All taxes (Except service Tax including Cess/surcharge etc on service tax as applicable), WCT under VAT act, duties, charges, royalties, duties etc. and any other State or Central Levy and other taxes by whatsoever name called shall be borne by the vendor 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 vendor. Quoted price of the bidder shall be inclusive of all such requirements. Vendor is responsible to furnish all documentary evidences towards registration, 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, separate depiction of VAT.
- 4.3 Service tax: Vendor shall obtain prior approval of BHEL for adopting the scheme for payment of service tax for this contract before the first bill is raised by the vendor. BHEL reserves the right to disagree with the scheme proposed by the vendor .The decision of BHEL shall be final and the vendor shall be bound to adopt the scheme of service tax as finalized by BHEL.

Service Tax (including Cess/surcharge etc on service tax as may be applicable) as legally leviable & payable by the vendor under the provisions of applicable law/ act, shall be paid by BHEL extra as per provision of applicable law. The vendor must be duly registered service provider under service tax law The invoice shall be a Tax invoice under service tax law and it should clearly depict following (i) the service tax

registration number of the vendor (ii) the amount of service tax (iii) the rate of service tax (iv) any other requirement specified by law.

BHEL will not be held to be responsible for any non-compliance of the vendor in respect of various service tax rules, being framed from time to time.

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

4.4 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 vendor. Service tax as per Clause No. 4 (3) 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

- (a) 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.
- (b) 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.
- (c) 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 vendor is entitled as per contract on the date immediately prior to date on which rate of new tax announced by Government becomes applicable/effective. New tax shall be paid at actual restricted to service tax rate which the vendor is entitled on the date immediately prior to date on which rate of new tax announced by the Govt. becomes applicable/effective, will have to be borne by vendor. 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.

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.

5.0 COMPLETION SCHEDULE:

The work covered under this NIT must be completed within two month including approval from BHEL/ customer and submission of requisite documents after approval.

6.0 LIQUIDATED DAMAGE :

- 6.1. If the vendor fails to complete the work within the time specified in NIT/ work order 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, per calendar week, subject to ceiling of 10% of the contract value.

7.0 EVALUATION :

The bidders are required to quote for entire BOQ items and for all types of design required under this NIT. Evaluation shall be done on total cost to BHEL and on overall L1 basis.

8.0 QUANTITY VARIATION

The quantities indicated in "Bill of Quantity/ Price Schedule" attached with the tender are indicative only and individual quantity may vary up to any extent. However, agreed unit rates shall remain firm irrespective of variations in the quantity of individual items.

9.0 PRICE VARIATION:

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

10.0 DISCREPANCIES AND ADJUSTMENT OF ERRORS:

10.1. If on check there are found to be differences between the rates given by the vendor in words and figures or in the amount worked out by him in the schedule of quantities and general summary, the same shall be adjusted in accordance with the following rules:

- a) If, in the price structure quoted for the required services, there is discrepancy between the unit price and the total price (which is obtained by multiplying the unit price by the quantity), the unit price shall prevail and the total price corrected accordingly, unless in the opinion of the BHEL there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price corrected accordingly.
- b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
- c) If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject of (a) and (b) above.
- d) If there is such discrepancy in an offer, the same shall be conveyed to the bidder with target date upto which the bidder has to send his acceptance on the above lines and if the bidder does not agree to the decision of the purchaser, the bid is liable to be ignored.

11.0 VALIDITY OF OFFER

11.1. 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.

12.0 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 vendor 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 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.

13.0 RIGHTS OF BHEL

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

- 13.1. To get the work done through another vendor 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.
- 13.2. 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 vendor 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.
- 13.3. To terminate the contract after due notice 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.
- 13.4. To recover any moneys due from the Vendor, from any moneys due to the vendor under this or any other contract.
- 13.5. 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 each work order per week of delay or part thereof subject to ceiling of 10 % of the contract value of each work order.
- 13.6. 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.
- 13.7. 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.
- 13.8. 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.
- 13.9. 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.
- 13.10. In the event of any dispute of technical nature, the decision of BHEL shall be final and binding on the Vendor.

14.0 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 recovery of liquidated damages as per relevant clauses.

15.0 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.

16.0 FORCE MAJEURE:

16.1. The following shall amount to force majeure conditions:

16.2. 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.

16.3. 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.

17.0 ARBITRATION :

17.1 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 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 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.

- 17.2 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.

- 17.3 The cost of arbitration shall be equally by the parties.

- 17.4 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.

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