

TERMS & CONDITIONS

1.0 Earnest Monet Deposit

Not applicable

2.0 Security Deposit

Not applicable

3.0 Responsibility of vendor:

- (i) Vendor has to submit details of test equipment to be used (Make and Model Number), valid calibration certificate and user's manual before dispatch of HV test kit
- (ii) The vendor has to submit the calibration certificate of the HV test kit through OEM / NABL accredited/ Reputed laboratory only.
- (iii) For supervision of HV testing highly skilled and experienced engineer/operator should be deputed.
- (iv) The lodging, boarding and local transport of the Testing Engineer/Operator shall be in scope of vendor and charges on account of these are deemed to be included in the quoted price.
- (v) Loading/ unloading at vendors works shall be in scope of vendor.
- (vi) The vendor has to submit the detail test report with analysis immediately after testing carried out.
- (vii) The vendor has to inform the weight & dimension of HV test kit, storage space and tools required for loading/unloading required for HV test kit, facilities, manpower support etc. required to carry out the test.
- (viii) Route survey (if required) before transportation of test kit to site shall be in scope of vendor.
- (ix) For testing FQP as per OEM of test kit shall be followed.
- (x) All safety norms applicable for conducting HV test to be followed.
- (xi) The vendor shall comply with all statutory requirement applicable in connection with this test.
- (xii) During operation, if test kit or its component is found defective and it is required to be replaced/ repaired, then the vendor has to repair the test kit or shall arrange alternate HV test kit within 15 days from occurrence of such incident. No claim on account of this shall be entertained by BHEL.
- (xiii) If test could not be performed due reason solely attributable to the vendor, no idling charges shall be paid.

4.0 Responsibility of BHEL

- (i) Sufficient storage space for HV test kit shall be provided by BHEL.
- (ii) Loading / Unloading at site, handling, shifting to & from stores, proper storage, assembly, installation shall be facilitated by BHEL and shall be done in the supervision of the deputed operator/testing engineer of the vendor.
- (iii) The T&P (Tools and Plants) required at Site for carrying out shifting , storage and erection of HV Test Kit shall be arranged by BHEL (Like Trolley, Crane, Wagons, Scaffolding with Clamps, Manlift etc.). A list of T&P is to be provided by the bidder along with their offer which may be required during the testing.
- (iv) Manpower assistance (skilled / semi-skilled workmen) shall be provided by BHEL to carry out the test.
- (v) Adequate power supply required for the HV test kit will be provided by BHEL.
- (vi) BHEL at site shall arrange all necessary permit and clearance from customer/ statutory authority to perform the test.
- (vii) Assistance in obtaining road permit for Himachal Pradesh through customer.

5.0 TAXES & DUTIES:

- (i) 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 from the appropriate Authority/Authorities is furnished.
- (ii) All taxes (Except service Tax including Cess/surcharge etc on service tax as applicable) duties, charges, royalties, duties etc. any State or Central Levy and other taxes for materials for 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 have to be borne by the contractor. Quoted price of the bidder shall be inclusive of all such requirements.
- (iii) Contractors have to make their own arrangement at their cost for completing the formalities , if required, with state Vat Authorities, for bringing their material, plant & machinery at site for the execution of contract, road permit / way bill, if required shall be arranged by the contractor and BHEL will not supply any road permit / way bill for this purpose.
- (iv) Service tax: Contractor 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 contractor. BHEL reserves the right to disagree with the scheme proposed by the contractor .The decision of BHEL shall be final and the contractor 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 contractor under the provisions of applicable law/ act, shall be paid by BHEL extra as per provision of applicable law. The contractor 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 contractor (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 contractor in respect of various service tax rules, being framed from time to time.

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

- (v) 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 contractor. Service tax as per Clause No. 5 (iv) 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 contractor 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 contractor is entitled on the date immediately prior o date on which rate of new tax announced by the Govt. becomes applicable/effective, will have to be borne by contractor .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.

6.0 Payment terms:

- (i) No mobilisation advance shall be paid.
- (ii) 100% payment shall be paid against invoice on certification of work completion by site in-charge and on submission of following:
 - Test reports duly signed with BHEL/ Customer
 - Attendance/ time sheet jointly signed by BHEL and vendor
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- (iii) Payment will be released within thirty (30) days from the date of receipt of clear invoice from the vendor and on submission of documents mentioned at sl. no. 6. (ii). In case of any delay in payment due to any reason, BHEL shall not pay any interest on delayed payment.

7.0 Secrecy/ Confidentiality:

Drawings, models and other documents communicated to the vendor and test report/data shall be used exclusively for the execution of the contract and shall remain property of BHEL. The vendor shall treat these documents as confidential and these documents shall not be disclosed, distributed, published or communicated to any third party/parties without prior express permission in writing by BHEL.

8.0 Insurance:

The vendor shall arrange necessary insurance cover with appropriate Third Party Liability cover for the HV Test kit and WC/Personal Accident Policy as applicable for his testing engineers/ operator.

BHEL will not be responsible for any damage or accident directly or indirectly to the property or equipment or engineers/operator of the vendor during transportation and operation at site. Vendor shall arrange for necessary insurance to cover the risk associated in transportation and operation at Site.

BHEL/Client has obtained Insurance Policy for the plant under installation and other assets of BHEL. Accidental loss/damage to these materials will be covered under this policy.

9.0 Quantity Variations:

The quantities indicated in "Bill of Quantity" attached with the tender are indicative only and individual quantity may vary up to any extent. However, agreed unit rates shall remain firm up to a variation of + 30% of the total value of contract irrespective of variations in the quantity of individual items.

10.0 Validity of offer prices and variation:

The quoted/ finalised rates shall be firm and valid for six months from latest date of tender opening.

During execution if it is felt that, services are required for additional days then same per day hiring/ deputation/ idling charges shall be applicable for additional period. For any multiple deployment within the validity period, individual item rates shall remain same.

11.0 Zero Date and Mobilisation:

The HV test kit along with testing engineer should be deployed at site on a mutually agreed date but not later than 1 month from date of intimation of readiness of site. BHEL shall intimate in writing the readiness of site to the vendor. The testing will be witnessed by customer or BHEL representatives (as the case may be) and endorsement of the results will have to be taken from them.

12.0 Liquidated Damage:

Liquidated damage @ 0.5% (half percent) of the contract value, per calendar week, subject to ceiling of 10% of the contract value will be imposed on the vendor if the vendor fails to:

1. Mobilize test equipment or test engineer within the time specified in NIT.
2. Replace/ repair the test equipment within the time specified in NIT
3. Conduct HV test as per BHEL engineer instructions after readiness of site/ GIS for testing.

Amended/ revised contract value (excluding ORC, Extra work, Supplementary/Additional Items and PVC) shall be considered for calculating LD/ penalty.

13.0 Subletting

Subletting of the job is not allowed.

14.0 Rights of BHEL:

- (i) BHEL reserves the right to terminate the contract or get any part of the work done through other agency or deploy BHEL's own/hired/otherwise arranged resources, at the risk and cost of the vendor after due notice of a period of two weeks by BHEL, in the event of:-
 - a) Vendor fails to provide HV test kit with in notice of 30 days or mutual agreed date whichever is earlier.
 - b) Insolvency of the vendor
 - c) Poor quality of work
 - d) Corrupt or illegal act of the Contractor
 - e) Persistent disregard to the instructions of BHEL
 - f) Non fulfilment of any contractual obligations
- (ii) To meet the expenses including BHEL overheads on the differential cost at 5%, over and above the Liquidated damages/penalties arising out of "Risk & Cost" as explained above under. BHEL shall recover the amount from any money due to the Contractor including Security Deposit, or by forfeiting any T&P or material of the contractor under this contract or any other contract of BHEL or by any other means or any combination thereof.
- (iii) To terminate the contract or to restrict the quantum of work and pay for the portion of work executed in case BHEL's contracts with its customer are terminated/ altered/deferred/disputed/on hold for any reason, as per mutual agreement.
- (iv) In event of termination of contract/ withdrawal of work without performing test the vendor shall have no claim to compensate for any loss sustained by him for any reason.
- (v) 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 statutorily forced to pay to anybody due to contractor's failure to fulfil any of his obligations. BHEL shall levy overheads of 5% on all such payments.
- (vi) To restrict or increase the quantity and nature of work to suit site 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.

15.0 Limitation of Liability

Notwithstanding any other provisions, except in cases of wilful misconduct and / or criminal negligence / acts,

- a) Neither the vendor nor BHEL shall be liable to each other, whether in work order / contract, tort (including negligence), or otherwise, for any consequential loss or damage, loss of use, loss of production or loss of profits or interest costs, provided however this exclusion shall not apply to any obligation of the Supplier / Contractor to pay Liquidated Damages to the BHEL as per NIT and

- b) Notwithstanding any other provisions incorporated elsewhere in the contract, the aggregate liability of the vendor in respect of this contract, whether under the Contract, in tort (including negligence) or otherwise, shall not exceed total contract price, however this limitation shall not apply to any obligation of the vendor to indemnify BHEL with respect to Patent Infringement or Intellectual Property Rights.

16.0 Working Time:

Vendor's testing engineer/ operator working time has to be matched with BHEL working time at site. The normal working time (including 1 hr. lunch break) shall be 10 hrs./ day . Working on holiday/ Sunday/ working beyond normal working time will be treated as overtime and shall be paid on pro-rata basis.

17.0 Gate Pass for test kit and test engineer:

Vendor shall arrange the entry/out gate pass for their engineer and test kit for which necessary documents will be forwarded by BHEL to the customer. Vendor shall maintain duly endorsed records of incoming test kit to facilitate grant of outward gate pass.

18.0 Force Majeure:

The following shall amount to Force Majeure:-

- (i) Acts of God, act of any Government, War, Sabotage, Riots, Civil commotion, Police action, Revolution, Flood, Fire, Cyclones, Earth quake and Epidemic, strike and lawful lock-out and other similar causes over which the contractor has no control.
- (ii) If the test could not be performed or delayed on account of force majeure conditions as defined above, the agreed time of completion of the job covered by this contract or the obligations of the contractor shall be extended by a period of time equal to period of force majeure. BHEL in writing shall inform vendor within 7 days from the date of the occurrence of any such eventuality causing delay in execution of contract.
- (iii) If the Force Majeure event(s) continue beyond the period of 15 days, both the parties shall hold consultation to chalk out the further course of action.
- (iv) Neither party can claim any type of compensation from the other party on account of Force Majeure.

19.0 Arbitration:

- (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 as 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 Indian 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 pre-reference or pendent-lite interest on its claims and any claim for such interest made by any party shall be void.