

BHARAT HEAVY ELECTRICALS LIMITED
Transmission Business Group
Subcontract Management

Terms & Conditions

1.0 EARNEST MONEY DEPOSIT

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

1.1 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 this document.
- iii) Banker's cheque/Pay order/Demand Draft, in favour of 'Bharat Heavy Electricals Limited' and payable at New Delhi (Along with offer)
- iv) In case total EMD amount is more than Rs. 20 Lakh, the amount in excess of Rs. 20 lakh may 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.
- v) No other form of EMD remittance shall be acceptable to BHEL

1.2 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 vendor fails to deposit the required Security deposit or commence the work within the period as per LOI/contract.

1.3 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.

1.4 In the case of unsuccessful bidders, the Earnest Money will be refunded to them within a reasonable time after award of work.

1.5 EMD shall not carry any interest.

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

Note: 'One Time EMD' will not be considered for this tender. All the bidders who have 'One Time EMD' with BHEL will also be required to submit the requisite amount of EMD.

2.0 SECURITY DEPOSIT

Security Deposit means the security provided by the vendor 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 vendor.

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 vendor, 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 Vendor 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 vendor 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 Vendor or it shall be recovered from payment/s due to the Vendor.
- 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 vendor'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**

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	J P Morgan
10	Punjab National Bank		
11	Punjab & Sindh Bank		Private bank
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 vendor duly performs and completes the work in all respects to the entire satisfaction of BHEL, security deposit will be released to the vendor 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 vendor. 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.

NAME OF THE COMPANY	BHARAT HEAVY ELECTRICALS LTD
ADDRESS OF THE COMPANY	TRANSMISSION BUSINESS GROUP, 5TH FLOOR, TOWER A ADVANT NAVIS IT BUSINESS PARK, PLOT NO. 7, SECTOR-142, EXPRESSWAY NOIDA, NOIDA – 201305 (U.P.)
NAME OF BANK	HDFC BANK
NAME OF BANK BRANCH	ARERA COLONY, BHOPAL
CITY	BHOPAL
ACCOUNT NUMBER	00620320000021
ACCOUNT TYPE	CASH CREDIT
IFSC CODE	HDFC0000062
MICR CODE	462240002

3.0 TERMS OF PAYMENT

As per chapter-IV of the Technical conditions of contract (TCC) enclosed with tender documents.

4.0 TAXES & DUTIES:

As per chapter-V of the Technical conditions of contract (TCC) enclosed with tender documents.

5.0 VARIATIONS

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. Unit price will be firm and no price escalation/ ORC is payable throughout the execution / extended period of the 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 TIME SCHEDULE:

6.1. As per chapter-III of the Technical conditions of contract (TCC) enclosed with tender documents.

7.0 LIQUIDATED DAMAGE :

7.1. Liquidated damage/ penalty of ½ % (half percentage) of contract value of the individual work order **per day** shall be deducted in case:

- (a) The vendor fails to deploy qualified safety engineer (as per contract) within the initial mobilization period (15 days) fixed in the tender or as indicated in Work Order or at any time repudiates the contract.
- (b) The vendor fails to provide alternate qualified safety engineer (as per contract) within a week as per BHEL written request, in case of safety engineer is found unqualified/ behaving in unethical / unacceptable/ working in non-professional ways.

7.2. Total ceiling limit of LD and Penalty under above clause shall be 10% of the contract value of the individual work order. Once the maximum limit of delay is reached (i.e. 20 days of delay) BHEL may consider termination of the contract and forfeiture of the Security deposit. Amended/ revised individual work order value shall be considered for calculating LD/ penalty.

8.0 FINALIZATION OF CONTRACT AND ALLOCATION OF JOB:

8.1. The contract will be awarded for entire quantity to one party on overall L1 basis. The detailed project specific work order will be furnished to successful bidder on case to case basis.

9.0 VALIDITY OF OFFER

- 9.1. 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.

10.0 PERIOD OF CONTRACT:

The 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 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 work order 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 contract. The quantities given in project specific BOQs will be tentative and may vary to any extent.

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 quality of service, persistent disregards of instructions of BHEL, assignment, transfer, subletting of the contracted service 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 service and/or to restrict/alter quantum of service as indicated in the contract during the tenure of the contract and get it done through other agency to suit BHEL/ its customer requirement or 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/service done through other agencies in addition to liquidated damages/penalty in the events of
- a) Continued poor performance of the vendor/ assigned workforce.
 - b) Withdrawal of workforce from the site without BHEL permission
 - c) Corrupt or illegal or unlawful act of the vendor/ assigned workforce.
 - d) Persistent disregard of the instructions of BHEL.
 - e) Assignment, transfer, subletting of the contract work without BHEL's written permission.
 - f) Fails to provide workforce as per BHEL requirement.
 - g) Non-payment to workforce for three consecutive months.
 - h) Non-fulfilment of any statutory compliance/ 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 recover additional cost incurred in execution of work/service along with BHEL overhead (i.e. @ 5% of executed value of such work/service) in case BHEL has decided to execute the work/service at risk & cost of the vendor. The work/service can be executed either directly by BHEL or through another agencies. This shall be over and above the Liquidated damages/penalties as per relevant clause.
- 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.

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:

- 14.1. The following shall amount to force majeure conditions:
- 14.2. 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.

14.3. 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.

15.0 ARBITRATION :

15.1 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.

- 15.2 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.

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

15.4 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.

16.0 FACILITIES PROVIDED TO MSEs

16.1 Following facilities shall be provided to MSEs

- a) Exemption from submission of EMD
- i) "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 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