

**BHARAT HEAVY ELECTRICALS LIMITED**  
**Transmission Business Group**  
**Subcontract Management**  
**Special Terms & Conditions**

The following special terms and conditions shall form a part of the tender document. If any discrepancy found between below mentioned clauses and clauses in the Conditions of Contract for testing and commissioning work, the clauses mentioned in this document shall prevail.

**1.0 EARNEST MONEY DEPOSIT**

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

**1. Mode of EMD deposit:**

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

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

***v) In case total EMD amount is more than Rs. 2 Lakh, the amount in excess of Rs. 2 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.***

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

**1. Forfeiture of EMD**

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

- i) After opening the tender and within the offer validity period, the bidder revokes his tender or makes any modification in his tender which is not acceptable to BHEL.
- ii) The contractor fails to deposit the required Security deposit or commence the work within the period as per LOI/contract.

2. EMD by the tenderer shall be withheld in case any action on the tenderer is envisaged under the provision of extant “Guidelines on Suspension of business dealing with supplier/contractors” and forfeited/ released based on the action as determined under these guidelines.
3. In the case of unsuccessful bidders, the Earnest Money will be refunded to them within a reasonable time after award of work.
4. EMD shall not carry any interest.
5. EMD of successful bidder shall be retained as part of Security Deposit.
6. **Bidders may please note that “One Time EMD” provision stands deleted. Hence, bidders who have deposited Rs. 2 Lakh as ‘One Time EMD’ with BHEL are also required to submit the requisite amount of EMD.**
7. No MSE benefits shall be given to MSEs bidder for **WORKS CONTRACT. Please refer clause no. O (facilities provided to MSEs) for detail.**

## **2.0 SECURITY DEPOSIT**

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

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

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

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

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

- i) Cash (as permissible under the extant Income Tax Act)
- ii) Local cheques of scheduled banks (subject to realization) / Pay Order / Demand Draft / Electronic Fund Transfer, in favour of BHEL.
- iii) Bank Guarantee from Scheduled Banks / Public Financial Institutions as defined in the Companies Act. The Bank Guarantee format for Security Deposit shall be in the prescribed formats enclosed with general conditions of contract.
- iv) Fixed Deposit Receipt issued by Scheduled Banks / Public Financial Institutions as defined in the Companies Act. The FDR should be in the name of the contractor, A/C BHEL and duly discharged on the back.

- v) Securities available from Indian Post Offices such as National Savings Certificates, Kisan Vikas Patras etc. (Certificates should be held in the name of Contractor furnishing the security and duly endorsed/hypothecated/pledged, as applicable, in favour of BHEL and duly discharged on the back).

**(NOTE:** BHEL will not be liable or responsible in any manner for the collection of interest or renewal of the documents or in any other matter connected therewith)

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

- i) At least 50 % of the required Security Deposit, including the EMD, shall be submitted before start of work. Balance of the Security Deposit can be submitted by way of deduction of 10% of the gross amount progressively from each running bills of the contractor till the total amount of the required Security Deposit is collected.
- ii) If the value of work done at any time exceeds the contract value, the amount of Security Deposit shall be correspondingly enhanced and the additional Security Deposit shall be immediately deposited by the Contractor or it shall be recovered from payment/s due to the Contractor.
- iii) The recoveries made from running bills (cash deduction towards balance SD amount) can be released against submission of equivalent Bank Guarantee in acceptable form, but only once, before completion of work, at the discretion of BHEL.
- iv) The BG shall be submitted only through the Banker. Along with the BG, the Bank shall also furnish a letter of confirmation (in the prescribed formats enclosed with general conditions of contract).
- v) The validity of the Bank Guarantee furnished towards Security Deposit shall be up to three months more than the period of completion of work as stipulated in the LOI and the same will be kept valid by proper renewal till the completion of the work.
- vi) BHEL reserves the right of forfeiture of Security Deposit in addition to other claims and penalties in the event of the contractor's failure to fulfil any of the contractual obligations or in the event of termination of contract as per terms and conditions of the contract. BHEL reserves the right to set off the Security Deposit, against any claims of any other contracts with BHEL.

## **2.3 Conditions for acceptance of bank guarantees**

Contractors are advised to obtain Bank Guarantee preferably from any of the following BHEL consortium banks

<b>Sl. No.</b>	<b>Nationalised Bank</b>		<b>Nationalised Bank</b>
1	Allahabad bank	19	Vijaya Bank
2	Andhra bank		<b>Public Sector Banks</b>
3	Bank of Baroda	20	IDBI
4	Canara Bank		<b>Foreign bank</b>

5	Corporation bank	21	CITI Bank N.A
6	Central bank of India	22	Deutsche Bank AG
7	Indian Bank	23	The Hongkong and Shanghai Banking Corporation Limited
8	Indian Overseas Bank	24	Standard Chartered Bank
9	Oriental bank of Commerce	25	J P Morgan
10	Punjab National Bank		
11	Punjab & Sindh Bank		<b>Private bank</b>
12	State Bank of India	26	Axis Bank
13	State Bank of Hyderabad	27	The Federal Bank Limited
14	Syndicate Bank	28	HDFC
15	State Bank of Travancore	29	Kotak Mahindra Bank
16	UCO Bank	30	ICICI
17	Union Bank of India	31	Indusind Bank
18	United Bank of India	32	Yes Bank

Bank Guarantees from Banks outside BHEL's consortium shall be as below:

The Bank Guarantees of all Public sector banks can be accepted (in addition to consortium banks)

**The Bank Guarantees of Co-operative banks shall not be accepted.**

Bank Guarantees of other than consortium bank and public sector bank can be accepted subject to an overall exposure limit (at New Delhi) of Rs. 10 crores for banks with networth of more than Rs. 500 crores as on last balance sheet date and Rs 5 crores for banks with net worth between Rs. 350 to Rs 500 crores (A certificate and copy of latest Balance Sheet to be given by the Bank at the time of submission of Bank Guarantees).

In case of private sector banks a clause to be incorporated in the text of Bank Guarantee that it can be enforceable by being presented at any branch of the bank.

In case of foreign vendors the bank guarantees issued by foreign banks may be confirmed by our consortium bank in India.

**In case of Bank Guarantees given by Non-Consortium banks (Private sector or Public sector), the Bank Guarantees are to be enforceable in New Delhi or the town/ city in which the sector office is located.**

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

If the contractor duly performs and completes the work in all respects to the entire satisfaction of BHEL, security deposit will be released to the contractor after deducting all costs, expenses and other amounts that are to be paid to BHEL under this contract or other contracts entered

into with the contractor. It may be noted that in no case the Security Deposit shall be refunded/released prior to passing of final bill.

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

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

**3.0 TERMS OF PAYMENT**

- 3.1 No Mobilisation advance is payable
- 3.2 90% payment against monthly progressive invoices duly certified by our commissioning engineer at site/ site in charge.
- 3.3 10% against total commissioning of all the equipments and panel under scope of work and submission of test report and hand corrected as built drawings.
- 3.4 100% To & Fro train fare, air fare, luggage and portorage expenses, local transportation, accommodation charges and other charges applicable as per NIT shall be released along with the 90% payment mentioned at sl. no. 3.2 above.

**4.0 TAXES & DUTIES:**

1. All taxes (except GST) , duties , charges , royalties, cess and any other levies by Central/ State/local authorities for the execution of the contract shall be borne by the contractor and shall not be payable extra . Any increase of the same at any stage during execution of the contract shall be borne by the contractor .Quoted price of the same shall be inclusive of all such requirements.
2. Contractors have to make their own arrangement at their cost for completing the formalities, if required with relevant taxation authorities, for bringing their material, plant and machinery at site for the execution of the contract. Road permits / way bill if required shall be arranged by the contractor.
3. The Contractor is responsible to furnish documentary evidence towards GST Registration of the State wherein the site is located and any other documents as per GST Act which may be required from time to time by BHEL. BHEL will not be held to be responsible for any non-compliance of the Contractor in respect of GST laws as framed from time to time.

4. Goods and Service Tax (GST) will be reimbursed to the Contractor subject to the following conditions :-
  - (i) Submission of valid GST Compliant Tax Invoice as per the GST Invoice Rules
  - (ii) The Invoice raised by the Contractor should indicate the BHEL GST Registration Number.
5. The GST amount shall get reflected within prescribed time limit in the GSTN for BHEL to avail the input credit. If the GST Credit is reversed/ denied/ delayed to BHEL due to non-receipt/delayed receipt of Services and/or tax invoice or due to expiry of timeline prescribed in GST law or due to any other factor for availing such Input Tax Credit (ITC) or for any other reason arising out of the act directly attributable to the Contractor, GST amount shall be recoverable from Contractor from any dues payable to the Contractor along with any interest levied/ leviable on BHEL.
6. Statutory variation, if any, on account of GST will be payable by BHEL at actuals on submission of documentary evidence.
7. TDS under Income Tax Act/GST Act shall be deducted as per applicable rates unless Exemption certificate, if applicable, from the appropriate Authority is furnished to BHEL along with the Invoice.
8. **New Taxes & duties:**

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

## **5.0 QUANTITY AND PRICE VARIATION**

The quantities indicated in “Bill of Quantity” attached with the tender are indicative only and individual quantity may vary up to any extent. Unit price will be firm and no price escalation is payable throughout the execution / extended period of the rate contract.

The total contract value is subject to variations depending upon the actual requirement. However, total executed value should not exceed beyond 30% of total contract value.

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

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

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

The rate contract shall be valid for 2 years, effective from the date of issue of LOI. However, BHEL may renew the contract for a further three months/ or part thereof with mutual consent. BHEL shall reserve the right and option to effect premature termination of this rate contract at any point of time, if felt necessary without any financial implication on BHEL.

The contract shall be valid for the project sites where services of testing commissioning sought in the duration of the Rate contract.

A separate work order shall be issued for each particular project. The project specific BOQ shall be furnished to successful bidders on case to case basis. The contract value for each project specific case will be work out as per the rate contract.

#### **8.0 ADDITIONAL EXPENDITURE AND LOSS/ DAMAGE:**

In case any additional expenditure is incurred in the works arising out of the faulty execution of the works by the contractor, such additional expenditure shall be borne by the contractor.

If due to contractor's personnel carelessness, negligence, non-observance of safety precautions, damage to BHEL/its Customer's property and/or personnel should occur, and if BHEL is unable to recover its claim from the Insurance Company, the deficit will be recovered from the Contractor.

#### **9.0 PROTECTION OF WORK & INSURANCE**

Contractor shall effectively protect his work, testing instruments, material from theft, damage or tempering at his own expenses till the work is finally taken over by the BHEL/Owner.

Contractor shall take insurance cover(s) to cover his testing instruments, Assets, workmen compensation and third party liability. The contractor shall make available the original insurance cover(s) to the Engineer for necessary verification before commencement of work.

#### **10.0 TESTING ENGINEER/ MANPOWER AND INSTRUMENTS :**

- 10.1 On receipt of a specific work order and intimation of readiness of site and requirement of resources for testing, the contractor will depute his team of engineers/ technicians to site who will report to BHEL's testing engineers/ site in charge.
- 10.2 Contractor has to depute qualified personnel to BHEL's site who will present their credentials/ licence/ certificates to BHEL's testing engineer/ Site Incharge.
- 10.3 Commissioning team members shall not be allowed to be changed unless commissioning engineer/other staff are found incompetent & sick. Under such circumstances contractor has to supply replacement of engineer within 5 days. Contractor shall obtain prior permission from BHEL before releasing his manpower from site.
- 10.4 Contractor's manpowers are expected to conduct themselves in most professional/ethical manner and must follow the directives given to them by BHEL's testing engineer/ site in charge.
- 10.5 If during the currency of the work any member of contractor's team is found unqualified/ behaving in unethical / unacceptable/ working in non-professional ways then BHEL reserves the right to expel such person from site. In such cases contractor has to provide alternate manpower qualified for the work within 72 hours on receipt of such information/ notice by e-mail/ phone/ letter.
- 10.6 In case alternate engineer/technician is not provided within stipulated time then the penalty equal to double the man hour rate given in contract BOQ will be imposed on the contractor.

- 10.7 If such alternate manpower is not provided within the time required by BHEL/ its customer then BHEL reserves the right to call such manpower from alternate source at the risk & cost of the contractor.
- 10.8 The contractor shall provide list of testing instruments to BHEL before the commencement of work at site. These testing instruments shall not be removed from site without the written permission of the owner/BHEL.

**11.0 COMMUNICATION:**

The Contractor will make his own arrangement for all his communication needs such as telephone, fax, internet etc.

**12.0 LD / Penalty**

- 12.1 If the tenderer fails to provide services within the initial mobilization period (07 days) fixed in the tender or as indicated in Work Order or at any time repudiates the contract then BHEL, without prejudice to any other right or remedy available to it under the contract, may at its discretion to recover from the tenderer, liquidated damages and not by way of penalty, a sum of ½ % (half percentage) of contract value of the individual work order per day of delay in mobilization, subject to ceiling of 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.
- 12.2 If during the currency of the work any member of contractor's team is found unqualified/ behaving in unethical / unacceptable/ working in non-professional ways then BHEL reserves the right to expel such person from site. In such cases contractor has to provide alternate manpower qualified for the work within 72 hours on receipt of such information/ notice by e-mail/ phone/ letter. In case alternate engineer/technician is not provided within stipulated time then the penalty equal to double the item rate given in contract BOQ will be imposed on the contractor.
- 12.3 The sum total of these recoveries under above clauses 12.1 & 12.2 shall be limited to maximum 15% of the contract value of the individual work.

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

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

Notes:



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

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

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

The Annexure-A together with its appendices will be treated as if the same is part and parcel hereof and shall be as effectual as if set out herein in these GCC.”

**C. Guidelines for settlement of claims for compensation on accidents**

The amount of compensation paid by BHEL under its guidelines on Settlement of claims for compensation on accidents as applicable for BHEL, i.e. **₹ 10,00,000/- (Rs Ten Lakh) in the event of death or permanent disability resulting from Loss of both limbs and ₹ 7,00,000/-(Rs Seven Lakh) in the event of permanent disability:** shall be recoverable in full from the contractor, agency or firm, if the accident is attributable to negligence of contractor, agency or firm or any of its employees, except in case of work/ service contract etc. being of less than ₹ 5,00,000/- value, in which case the entire amount of compensation shall be borne by BHEL.

**D. The Clause No. B.15.0 “Arbitration” of Conditions of contract for ETC works stands deleted. Now the modified clause shall be read as below:**

- (i) Except where otherwise provided for in the contract all questions & disputes relating to the meaning of the specification designs, drawings and instruction herein before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings specifications, estimates, instructions, orders of these conditions or otherwise concerning the works, of the execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof shall be referred to the sole arbitration of the Head TBG, BHEL, Noida and if the Head TBG is unable or unwilling to act, to the sole arbitration of some other person appointed by the Head TBG willing to act as such arbitrator.

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

There will be no objection if the arbitrator so appointed is an employee of BHEL and he had to deal with the matters to which the contract relates, in the course of his duties. The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason such Head TBG as aforesaid at the time of such transfer vacation of office or inability to act shall appoint (see note) another person to act as arbitrator in accordance with the terms of the contract such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is also a term of this contract that no person other than a person appointed by such Head TBG as aforesaid should act as arbitrator and if for any reason that is not possible the matter is not to be referred to arbitration at all, in all cases where the amount of the claim dispute is Rs. 50,000/- (Rupees fifty thousand) and above the arbitrator shall give reasons for the award.

The provisions of Indian Arbitration and Conciliation Act 1996 or any statutory modification or re-enactment thereof and the rules made thereunder and the time being in force shall apply to the arbitration proceeding under this clause.

It is a term of the contract that the party involving arbitration shall specify the dispute or disputes to be referred to arbitration under this clause together with the amounts claimed in respect of each dispute.

The arbitrator may from time to time with consent of the parties enlarge the time for making and publishing the award.

The work under the contract shall, if reasonably possible, continue during the arbitration proceedings and no payment due or payable to the contractor shall be withheld on account of such proceedings.

The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties fixing the date of the first hearing.

The Arbitrator shall give a separate award in respect of each dispute or difference referred to him.

The Venue of arbitration shall be at New Delhi.

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

Laws governing the Contract:

The contract shall be governed by the Indians Laws for the time being in force.

NOTE:-The Authority appointing the arbitrator should not be lower in rank than the Authority accepting the Agreement.

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

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

- (iii) The cost of arbitration shall be equally by the parties.
- (iv) Neither party shall be entitled for any interest including pre-reference or pendent-lite interest on its claims and any claim for such interest made by any party shall be void.

#### **14.0 FACILITIES PROVIDED TO MSEs**

- (i) Following facilities shall be provided to MSEs
  - a) Exemption from submission of EMD
- (ii) "MSE suppliers can avail the intended benefits only if they submit along with the offer, attested copies of either EM II certificate having deemed validity (five years from the date of issue of acknowledgement in EM II) or valid NSIC certificate or Udyog Aadhar Memorandum or 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.

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