

TENDER NO: CFP/BHEL/2015-16/15

VOLUME -IB

GENERAL CONDITIONS OF CONTRACT
(SERVICE)

FOR

Transportation of Consignments from BHEL Rudrapur to Punatsangchhu- I ,Punatsangchhu-II & Mangdechhu HEP site including Customs/Sales Tax Clearance at Indo-Bhutan Border for 6X200 MW Punatsangchhu-I ,6x170MW Punatsangchhu-II &4X180MW Mangdechhu Hydroelectric Project Bhutan..

BHARAT HEAVY ELECTRICALS LIMITED

(A GOVT. OF INDIA UNDERTAKING)

Component Fabrication Plant

Kichchha By Road

Rudrapur,

UK – 263153.

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CHAPTER -1

1. GENERAL INSTRUCTION TO TENDERERS

1.1. DESPATCH INSTRUCTION

- i) The General Conditions of Contract form part of the Tender specifications. **All pages of the tender documents shall be duly signed, stamped and submitted along with the offer in token of complete acceptance thereof.** The information furnished shall be complete by itself. The tenderer is required to furnish all the details and other documents as required in the following pages
- ii) Tenderers are advised to study all the tender documents carefully. Any submission of tender by the tenderer shall be deemed to have been done after careful study and examination of the tender documents and with the full understanding of the implications thereof. Should the tenderers have any doubt about the meaning of any portion of the Tender Specification or find discrepancies or omissions in the drawings or the tender documents issued are incomplete or shall require clarification on any of the technical aspect, the scope of work etc., he shall at once, contact the authority inviting the tender well in time (so as not to affect last date of submission) for clarification before the submission of the tender. Tenderer's request for clarifications shall be with reference to Sections and Clause numbers given in the tender documents. The specifications and terms and conditions shall be deemed to have been accepted by the tenderer in his offer. Non compliance with any of the requirements and instructions of the tender enquiry may result in the rejection of the tender.

1.2. SUBMISSION OF TENDERS

- 1.2.1 The tenderers must submit their tenders to Officer inviting tender as per instructions in the NIT
- 1.2.2 Tenders submitted by post shall be sent by 'REGISTERED POST ACKNOWLEDGEMENT DUE / by COURIER' and shall be posted with due allowance for any postal/courier delays. BHEL takes no responsibility for delay, loss or non-receipt of tenders sent by post/courier. **The tenders received after the specified time of their submission are treated as 'Late Tenders' and shall not be considered under any circumstances.** Offers received by Fax/Email/Internet shall be considered as per terms of NIT.
- 1.2.3 Tenders shall be opened by authorised Officer of BHEL at his office at the time and date as specified in the NIT, in the presence of such of those tenderers or their authorised representatives who may be present
- 1.2.4 Tenderers whose bids are found techno commercially qualified shall be informed the date and time of opening of the Price Bids and such Tenderers may depute their representatives to witness the opening of the price bids. BHEL's decision in this regard shall be final and binding.

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- 1.2.5 Before submission of Offer, the tenderers are advised to inspect the site of work and the environments and be well acquainted with the actual working and other prevalent conditions, facilities available, position of material and labour, means of transport and access to Site, accommodation, etc. No claim will be entertained later on the grounds of lack of knowledge of any of these conditions.

1.3. LANGUAGE

- 1.3.1 The tenderer shall quote the rates in English language and international numerals. These rates shall be entered in figures as well as in words. For the purpose of the tenders, the metric system of units shall be used.
- 1.3.2 All entries in the tender shall either be typed or written legibly in ink. Erasing and over-writing is not permitted and may render such tenders liable for rejection. All cancellations and insertions shall be duly attested by the tenderer.

1.4 PRICE DISCREPANCY:

- 1.4.1 **Conventional (Manual) Price Bid opening :** In the case of price bid opening without resorting to Reverse Auction, if there are differences between the rates given by the tenderer in words and figures or in amount worked out by him, the following procedure for evaluation and award shall be followed:
- i) When there is a difference between the rates in figures and in words, the rates which corresponds to the amounts worked out by the contractor, shall be taken as correct
 - ii) When the amount of an item is not worked out by the contractor or it does not correspond with the rate written either in figure or in words, then the rate quoted by the contractor in words shall be taken as correct
 - iii) When the rate quoted by the contractor in figures and words tallies but the amount is not worked out correctly, the rate quoted by the contractor shall be taken as correct and not the amount.
 - iv) In case of lumpsum price, if there is any difference between the amount in figures and in words, the amount quoted by the bidder in words shall be taken as correct.
 - v) In case of omission in quoting any rate for one or more items, the evaluation shall be done considering the highest quoted rate obtained against the respective items by other tenderers for the subject tender. If the tenderer becomes L-1, the notional rates for the omission items shall be the lowest rates quoted for the respective items by the other tenderers against the respective omission items for the subject job and the 'Total quoted price (loaded for omissions)' shall be arrived at. However the overall price remaining the same as quoted originally, the rates for all the items in the 'Total quoted price (loaded for omissions)' shall be reduced item wise in proportion to the ratio of 'Original' total price and the 'Total quoted price (loaded for omissions)'.
 - vi) The 'Final Total Amount' shall be arrived at after considering the amounts worked out in line with 'i' to 'iv' above.
- 1.4.2 **Reverse Auction:** In case of Reverse Auction, the successful bidder shall undertake to execute the work as per overall price offered by him during the Reverse Auction process. After reverse auction price breakup to be submitted by bidder in accordance within time given in price breakup format Volume-III. In case of omission of rates, the procedure shall be as per 'Guidelines for Reverse Auction' enclosed.
- 1.5. **QUALIFICATION OF TENDERERS**
- i) Only tenderers who have previous experience in the work of the nature and description detailed in

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- the Notice Inviting Tender and/or tender specification are expected to quote for this work duly detailing their experience along with offer.
- ii) Offers from tenderers who do not have proven and established experience in the field shall not be considered
 - iii) .Offers from tenderers who are under suspension (banned) by any Unit/Region/Division of BHEL shall not be considered.
 - iv) Offers from tenderers who do not comply with the latest guidelines of Ministry/Commissions of Govt of India shall not be considered.

1.6. EVALUATION OF BIDS

- i) Technical Bids submitted by the tenderer will be opened first and evaluated for fulfilling the Pre Qualification criteria and other conditions in NIT/Tender documents, based on documentary evidences submitted along with the offer
- ii) In case the same qualifying experience is claimed by more than one agency, then the agency who has executed the work as per documentary evidence submitted shall only be qualified. Scope of qualifying work should be totally with the agency who has executed and in case it is only labour+consumables without T&P, then the responsibility of execution is assigned to the first agency and not to the agency who has executed only as labour supply contractor. Further, BHEL reserves the right to ask for further proofs including submission of TDS certificates for the said job
- iii) In case the qualifying experience is claimed by private organizations based on Work Order and completion certificates from another private organization, BHEL reserves the right to ask for further proofs including submission of TDS certificates for the said job
- iv) Assessing Bidder Capacity for executing the current tender shall be as per Notice Inviting Tender
- v) Price Bids of shortlisted bidders shall only be opened either through the conventional price bid opening or through electronic Reverse Auction, at the discretion of BHEL
- vi) Price Bids of unqualified bidders shall not be opened.

1.7. DATA TO BE ENCLOSED

Full information shall be given by the tenderer in respect of the following. Non-submission of this information may lead to rejection of the offer.

- i) **INCOME TAX PERMANENT ACCOUNT NUMBER**
Certified copies of Permanent Account Numbers as allotted by Income Tax Department for the Company/Firm/Individual Partners, etc. shall be furnished along with tender.
- ii) **ORGANIZATION CHART**
The organization chart of the tenderer's organization, including the names, addresses and contact information of the Directors/Partners shall be furnished along with the offer.
- iii) An attested copy of the Power of Attorney, in case the tender is signed by an individual other than the sole proprietor
- iv) **IN CASE OF INDIVIDUAL TENDERER:**
His / her full name, address and place & nature of business.

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v) **IN CASE OF PARTNERSHIP FIRM**

The names of all the partners and their addresses, A copy of the partnership deed/instrument of partnership duly certified by the Notary Public shall be enclosed.

vi) **IN CASE OF COMPANIES:**

- a. Date and place of registration including date of commencement certificate in case of Public Companies (certified copies of Memorandum and articles of Association are also to be furnished).
- b. Nature of business carried on by the Company and the provisions of the Memorandum relating thereof.

1.8 **AUTHORISATION AND ATTESTATION**

Tenders shall be signed by a person duly authorized/empowered to do so. An attested copy of the Power of Attorney, in case the tender is signed by an individual other than the sole proprietor shall be submitted along with the tenders

1.9 **EARNEST MONEY DEPOSIT**

- 1.9.1 Every tender must be accompanied by the prescribed amount of Earnest Money Deposit (EMD) in the manner described herein.

Earnest Money Deposit (EMD) of Rs. 2,00,000/- is a must and shall be deposited along with the offer in the form of Bank Draft from any nationalized bank, Pay Order in favor of BHEL Rudrapur or in Cash. The EMD amount given by unsuccessful tenderers shall be refunded within 15 days of acceptance of award of work by the successful tenderers whereas EMD of the successful tenderers shall be converted and adjusted against Security Deposit. EMD shall not carry any interest. It may be also noted that the EMD & tender cost (Rs 1000) should not be combined together. Tender cost is to be submitted separately in cash/DD/bankers cheque drawn in favor of BHEL, payable at Rudrapur while obtaining tender /submitting the offers.

Bidder may opt to deposit "One Time EMD" of Rs. 2.0 lakhs (Rupees Two lakhs only) with BHEL, Rudrapur issuing the tender, which will enable them to participate in all the future tender enquiries in respect of Transportation services issued from this office. Interested bidders may clearly send their consent for converting the present EMD into a "One Time EMD" in their offer

Offers without EMD shall not be considered & shall be outrightly rejected

- 1.9.2 EMD by the bidder will be forfeited as per Tender Documents if

- i) After opening the tender, the bidder revokes his tender within the validity period or increases his earlier quoted rates.
- ii) The bidder does not commence the work within the period as per LOI/Contract. In case the LOI / contract is silent in this regard then within 15 days after award of contract.

- 1.9.3 EMD shall not carry any interest.

- 1.9.4 In the case of unsuccessful bidders, the Earnest Money will be refunded to them within a reasonable time after acceptance of award by successful tenderer.

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1.10 SECURITY DEPOSIT

1.10.1 Upon acceptance of Tender, the successful Tenderer should deposit the required amount of Security Deposit for satisfactory completion of work, as per the rates given below:

SN	Contract Value	Security Deposit Amount
1	Up to Rs. 10 lakhs	10% of Contract Value
2	Above Rs. 10 lakhs upto Rs.50 lakhs	1 lakh + 7.5% of the Contract Value exceeding Rs. 10 lakhs.
3	Above Rs. 50 lakhs	Rs 4 lakhs + 5% of the Contract Value exceeding Rs. 50 lakhs.

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

1.10.3 Security Deposit may be furnished in any one of the following forms

- i) Cash (as permissible under the Income Tax Act)
- ii) Pay Order / Demand Draft in favour of BHEL.
- iii) Local cheques of scheduled banks, subject to realization.
- iv) Securities available from 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 pledged in favour of BHEL and discharged on the back).
- v) 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
- vi) 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, duly discharged on the back.
- vii) Security deposit can also be recovered at the rate of 10% from the running bills. However in such cases at least 50% of the Security Deposit should be deposited in any form as prescribed before start of the work and the balance 50% may be recovered from the running bills.
- viii) EMD of the successful bidder can be converted and adjusted against the cash portion of Security Deposit excepting for such bidders who have remitted One Time EMD.

NOTE: Acceptance of Security Deposit against Sl. No. (iv) and (vi) 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.

1.10.4 The Security Deposit shall not carry any interest.

1.10.5 In case the value of work exceeds / reduces from the awarded / accepted value, the Security Deposit shall be correspondingly enhanced / reduced as given below:

- i) The enhanced part of the Security Deposit shall be immediately deposited by the Contractor or adjusted against payments due to the Contractor.
- ii) There will be no reduction in Security Deposit value in case of variation in contract value upto the lower limit specified in Quantity variation clause. In case of reduction of contract value beyond the lower limit specified in Quantity Variation clause, then the Security Deposit shall be re adjusted in proportion.
- iii) In case of reduction, the reduced Contract value shall be certified by BHEL Construction Manager after ascertaining / freezing of BOQ / Drawings from the Design / Engineering Centre. The reduced Security Deposit value can only be considered after taking into account the adequacy of the

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securities held by BHEL to meet the liabilities of the contractor for the contract, and the performance of the contract in general. In such cases, the revised value of Security Deposit shall be worked out only after execution of not less than the lower limit of the revised scope of work/contract value as per quantity variation clause, and as certified by Construction Manager. This reduction in value of Security Deposit shall not entitle the contractor to any amendment of Contract and shall be operated at the discretion of BHEL

- iv) Contract value for the purpose of operating the reduced/increased value of Security Deposit due to Quantity Variation, shall be exclusive of Price Variation Clause, Over Run Compensation and Extra works done on manday rates.

1.10.6 The validity of Bank Guarantees towards Security Deposit shall be initially upto the completion period as stipulated in the Letter of Intent/Award + 3 months, and the same shall be kept valid by proper renewal till the acceptance of Final Bills of the Contractor, by BHEL

1.10.7 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 fulfill any of the contractual obligations or in the event of termination of contract as per terms and conditions of contract. BHEL reserves the right to set off the Security Deposit against any claims of other contracts with BHEL.

1.11 RETURN OF SECURITY DEPOSIT

Security Deposit shall be refunded/Bank Guarantee(s) released to the Contractor along with the 'Final Bill' after deducting all expenses / other amounts due to BHEL under the contract / other contracts entered into with them by BHEL.

1.12 BANK GUARANTEES

Where ever Bank Guarantees are to be furnished/submitted by the contractor, the following shall be complied with

- i) Bank Guarantees shall be from Scheduled Banks / Public Financial Institutions as defined in the Companies Act.
- ii) The Bank Guarantees shall be as per prescribed formats.
- iii) It is the responsibility of the bidder to get the Bank Guarantees revalidated/extended for the required period (subject to a minimum period of six months), as per the advice of BHEL Site Engineer / Construction Manager. BHEL shall not be liable for issue of any reminders regarding expiry of the Bank Guarantees.
- iv) In case extension/further extensions of any Bank Guarantees are not required, the bidders shall ensure that the same is explicitly endorsed by the Construction Manager and submitted to the BHEL Rudrapur issuing the LOI/LOA.
- v) In case the Bank Guarantees are not extended before the expiry date, BHEL reserves the right to invoke the same by informing the concerned Bank in writing, without any advance notice/communication to the concerned bidder.
- vi) Bidders to note that any corrections to Bank Guarantees shall be done by the issuing Bank, only through an amendment in an appropriate non judicial stamp paper.
- vii) The Original Bank Guarantee shall be sent directly by the Bank to BHEL under Registered Post (Acknowledgement Due), addressed to the Subcontracting Department of the respective Region.

1.13 VALIDITY OF OFFER

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The rates in the Tender shall be kept open for acceptance for a minimum period of **SIX MONTHS** from latest due date of offer submission (including extension, if any). In case BHEL (Bharat Heavy Electricals Ltd) calls for negotiations, such negotiations shall not amount to cancellation or withdrawal of the original offer which shall be binding on the tenderers.

1.14 EXECUTION OF CONTRACT AGREEMENT

The successful tenderer's responsibility under this contract commences from the date of issue of the Letter of Intent by Bharat Heavy Electricals Limited. The Tenderer shall submit an unqualified acceptance to the Letter of Intent/Award within the period stipulated therein.

The successful tenderer shall be required to execute an agreement in the prescribed form, with BHEL, within a reasonable time after the acceptance of the Letter of Intent/Award, and in any case before releasing the first bill. The contract agreement shall be signed by a person duly authorized/empowered by the tenderer. The expenses for preparation of agreement document shall be borne by BHEL.

1.15 REJECTION OF TENDER AND OTHER CONDITIONS

1.15.1 The acceptance of tender will rest with BHEL which does not bind itself to accept the lowest tender or any tender and reserves to itself full rights for the following without assigning any reasons whatsoever:-

- a. To reject any or all of the tenders.
- b. To split up the work amongst two or more tenderers as per NIT
- c. To award the work in part if specified in NIT
- d. In case of either of the contingencies stated in (b) and (c) above, the time for completion as stipulated in the tender shall be applicable.

1.15.2 Conditional tenders, unsolicited tenders, tenders which are incomplete or not in the form specified or defective or have been materially altered or not in accordance with the tender conditions, specifications etc., are liable to be rejected.

1.15.3 Tenders are liable to be rejected in case of unsatisfactory performance of the tenderer with BHEL, or tenderer under suspension (hold/banning /delisted) by any unit / region / division of BHEL or tenderers who do not comply with the latest guidelines of Ministry/Commissions of Govt of India. BHEL reserves the right to reject a bidder in case it is observed that they are overloaded and may not be in a position to execute this job as per the required schedule in line with clause no.8.0 of the 'NIT'. The decision of BHEL will be final in this regard.

1.15.4 If a tenderer who is a proprietor expires after the submission of his tender or after the acceptance of his tender, BHEL may at their discretion, cancel such tender. If a partner of a firm expires after the submission of tender or after the acceptance of the tender, BHEL may then cancel such tender at their discretion, unless the firm retains its character.

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- 1.15.5 BHEL will not be bound by any Power of Attorney granted by changes in the composition of the firm made subsequent to the execution of the contract. They may, however, recognise such power of Attorney and changes after obtaining proper legal advice, the cost of which will be chargeable to the contractor concerned.
- 1.15.6 If the tenderer deliberately gives wrong information in his tender, BHEL reserves the right to reject such tender at any stage or to cancel the contract if awarded and forfeit the Earnest Money/Security Deposit/any other money due.
- 1.15.7 Canvassing in any form in connection with the tenders submitted by the Tenderer shall make his offer liable to rejection.
- 1.15.8 In case the Proprietor, Partner or Director of the Company/Firm submitting the Tender, has any relative or relation employed in BHEL, the authority inviting the Tender shall be informed of the fact as per specified format, along with the Offer. Failing to do so, BHEL may, at its sole discretion, reject the tender or cancel the contract and forfeit the Earnest Money/Security Deposit.
- 1.15.9 The successful tenderer should not sub-contract part or complete work detailed in the tender specification undertaken by him without written permission of BHEL's Construction Manager/Site Incharge. The tenderer is solely responsible to BHEL for the work awarded to him.
- 1.15.10 The Tender submitted by a techno commercially qualified tenderer shall become the property of BHEL who shall be under no obligation to return the same to the bidder. However unopened
- 1.15.11 price bids and late tenders shall be returned to the bidders
- 1.15.12 Unsolicited discount received after the due date and time of Bid Submission shall not be considered for evaluation. However, if the party who has submitted the unsolicited discount/rebate becomes the L-1 party, then the awarded price i.e contract value shall be worked out after considering the discount so offered.
- 1.15.13 BHEL shall not be liable for any expenses incurred by the bidder in the preparation of the tender irrespective of whether the tender is accepted or not.

CHAPTER-2

- 2.1 **DEFINITION:** The following terms shall have the meaning hereby assigned to them except where the context otherwise requires
- i) BHEL shall mean Bharat Heavy Electricals Limited, a company registered under Indian Companies Act 1956, with its Registered Office at BHEL HOUSE, SIRI FORT, NEW DELHI – 110 049, or BHEL CFP Rudrapur or other employees authorised to deal with any matters with which these persons are concerned on its behalf.
- ii) “EXECUTIVE DIRECTOR” or ‘GROUP GENERAL MANAGER’ or “GENERAL MANAGER (Incharge)” or “GENERAL MANAGER” shall mean the Officer in Administrative charge of the BHEL Rudrapur.
- iii) “COMPETENT AUTHORITY” shall mean Executive Director or Group General Manager or General

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Manager (Incharge) or General Manager or BHEL Officers who are empowered to act on behalf of the Executive Director or General Manager (Incharge) or General Manager of BHEL.

- iv) "ENGINEER" or "ENGINEER IN CHARGE" shall mean an Officer of BHEL as may be duly appointed and authorized by BHEL to act as "Engineer" on his behalf for the purpose of the Contract, to perform the duty set forth in this General Conditions of Contract and other Contract documents.
- v) "SITE" shall mean the places or place at which the plants/equipments are to be erected and services are to be performed as per the specification of this Tender.
- vi) "CLIENT OF BHEL" or "CUSTOMER" shall mean the project authorities with whom BHEL has entered into a contract for supply of equipments or provision of services.
- vii) "CONTRACTOR" shall mean the successful Bidder/Tenderer who is awarded the Contract and shall include the Contractor's successors, heirs, executors, administrators and permitted assigns.
- viii) "CONTRACT" or "CONTRACT DOCUMENT" shall mean and include the Agreement of Work Order, the accepted appendices of Rates, Schedules, Quantities if any, General Conditions of Contract, Special Conditions of Contract, Instructions to the Tenderers, Drawings, Technical Specifications, the Special Specifications if any, the Tender documents, subsequent amendments mutually agreed upon and the Letter of Intent/Acceptance issued by BHEL. Any conditions or terms stipulated by the contractor in the tender documents or subsequent letters shall not form part of the contract unless, specifically accepted in writing by BHEL in the Letter of Intent/Award and incorporated in the agreement.
- ix) "GENERAL CONDITIONS OF CONTRACT" shall mean the 'Instructions to Tenderers' and 'General conditions of Contract' pertaining to the work for which above tenders have been called for.
- x) "TENDER SPECIFICATION" or "TENDER" or "TENDER DOCUMENTS" shall mean General conditions, Common Conditions, Special Conditions, Price Bid, Rate Schedule, Technical Specifications, Appendices, Annexures, Corrigendums, Amendments, Forms, procedures, Site information, etc and drawings / documents pertaining to the work for which the tenderers are required to submit their offers. Individual specification number will be assigned to each Tender Specification.
- xi) "LETTER OF INTENT" shall mean the intimation by a Letter/Fax/email to the tenderer that the tender has been accepted in accordance with provisions contained in the letter. The responsibility of the contractor commences from the date of issue of this letter and all terms and conditions of the contract are applicable from this date.
- xii) "COMPLETION TIME" shall mean the period by 'date/month' specified in the 'Letter of Intent/Award' or date mutually agreed upon for handing over of the intended scope of work, the erected equipment/plant which are found acceptable by the Engineer, being of required standard and conforming to the specifications of the Contract.
- xiii) "PLANT" shall mean and connote the entire assembly of the plant and equipments covered by the contract.
- xiv) "EQUIPMENT" shall mean equipment, machineries, materials, structural, electricals and other components of the plant covered by the contract.
- xv) "TESTS" shall mean and include such test or tests to be carried out on the part of the contractor as are prescribed in the contract or considered necessary by BHEL, in order to ascertain the quality,

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workmanship, performance and efficiency of the contractor or part thereof.

- xvi) “APPROVED”, “DIRECTED” or “INSTRUCTED” shall mean approved, directed or instructed by BHEL.
- xvii) “WORK or CONTRACT WORK” shall mean and include supply of all categories of labour, specified consumables, tools and tackles and Plants required for complete and satisfactory site transportation, handling, stacking, storing, erecting, testing and commissioning of the equipments to the entire satisfaction of BHEL
- xviii) “SINGULAR AND PLURALS ETC” words carrying singular number shall also include plural and vice versa, where the context so requires. Words imparting the masculine Gender shall be taken to include the feminine Gender and words imparting persons shall include any Company or Associations or Body of Individuals, whether incorporated or not.
- xix) “HEADING” – The heading in these General Conditions are solely for the purpose of facilitating reference and shall not be deemed to be part thereof or be taken as instructions thereof or of the contract.
- xx) “MONTH” shall mean calendar month unless otherwise specified in the Tender.
- xxi) Day’ or ‘Days’ unless herein otherwise expressly defined shall mean calendar day or days of twenty four (24) hours each. A week shall mean continuous period of seven (7) days.
- xxii) “COMMISSIONING” shall mean the synchronisation testing and achieving functional operation of the Equipment with associated system after all initial adjustments, trials, cleaning, re- assembly required at site if any, have been completed and Equipment with associated system is ready for taking into service
- xxiii) “WRITING” shall include any manuscript type written or hand written or printed statement or electronically transmitted messages, under the signature or seal or transmittal of BHEL.
- xxiv) “TEMPORARY WORK” shall mean all temporary works for every kind required in or for the execution, completion, maintenance of the work.
- xxv) ‘CONTRACT PRICE’ or ‘CONTRACT VALUE’ shall mean the sum mentioned in the LOI/LOA/Contract Agreement subject to such additions thereto or deductions there from as may be made under provisions hereinafter contained
- xxvi) “COMMENCEMENT DATE” or “START DATE” shall mean the commencement/start of work at Site as per terms defined in the Tender
- xxvii) “SHORT CLOSING” or “FORE CLOSING” of Contract shall mean the premature closing of Contract, for reasons not attributable to the contractor and mutually agreed between BHEL and the contractor
- xxviii) “TERMINATION” of Contract shall mean the premature closing of contract due to reasons as mentioned in the contract
- xxix) “DE MOBILISATION” shall mean the temporary winding up of Site establishment by Contractor leading to suspension of works temporarily for reasons not attributable to the contractor
- xxix) “DE MOBILISATION” shall mean the temporary winding up of Site establishment by Contractor leading to suspension of works temporarily for reasons not attributable to the contractor
- xxx) “RE MOBILISATION” shall mean the resumption of work with all resources required for the work after demobilization.

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LAW GOVERNING THE CONTRACT AND COURT JURISDICTION

2.2

The contract shall be governed by the Law for the time being in force in the Republic of India. The Civil Court having original Civil Jurisdiction at Rudrapur, shall alone have exclusive jurisdiction in regard to all claims in respect of the Contract. No other Civil Court shall have jurisdiction in case of any dispute, under this contract

2.3 **ISSUE OF NOTICE**

2.3.1 **Service of notice on contractor**

Any notice to be given to the Contractor under the terms of the contract shall be served by sending the same **by Registered Post / Speed Post** to or leaving the same at the Contractor's last known address of the principal place of business (or in the event of the contractor being a company, to or at its Registered Office). In case of change of address, the notice shall be served at changed address as notified in writing by the Contractor to BHEL. Such posting or leaving of the notice shall be deemed to be good service of such notice and the time mentioned to the condition for doing any act after notice shall be reckoned from the date so mentioned in such notice.

2.3.2 **Service of notice on BHEL**

Any notice to be given to BHEL in-charge/Region under the terms of the Contract shall be served by sending the same by post to or leaving the same at BHEL address or changed address as notified in writing by BHEL to the Contractor.

2.4 **USE OF LAND**

No land belonging to BHEL or their Customer under temporary possession of BHEL shall be occupied by the contractor without written permission of BHEL

2.5 **COMMENCEMENT OF WORK**

2.5.1 The contractor shall commence the work as per the time indicated in the Letter of Intent from BHEL and shall proceed with the same with due expedition without delay.

2.5.2 If the contractor fails to start the work within stipulated time as per LOI or as intimated by BHEL, then BHEL at its sole discretion will have the right to cancel the contract. The Earnest Money and/or Security Deposit with BHEL will stand forfeited without any further reference to him without prejudice to any and all of BHEL's other rights and remedies in this regard.

All the work shall be carried out under the direction and to the satisfaction of BHEL.

2.6 **MODE OF PAYMENT:**

2.6.1 All payments due to the contractors shall be made by e mode only, unless otherwise found operationally difficult for reasons to be recorded in writing

2.6.2 All payments shall be made to the transporter through e-payment within 20 days of the submission of proper bills enclosing LR and DAN duly acknowledged by the consignee stating that the material is received in full and good condition. The contractor shall submit the bills in duplicate immediately after delivery of goods. For e-payment, transporter has to submit the following information:

- Name of beneficiary :
- Bank Name :

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- Bank Account No. :
- Branch Name :
- IFSC Code :

Note: The transporter should have capability to invest working capital up to 15-20 lakhs at a time, as our payment terms are within 20 days of submission of bills by the transporter.

2.7 RIGHTS OF BHEL

BHEL reserves the following rights in respect of this contract during the original contract period or its extensions if any, as per the provisions of the contract, without entitling the contractor for any compensation.

- 2.7.1 To withdraw any Tractor, Open body truck, 9MT truck or 15MT truck to restrict/alter quantum of work as indicated in the contract during the progress of work and get it done through other agencies to suit BHEL's commitment to its customer or in case BHEL decides to advance the date of completion due to other emergent reasons/ BHEL's obligation to its customer.
- 2.7.2 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 contractor after due notice of a period of two days by BHEL, in the event of:-
 - i) Contractor's continued poor progress
 - ii) Withdrawal from or abandonment of the work before completion of the work
 - iii) Contractor's inability to progress the work for completion as stipulated in the contract
 - iv) Poor quality of work
 - v) Corrupt act of Contractor
 - vi) Insolvency of the Contractor
 - vii) Persistent disregard to the instructions of BHEL
 - viii) Assignment, transfer, sub-letting of contract without BHEL's written permission
 - ix) Non fulfillment of any contractual obligations
 - x) In the opinion of BHEL, the contractor is overloaded and is not in a position to execute the job as per required schedule
- 2.7.3 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 Sl.No. 2.7.2. BHEL shall recover the amount from any money due from Contractor, or 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
- 2.7.4 To terminate the contract or to restrict the quantum of work and pay for the portion of work executed in case BHEL's contract with their customer are terminated for any reason, as per mutual agreement.
- 2.7.5 To effect recovery from any amounts due to the contractor under this or any other contract or in any other form, the moneys BHEL is statutorily forced to pay to anybody, due to contractor's failure to fulfill any of his obligations. BHEL shall levy overheads of 5% on all such payments along with interest as defined elsewhere in the GCC.
- 2.7.6 While every endeavor will be made by BHEL to this end, they cannot guarantee uninterrupted work due to conditions beyond their control. The Contractor will not be normally entitled for any

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compensation/extra payment on this account unless otherwise specified elsewhere in the contract.

- 2.7.7 In case the execution of works comes to a complete halt or reaches a stage wherein worthwhile works cannot be executed and there is no possibility of commencement of work for a period of not less than two months, due to reasons not attributable to the contractor and other than Force Majeure conditions, BHEL may consider permitting the contractor to de mobilize forthwith and re mobilize at an agreed future date. Cost of such demobilization/remobilization shall be mutually agreed. ORC in such cases shall not be applicable for the period between the period of demobilization and re mobilisation. The duration of contract/time extension shall accordingly get modified suitably. In case of any conflict, BHEL decision in this regard shall be final and binding on the contractor.

2.7.8 LIQUIDATED DAMAGES/PENALTY

- 2.7.8.1 Subject to force majeure, if contractor fails to adhere time-schedule given as per clause no. 3.7.2, Clause of SCC BHEL shall have the right to recover as liquidated damage (LD) for transportation of each consignment a sum equivalent to 2% of the freight for direct delivery or proportionate freight value payable at each stage of payment (BHEL-MU to storage/ Storage to site) per week of delay or part thereof.
- 2.7.8.2 Apart from above, in case due to non-readiness of any activity in time essentially required for successful execution of the contract, the delay occurs in total completion of the contract as per clause no. 3.7.1, BHEL shall have the right to recover liquidated damages (LD) @ 0.25% of contract price for delay of each week or part thereof.
- 2.7.8.3 The total liability (a) + (b) for such delay shall not in any case exceed 10 % (ten percent) of the contract price

2.8 RESPONSIBILITIES OF THE CONTRACTOR IN RESPECT OF LOCAL LAWS, EMPLOYMENT OF WORKERS ETC.

The following are the responsibilities of the contractor in respect of observance of local laws, employment of personnel, payment of taxes etc. The subcontractor shall fully indemnify BHEL against any claims of whatsoever nature arising due to the failure of the contractor in discharging any of his responsibilities hereunder:

- 2.8.1 As far as possible, Unskilled Workers shall be engaged from the local areas in which the work is being executed.
- 2.8.2 The contractor at all times during the continuance of this contract shall, in all his dealings with local labour for the time being employed on or in connection with the work, have due regard to all local festivals and religious and other customs.
- 2.8.3 The contractor shall comply with all applicable State and Central Laws, Statutory Rules, Regulations etc. such as Payment of Wages Act, Minimum Wages Act, Workmen Compensation Act, Employer's Liability Act, Industrial Disputes Act, Employers Provident Act, Employees State Insurance Scheme, Contract Labour (Regulation and Abolition) Act 1970, Payment of Bonus & Gratuity Act and other Acts, Rules and Regulations for labour as may be enacted by the Government during the tenure of the Contract and having force or jurisdiction at Site. The Contractor shall also give to the local Governing Body, Police and other relevant Authorities all such notices as may be required by the Law.
- 2.8.4 The contractor shall obtain independent License under the Contract Labour (Regulations and

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Abolition Act, 1970) as required from the concerned Authorities based on the certificate (Form-V) issued by the Principal Employer/Customer

- 2.8.5 The contractor shall pay all taxes, fees, license charges, deposits, duties, tolls, royalties, commission or other charges which may be leviable on account of his operations in executing the contract.
- 2.8.6 Contractor shall be responsible for provision of Health and Sanitary arrangements (more particularly described in Contract Labour Regulation & Abolition Act), Safety precautions etc. as may be required for safe and satisfactory execution of contract.
- 2.8.7 The contractor shall be responsible for proper accommodation including adequate medical facilities for personnel employed by him.
- 2.8.8 The contractor shall be responsible for the proper behavior and observance of all regulations by the staff employed by him.
- 2.8.9 The contractor shall ensure that no damage is caused to any person/property of other parties working at site/storage area. If any such damage is caused, it is responsibility of the contractor to make good the losses or compensate for the same.
- 2.8.10 All the properties/equipments/components of BHEL/their Client loaned with or without deposit to the contractor in connection with the contract shall remain properties of BHEL/their Client.
- 2.8.11 The contractor shall use such properties for the purpose of execution of this contract. All such properties/equipments/components shall be deemed to be in good condition when received by the contractor unless he notifies within 48 hours to the contrary. The contractor shall return them in good condition as and when required by BHEL/their Client. In case of non-return, loss, damage, repairs etc, the cost thereof as may be fixed by BHEL Engineer will be recovered from the contractor
- 2.8.12 The contractor shall arrange, coordinate his work in such a manner as to cause no hindrance to other agencies working in the same premises.
- 2.8.13 All safety rules and codes applied by the Client/BHEL at site shall be observed by the contractor without exception. The contractor shall be responsible for the safety of the equipment/material and works to be performed by him and shall maintain all light, fencing guards, slings etc. or other protection necessary for the purpose. Contractor shall also take such additional precautions as may be indicated from time to time by the Engineer with a view to prevent pilferage, accidents, fire hazards. Due precautions shall be taken against fire hazards and atmospheric conditions. Suitable number of Clerical staff, watch and ward, store keepers to take care of equipment/materials and construction tools and tackles shall be posted at site by the contractor till the completion of work under this contract.
- 2.8.14 The contractor will be directly responsible for payment of wages to his workmen. A pay roll sheet giving all the payments given to the workers and duly signed by the contractor's representative should be furnished to BHEL site for record purpose, if so called for.
- 2.8.15 In case of any class of work for which there is no such specification as laid down in the contract, such work shall be carried out in accordance with the instructions and requirements of the Engineer.

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2.8.16 Also, no idle charges will be admissible in the event of any stoppage caused in the work resulting in contractor's labour and Tools & Plants being rendered idle due to any reason at any time.

2.8.17 The contractor shall take all reasonable care to protect the materials and work till such time the plant/equipment has been taken over by BHEL or their Client whichever is earlier.

2.8.18 The contractor shall keep the area of work clean and shall remove the debris etc. while executing day-to-day work. Upon completion of work, the contractor shall remove from the vicinity of work, all scrap, packing materials, rubbish, unused and other materials and deposit them in places specified by the Engineer. The contractor will also demolish all the hutments, sheds, offices, etc. constructed and used by him and shall clean the debris. In the event of his failure to do so, the same will be arranged to be done by the Engineer and the expenses recovered from the contractor.

i) The Contractor to note that some of BHEL's T&Ps/MMDs may not be insured. The Contractor will take necessary precautions and due care to protect the same while in his custody from any damage/ loss till the same is handed over back to BHEL. In case the damage / loss is due to carelessness/ negligence on the part of the contractor, the Contractor is liable to get them repair/ replaced immediately and in case of his failure to do so within a reasonable time, BHEL will reserve the right to recover the loss from the contractor.

2.9 PRICE VARIATION COMPENSATION

2.9.1 FREIGHT PRICE VARIATION:

Bidders needs to quote their rates on the basis of diesel price Rs.48.14(IOCL Diesel Price at Rudrapur).Total distance is finalized from BHEL Rudrapur to Punatsangchhu &Magdechhu is 1650KM&1587KM respectively. Rates quoted by the bidders will be subjected to price variations during the currency of the rate contract as per following formula:

$P = \text{Rate @ rate of Diesel is Rs 48.14}$

$A = P / (\text{Distance from BHEL Rudrapur to project Site})$

$B = A + 0.25x (F1-F0),$

$C = B * (\text{Distance from BHEL Rudrapur to project Site})$

Whereas

$C = \text{Rates payable.}$

$P = \text{Rates quoted /finalize against tender (diesel price@48.14)}$

$F1 = \text{IOCL diesel price prevailing at Rudrapur on the date of GR}$

$F0 = \text{base diesel price of IOCL of Rudrapur .i.e. Rs48.14}$

Example1: if the rate finalized for trailer on diesel price @48.14 is =Rs.200000 and diesel increases to Rs50/liter for Puntsangchhu.

Then $A = 200000 / 1650 = 121.2121$

$F1 = 50$

$F0 = 48.14$

*Then $B = A + 0.25X (50 - 48.14)$
 $= 121.6771$*

*$C = B * 1650 = 200767.25$*

Example2: if the rate finalized for the trailer on diesel price @48.14 is =Rs.200000 and diesel decreases to Rs40/liter for Punatsangchhu.

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Then $A = 200000/1650 = 121.2121$

$F1 = 40$

$F0 = 48.14$

*Then $B = A + 0.25X (40-48.14)$
 $= 119.1771$*

*$C = B * 1650 = 196642.25$*

2.10 STRIKES & LOCKOUT

- 2.10.1 The contractor will be fully responsible for all disputes and other issues connected with his labour. In the event of the contractor's labour resorting to strike or the Contractor resorting to lockout and if the strike or lockout declared is not settled within a period of one month, BHEL shall have the right to get the work executed through any other agencies and the cost so incurred by BHEL shall be deducted from the Contractor's bills.

For all purposes whatsoever, the employees of the contractor shall not be deemed to be in the employment of BHEL

2.11 FORCE MAJEURE

The following shall amount to Force Majeure:-

- 2.11.1 Acts of God, act of any Government, War, Sabotage, Riots, Civil commotion, Police action, Revolution, Flood, Fire, Cyclones, Earth quake and Epidemic and other similar causes over which the contractor has no control.

If the contractor suffers delay in the due execution of the contractual obligation due to delays caused by force majeure 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 delay, provided that on the occurrence of any such contingency, the contractor immediately reports to BHEL in writing the causes of delay and the contractor shall not be eligible for any compensation.

2.12 ARBITRATION & RECONCILIATION

2.21.1 In case amicable settlement is not reached in the event of any dispute or difference arising out of the execution of the Contract or the respective rights and liabilities of the parties or in relation to interpretation of any provision by the Contractor in any manner touching upon the Contract, such dispute or difference shall (except as to any matters, the decision of which is specifically provided for therein) be referred to the sole arbitration of the arbitrator appointed by BHEL/In charge(Region). The award of the Arbitrator shall be binding upon the parties to the dispute

Subject as aforesaid, the provisions of Arbitration and Reconciliation Act 1996 (India) or statutory modifications or re enactments thereof and the rules made there under and for the time being in force shall apply to the arbitration proceedings under this clause. The venue of the arbitration shall be the place from which the contract is issued or such other place as the Arbitrator at his discretion may determine

- 2.12.1 In case of Contract with Public Sector Enterprise (PSE) or a Government Department, 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

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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.

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

Work under the contract shall be continued during the arbitration proceedings

2.13 PAYMENTS

Payments to Contractors are made in any one of the following forms

All payments shall be made to the transporter through e-payment within 20 days of the submission of proper bills enclosing LR and DAN duly acknowledged by the consignee stating that the material is received in full and good condition. The contractor shall submit the bills in duplicate immediately after delivery of goods. For e-payment, transporter has to submit the following information:

- Name of beneficiary :
- Bank Name :
- Bank Account No. :
- Branch Name :
- IFSC Code :

Note: The transporter should have capability to invest working capital up to

15-20 lakhs at a time, as our payment terms are within 20 days of submission of bills by the transporter

2.13.1 PAYMENT OF OTHER TAXES /LEVIES:

No demurrage, wharfage, ground rent, godown rent, hamali charges, labour charges, statistical charges, surcharges, unloading charges, goods tax, bridge tax, collection charges, road tax, border tax etc. shall payable to the contractor. Besides the rates as agreed in the rate contract, no claim for any extra payment will be entertained. However, Octroi/Toll tax on goods only shall be payable as per actual on production of proper receipt.

2.13.2 EXTRA PAYMENT FOR ODC /OVER WEIGHT CONSIGNMENTS:

- * In case the size of consignment is larger than the Trailor size(40'x8.6'x8') 10% extra of the basic freight shall be payable for each & every feet and part thereof in length/width/ height as the case may be subject to max. of 50% of basic freight.
- * In case of weight of consignment is above 25MT for Trailor (FTL), the payment shall be made on proportionate basis for weight above 25MT.
- * In case the size of consignment is larger than the Open Body size(28'x8.6'x8') 10% extra of the basic freight shall be payable for each & every feet and part thereof in length/width/ height as the case may be subject to max. of 50% of basic freight.
- * In case of weight of consignment is above 09MT for Open Body (FTL), the payment shall be made on proportionate basis for weight above 09MT.
- * In case the size of consignment is larger than the vehicle size(LPT truck 15MT Size 22'x7.6'x7.6' , LP Body ,9MT Size 19'x7'x7') 10% extra of the basic freight shall be payable in each direction and part thereof in length/width/ height as the case may be subject to max. of 20% of basic freight.
- * In case of weight of consignment is above capacity for the Vehicle (FTL), the payment shall be made on proportionate basis for weight subject to max. of 50% over the Capacity of the vehicle

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2.14 CLOSING OF CONTRACTS

The Contract shall be considered completed and closed upon completion of all contractual obligations and settlement of Final Bill or completion of Guarantee period whichever is later. Upon closing of Contract, BHEL shall issue a completion certificate as per standard format, based on specific request of Contractor.

2.15 REVERSE AUCTION:

BHEL reserves the right to go for Reverse Auction for Price Bid Opening by BHEL appointed service provider, instead of opening the submitted sealed price bid in the conventional way. The Business Rules for Reverse Auction shall be as per BHEL guidelines issued from time to time.

2.16 SUSPENSION OF BUSINESS DEALINGS

BHEL reserves the right to take action against Contractors who either fail to perform or Tenderers/Contractor who indulge in malpractices, by suspending business dealings with them in line with BHEL guidelines issued from time to time.

2.17 OTHER ISSUES

2.17.1 Value of Non judicial Stamp Paper for Bank Guarantees and for Contract Agreement shall be not less than Rs 100/- unless otherwise required under relevant statutes.

2.17.2 In case of any conflict between the General Conditions of Contract and Special Conditions of Contract, provisions contained in the Special Conditions of Contract shall prevail.

2.17.3 Unless otherwise specified in NIT, offers from consortium/JVs shall not be considered.

BHEL may not insist for signing of Contract Agreements in respect of low value and short time period contracts like providing services for Hot water flushing, Chemical Cleaning, Transportation, etc

2.18 Integrity Pact(IP)

IP is a tool to ensure that activity and transaction between the company and its Bidders/Contractors are handled in a fair, transparent and corruption free manner. A panel of independent External Monitors(IEMs) have been appointed to oversee implementation of IP in BHEL.

The IP as enclosed with the tender is to be submitted(duly signed by authorized signatory who signs in the offer) along with techno-commercial bil. Only those bidder who have entered into such an IP with BHEL would be a preliminary qualification.

Details of IEM for this tender is furnished below.

Name :-Mrs.Pravin Tripathi, IA & AS(Retd)

Address:D-243, Anupam Garden, Lane IB ,Neb Sarai, Sainik Farms, New Delhi-110068.

Email:pravin.tripathi@gmail.com Ph: +911129533206/29531715

Please refer section-8 of IP for Role and responsibilities of IEMs. In case of any complaint arising out of tendering process, the matter may be referred to the IEM Mentioned in the tender.

No routine correspondence shall be addressed to the IEM(phone/post/email) regarding the clarification, time extension or any other administrative queries, etc on the tender issued. All such clarification/issues shall be addressed directly to the tender issuing (procurement) department."

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