

**BHARAT HEAVY ELECTRICALS LIMITED
TRANSMISSION BUSINESS GROUP,
TBWS, VADODARA**

**CONDITIONS OF CONTRACT
FOR
SITE ASSISTANCE MANPOWER SERVICES**

BHARAT HEAVY ELECTRICALS LIMITED
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GENERAL CONDITIONS OF CONTRACT

1.0 GENERAL INSTRUCTION AND CONDITIONS

- 1.1 Tenderers are requested to go through the scope of services and get fully acquainted with the scope of services required for the said work premises and get their doubts clarified regarding the above job before submitting the tender.
- 1.2 All documents submitted by the Tenderer in his tender shall be accompanied with a covering letter giving index interlinking all the documents.
- 1.3 Tenderers must note that any false information / data or any suppression of facts will disqualify them even at a later stage also. The tenderer will have to deploy trained and efficient work force for the above job contract. In this connection, the tenderer has to maintain a register for their record etc. and made available to BHEL/Statutory authorities as & when needed.
- 1.4 The tenderer shall confirm that he shall abide by and is willing to execute the services mentioned in NIT on Job Contract basis strictly in accordance with the terms and conditions of this tender and the BHEL in turn also agrees to engage the tenderer accordingly with effect from the date of award by entering into an Agreement.
- 1.5 BHEL will have nothing to do or be concerned with the employment of employees working for the tenderer. All laws governing the employment of manpower shall be adhered by the tenderer and BHEL shall be only a service receiver from the tenderer. The relationship between the tenderer and BHEL will be that of independent entities and nothing herein contained will amount to joint venture, partnership or employee-employer relationship.
- 1.6 The tenderer or/and his representative should be available in the office premises to closely monitor the services under the job contract, sort out issues arising in execution of the contract and to ensure proper conduct and discipline by his team of workforce, while performing their duty at BHEL premises.
- 1.7 The tenderer shall be fully responsible for the timely payment of consolidated wages, VDA, Misc. additional Allowances, Bonus, PF, ESI or any other benefits payable under the labour laws and acts. The tenderer shall be liable for full knowledge of labour laws and acts and any implication arising out of ignorance, willfull default or otherwise to any act/ law shall be borne by the tenderer. Laws and regulations to the workforce engaged by him at the work premises of the BHEL. Tenderer shall also be fully responsible for timely deposit of PF and ESI with the appropriate authority including submission of return of PF & ESI and issue of PF slip issued by the PF Authority. The BHEL shall not be responsible for these payments or any other liability on this account. The tenderer shall also indemnify and compensate the BHEL for any liability incurred by the BHEL, if any, including costs incurred thereon. In that event the BHEL shall be entitled to recover the amount so paid, from the tenderer, including forfeiture of the Security Deposit; and, if the sum so payable and / the Security Deposit is less than the BHEL's claim, it shall be lawful for the BHEL to recover the balance amount as a debt from the tenderer.

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2.0 EARNEST MONEY DEPOSIT

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

A. 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

B. 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.

C. 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.

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

E. EMD shall not carry any interest.

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

3.0 SECURITY DEPOSIT:

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

- A. 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.**

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B. 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)

C. 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.

- D.** 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).

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- E. 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.
- F. 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.

G. Conditions for acceptance of bank guarantees

Contractors 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

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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.

H. RETURN OF SECURITY DEPOSIT:

If the contractor duly performs and completes the work in all respects to the entire satisfaction of BHEL and presents an absolute "No demand certificate", returns properties belonging to BHEL, taken, borrowed or hired by him for carrying out the said works, 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.

4.0 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

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5.0 VARIATION

5.1. PRICE VARIATION

The Price quoted will be adjusted on the **following**:

- (i) Change in Minimum Wages including VDA as notified by Govt. of Respective States or NCT New Delhi, as applicable from time to time.
- (ii) Any changes in PF / ESI contribution of employers portion and any other amount which becomes payable due to changes in Labour Law.
- (iii) Any variation which becomes payable to workforce due to enactment of any Law/Regulation to the workforce as notified by the state authority.

Once the contract is entered, the agreed sum will not vary on any account what so ever the reason except for reasons mentioned above. **However, the agreed profit/ service charge shall not be subject to revision.**

5.2. QUANTITY VARIATION

The quantities of manpower mentioned in the tender are indicative only and individual quantity can vary upto any extent as per actual project requirement.

The total contract price on account of quantity variation can vary from +/- 30% of the cumulative awarded value. Further, there shall be no compensation for any reduction in the overall contract price.

In case of manpower is required at sites other than those mentioned in the tender, the same shall be hired on existing terms & conditions. The basis rate/ wage shall be as per existing minimum wages applicable at site/ state.

Additional category if required can also be introduced during execution of the contract. In such case profit/ service charges applicable as per contract shall be paid to the renderer.

6.0 FINALIZATION OF RATE CONTRACT AND ALLOCATION OF JOB:

The rate contract will be awarded for entire quantity to one party on overall L1 basis.

7.0 EVALUATION CRITERIA:

Evaluation of the tender shall be done based upon lowest quoted Service Charges in % (Percentage) "Q" of Annexure-G "**Price Format**"

8.0 CONTRACT VALUE

The contract value shall be worked out based on the percentage service charge as quoted by bidder. Service charge (in percentage) as quoted by the bidders should be inclusive of all taxes except service tax.

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9.0 DISCREPANCIES AND ADJUSTMENT OF ERRORS:

9.1. If on check there are found to be differences between the service charges in % given by the vendor in words and figures in the schedule of quantities and general summary, the same shall be adjusted in accordance with the following rules :

- a) If there is a discrepancy between words and figures, the text in words shall prevail.
- b) If there is such discrepancy in an offer, the same shall be conveyed to the bidder with target date up to which the bidder has to send his acceptance on the above lines and if the bidder does not agree to the decision of the purchaser, the bid is liable to be ignored.

10.0 VALIDITY OF OFFER:

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.

11.0 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. No compensation/ extra payment will be made to tenderer for pre mature termination.

12.0 DEPLOYMENT OF MANPOWER

Successful tenderer shall be required to deploy requisite manpower for commencement of services at the specified location within a maximum of 10 days of actual requirement of manpower as intimated by official of BHEL TBWS Headquarter, Vadodara.

13.0 LIQUIDATED DAMAGES (LD) & OTHER PENALTIES

13.1. If the tenderer fails to provide services within the initial mobilization period (10 days) fixed in the tender or 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:-

- (i) Recover from the tenderer, liquidated damages and not by way of penalty, a sum of ½ % (half percentage) of monthly value of the original contract per week or part thereof of delay in deputation, subject to a maximum of 4 weeks. In such a case, BHEL may also terminate the contract and forfeit security deposit if delay extends beyond four weeks.

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- 13.2. An amount of Rs.200/- per day per workforce shall be recovered/ deducted per day as penalty in the event of any delay in making the payment of any wages or dues to the contractual worker by the tenderer i.e. after 07th of subsequent month.
- 13.3. If the manpower deployed by the tenderer fails to carry out the activities mentioned in the contract, on any day during the contract period, a penalty of Rs.200/- per case/ activity/ service will be deducted from the bill of contractor.
- 13.4. The total of these recoveries under above clauses (13.1 to 13.3) shall be limited to maximum 10% of the original contract value.
- 13.5. In the event of any dispute regarding imposition of LD between BHEL and the tenderer the decision of BHEL shall be final and binding.

14.0 RIGHTS OF BHEL

- 14.1. BHEL reserves to itself the following rights without entitling the Vendor for any compensation.
- 14.2. To withdraw any portion of service and/or to increase or decrease the quantum of service at any stage during the tenure of the contract.
- 14.3. To terminate the contract or get any part of the service/job done through other agency/ BHEL arranged resources , at the risk and cost of the contractor after due notice of a period of two weeks by BHEL, in the event of:-
- a) Continued poor performance of the vendor/ assigned workforce.
 - b) Withdrawal of workforce from the site/guest house 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.
- 14.4. To meet the expenses including BHEL overheads on the differential cost (i.e Risk & cost amount) at 10%, over and above the Liquidated damages/ penalties arising out of "Risk & Cost" as explained above under Sl. No. 14.3. BHEL shall recover the amount from any money due from vendor, or from any money due to the vendor including Security Deposit under this contract or any other contract of BHEL or by any other means or any combination thereof.
- 14.5. 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.
- 14.6. No idle charges will be payable by BHEL in any case.

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15.0 SECRECY/ CONFIDENTIALITY

The service/ work executed by the vendor shall be the property of BHEL & shall not be passed on / leaked to any person or agency out-side BHEL, TBG division. This shall be the responsibility of the vendor & his representatives. Non-compliance of this condition shall lead to prosecution under the law of the land.

16.0 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.

17.0 ARBITRATION :

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

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

There will be no objection if the arbitrator so appointed is an employee of BHEL and he had to deal with the matters to which the contract relates, in the course of his duties. The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason such 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.

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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.

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

18.0 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 EM II certificate along with attested copy of a CA certificate (Format enclosed at Annexure -I 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.