

REF:MM: PUR: ASTM SB265GR2

DT: 23.12.2020

Pre-Qualification requirements (PQR) for the procurement of Titanium Sheet /Plate as per specification ASTM SB 265 GR-2 through Open Tender – Non-IBR Quality

A: Organizational Capability & Technical Competence:

1. Chemical and Mechanical testing shall be done in house or at Labs certified as per ISO 17025 or Government approved Labs.
2. Confirmation to the tendered specifications is mandatory for consideration of offer.

B: Past Experience/ Performance:

1. Bidder should have manufactured/supplied minimum One Purchase Order having minimum of 1000 kg Titanium Plates/Sheets any thickness as per ASTM SB265. PO date should not be more than 5 years from the date of Enquiry.
2. In support of Clause 1 above, bidder to furnish following:
 - a. Copy of unpriced PO for supply of Titanium plate as per details given under Cl.1 is preferred. However, if the credential is not available for any specific tendered size, then declaration shall be submitted stating the capability to supply/produce the sizes as per enquiry.
 - b. Dispatch or shipping documents along with Test certificate against for the material supplied against PO as per Cl. 2a.
3. Bidders to confirm following points
 - a. Supply of Titanium sheet shall be in plate form. Supply in coil form is not acceptable.
 - b. Size of plates (Thick x Width x Length) shall be as per enquiry is preferable.
 - c. Marking: Each plate should be identified with Stenciling/stamping to the following details: (1) Specification, (2) Grade, (3) Size in mm (thick x width x length), (4) Melt. No., (5) Maker's emblem/code.
 - d. Manufacturer's Test certificate (MTC) shall be furnished in line with the material specification.

Necessary supporting documents shall be submitted for meeting each of the above Pre-Qualification Criteria for evaluation of the offers.

BHEL reserves the right to consider/Not-consider the offers based on the evaluation of documents submitted for the above Pre-Qualification Criteria. If required, BHEL also reserves the right to verify information submitted by vendor. In case the information is found false/incorrect, the offer shall be rejected.

BHEL also reserves the right to carry out audit checks for confirming the material properties on the supplied material during material receipt at BHEL. Supplies found defective during check or subsequent processing at BHEL will be rejected.

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ANNEXURE-A

ENQUIRY CONDITIONS FOR SUPPLY OF TITANIUM PLATES TO SPEC ASME SB265 Gr2

Note: This Annexure has to be mandatorily filled & signed by the manufacturer (or) mill and submitted along with Technical Bid. Any deviation to the below mentioned terms shall be stated specifically in the comments column for each term and also in case of acceptance to our terms, it will be construed that the whole term is understood and agreed in totality without any deviation (if otherwise mentioned).

Sl No	BHEL Requirements				Supplier Comments (Acceptance or otherwise for each point to be given)
1.	Material specification & Item details:				
	Sl. No	Item Description	No. of Plate	Qty (MT)	
	1.	Plate 6X1000X6500 mm to spec ASME SB265 Gr2	45	7.920	1.
	a. Material shall be supplied in trimmed edge condition only. Supply in coil form is not acceptable.				a)
	b. Stamping and certification shall be as per relevant specification.				b)
2.	Size & Quantity:				
	Titanium Plate: Width and length shall be as per enquiry. However, Alternate width of 1250/1500/2000 mm are also acceptable. Total qty in MT shall be ensured in case of alternate sizes being offered. Note: Deviation in width & Length of Plate other than specified alternate width in tender is not acceptable.				a)
	a. Quantity tolerance: - Nil / +5%				b)
	b. No of pieces shall be indicated in invoice/TC.				c)
	c. Invoicing of titanium Plate shall be on theoretical weight basis with density factor of 4.506 gm/cc . Supplier shall quote only on theoretical weight basis.				d)
3.	Inspection & Testing:				
	a. Two sets of original test certificates shall be provided for Titanium Plate as per the applicable standard.				
	b. For Manufacturers, Mill test Certificates are to be duly stamped and signed by the Mill's Inspection-in charge as per EN10204 3.1 . Corresponding mill TC's should also be provided along with dispatch of Plates.				
	c. Test certificates shall incorporate the details regarding material specification, Melt no, Manufacturing process and heat treatment done on material (if applicable), BHEL purchase order no, supplier name and logo, TC no, size and results obtained in chemical and mechanical testing. The test certificates must bear signature of competent personnel of the supplier. Test certificates are to be sent along with materials.				
	d. Draft MTC (for manufacturer) is to be submitted before the shipment / dispatch of materials. This is to be vetted by BHEL/Quality. Shipment / dispatch clearance shall be given only after acceptance of draft MTC.				
	e. In case of Indigenous Trader/Stockist, Govt. / NABL approved Lab test certificate for the result of chemical composition and Mechanical properties shall be produced along with supply.				
	f. For Indigenous Traders/Stockiest, testing in NABL approved laboratory will be witnessed by BHEL/BHEL approved TPI. Only after acceptance of the same, dispatch clearance will be provided. Suitably suppliers may raise inspection call one week in advance. Pls confirm.				
	g. Supplier shall submit MTC before dispatch and only on confirmation from BHEL supplier shall dispatch the material. Specification/grade (ASME SB265 Gr2) shall be as per enquiry only acceptable.				
	h. <u>In case of Foreign Traders/Stockist:</u> Apart from submission of MTC, material shall be retested (Chemical and mechanical testing) separately at LAB and shall be witnessed by TPI. Separate lab test report countersigned by TPI shall be submitted along with MTC.				
	i. Pls indicate the TPI				

4.	Delivery Terms:	
	The offer shall clearly indicate delivery period in fixed number of weeks/Months from the date of Purchase Order. Our delivery requirement is indicated for each item in EPS. Supplier shall take note of the same and specifically confirm the delivery schedule. Our required delivery schedule is 90 days from PO. Suppliers shall quote shortest possible delivery and shall avoid offering longer delivery period. Notwithstanding anything to the contrary, including, but not limited to, provisions relating to extension of time and compensation/or delay, time shall be the essence of the Contract.	
5.	Supply condition	
	Stenciling of following details on each Sheets to be ensured in addition to specification requirement	
	i. Size of the Sheet (EG: PL 6 X 1000 X 6500 MM)	i.
	ii. Material Specification as mentioned above	ii.
	iii. Melt number & Coil number	iii.
	iv. Quantity (in Nos / Weight in MT)	iv.
	v. Name (or) Marker's emblem to be marked legibly	v.
	a. Supply shall be in Uncoiled, bundled with metal foil wrapped and strapped. Metal tag to be provided with details like No. of sheets, heat number etc., to be fixed and details like heat /lot number, Specn, size details, Weight etc., shall also be paint-marked on top of the bundle.	b.
6.	Pre-qualifying requirement:	
	In addition to the size & specification requirements, suppliers shall meet the Pre-Qualification Requirements (Pre-Qualification requirements (PQR) for the procurement of Titanium Sheet /Plate as per specification ASTM SB265 GR-2 through Open Tender – Non-IBR Quality REF:MM: PUR: ASTM SB265GR2 dt 23.12.2020) enclosed herewith. Pls submit all the required documents in line with the respective PQR. The offers of the suppliers who fail to do so will be liable for rejection.	
7.	List of Documents to be submitted along with offer (only offer of manufactures will be considered)	
	a. Pre-qualifying requirements are as per Clause- 6 of this annexure and submit the relevant documents as per the same.	a.
	b. In case of foreign suppliers representing through their Indian/foreign agents, agency agreement should be submitted, along with registration documents else offer is liable for rejection. Agency agreement requirements attached as separate file and full compliance to it shall be ensured while submitting the same.	b.
	c. Along with the offer document the following documents shall be submitted in Part-I bid without fail. This is apart from Pre-qualifying requirements as mentioned in Clause - 6	c.
	d. Mandatory requirements (Supplier must submit the below mentioned documents or else offer will be rejected):	
	i. Copy of the original Agency agreement (in case of Foreign or Indian agents).	
	ii. latest audited report from any reputed third party business rating agency like D&B /Credit reform (In case of import vendor) of foreign agent or principal.	
8.	Offer Submission:	
	8.1 Indigenous:	
	1. Submit your FIRM competitive offer rate per MT (basic price & freight) with best possible delivery on FOR BHEL-Trichy basis ONLY. The quoted prices shall be inclusive of all charges (like testing charges, Freight, etc.).	
	2. Price Variation Clause (PVC) is not acceptable and offer shall be rejected.	
	3. Response to Tenders for Indigenous supplier will be entertained only if the vendor has a valid GST registration number which should clearly mentioned in the offer. Indicate the GST registration number. If any specific exemption is available, a declaration with due supporting documents need to be furnished for considering the offer.	
	4. Supplier shall mention their GSTN registration number in all their invoices (incl. Credit notes, debit notes) and invoices shall be in the format as specified/prescribed under GST laws. Invoices shall necessarily contain Invoice number (in case of multiple numbering system is being followed for billing like SAP invoice no, commercial invoice no etc., then the Invoice No which is linked/uploaded in GSTN network shall be clearly indicated), item description as per PO, Quantity, Rate, Value, applicable taxes with nomenclature (like IGST, SGST, CGST & UTGST) separately, HSN/ SAC Code, etc.	
	5. All invoices shall bear the HSN Code for each item separately (Harmonized System of Nomenclature)/ SAC code (Services Accounting Code).	

6. Invoices will be processed only upon completion of statutory requirement and further subject to following: - Vendor declaring such invoice in Form GST ANX-1 - Receipt of Goods or Services and Tax invoice by BHEL	
7. As the continuous uploading of tax invoices in GSTN portal (in GST ANX-1) is available for all (i.e. both Small & Large) tax payers under proposed new GST Return System, all invoices raised on BHEL may be uploaded immediately in GST portal on dispatch of material /rendering of services. The supplier shall ensure availability of Invoice in GST portal before submission of invoice to BHEL. Invoices will be admitted by BHEL only if the invoices are available in GSTN portal (in BHEL's GST ANX-2)	
8. All documents like Mill Test Certificate, LR copy, Guarantee/Warranty certificate, work completion certificate, any other document mentioned in PO, shall be sent along with the vehicle/consignment. For all consignments received within the calendar month, input credit will be availed within that month in line with monthly returns filing cycle. In case of any discrepancy in the document or non-submission of documents mentioned in the PO, then BHEL will not be able to accept or account the material, in such case availing of tax credit will be deferred to next month or so.	
9. In case of discrepancy in the data uploaded by supplier in the GSTN portal or in case of any shortages or rejection in the supply, then BHEL will not be able to avail the tax credit and will notify the supplier of the same. Supplier has to rectify the data discrepancy in the GSTN portal or issue credit note or debit note (details to be uploaded in GSTN portal) for the shortages or rejections in the supplies or additional claims, within the calendar month notified by BHEL	
10. In cases where invoice details have been uploaded by the vendor but failed to remit the GST amount to GST Department (Form PMT-08 or Form GST RET-01 to be submitted) within stipulated time, then GST paid on the invoices pertaining to the month for which GST return not filed by the vendor will be recovered from the vendor along with the applicable interest (currently 24% p.a) and all subsequent bills of the vendor will not be processed till filing of the GST return by the vendor.	
11. The offer will be evaluated on total landed cost to BHEL, Trichy as below, Total landed cost = FOR Trichy + applicable taxes + commercial loading as applicable - applicable tax credits	
Note: - Transit insurance in the scope of supplier only. - In case GST credit is denied to BHEL due to non-receipt or delayed receipt of goods and/ or tax invoice or expiry of timeline prescribed in GST law for availing such ITC, or any other reasons not attributable to BHEL, GST amount claimed in the invoice shall be disallowed to the vendor. - Where any GST liability arising on BHEL under Reverse Charge (RCM), the vendor has to submit the invoices to BHEL well within the timeline prescribed in GST Law, to enable BHEL to discharge the GST liability. If there is a delay in submission of invoice by the vendor resulting in delayed payment of GST by BHEL along with Interest, then such Interest payable or paid shall be recovered from the vendor. - Under GST regime, BHEL has to discharge GST liability on LD recovered from suppliers/contracts. Hence applicable GST shall also be recoverable from suppliers/contractors on LD amount. For this Tax Invoice will be issued by BHEL indicating the respective supply invoice number. - GST TDS will be deducted as per Section 51 of CGST Act 2017 and in line with Notification 50/2018 – Central Tax dated 13.09.2018. GST TDS certificate which will be generated in GST portal subsequent to vendor accepting the TDS deduction in the GST portal, will be issued to the vendor.	
8.2 Imports:	
a. Suppliers to quote their rates on CFR-Chennai basis only. The quote should be inclusive of all charges, including testing packing, inspection etc. Ocean freight (LIFO basis) for CFR, Chennai shall also be quoted separately. BHEL will finalize order on either FOB or CFR basis keeping its commercial interest.	a.
Note: Offer on CFR (without freight breakup) or FOB only is not acceptable, both FOB & ocean freight to be quoted separately	

b. Shipment shall be through container only. Accordingly supplier shall quote the freight charges on LILO (LINER IN LINER OUT) basis.	b.
Note: Pls check Clause 2(a) above and may quote suitable size accordingly meeting the aforesaid shipment requirement	
c. For shipment through container, acceptance to the following points are required. i. B/L should bear the endorsement that "14 free days for Container Detention is applicable". Pls refer to note below also ii. For CFR terms, moved through Containers (Suppliers should clearly specify this in their offer) it would be presumed by BHEL that the freight charges quoted is on LILO (LINER IN LINER OUT) basis including extra charges, if any, like Container Imbalance Charges, Trade Imbalance charges or any other charges payable to the Liner. No other charges other than the quoted Freight rate will be paid by BHEL excepting applicable Terminal Handling Charges, Container cleaning Charges, DO charges to Shipping Liner at Discharge Port.	c.
Note: 14 Free days for Container detention at final port of destination shall be provided and the same to be endorsed in the Bill of Lading. If there is no free day or less than 14 free days provided by the supplier, the actual cost incurred towards detention charges due to non-availability of above said free days will be recovered from the supplier Invoice.	
d. Price Variation Clause is not acceptable and offer shall be rejected	d.
e. All invoices shall bear the HSN Code for each item separately (Harmonized System of Nomenclature)/ SAC code (Services Accounting Code).	
f. The offer will be evaluated on total landed cost to BHEL-Trichy as below: Total landed cost = CFR Chennai + Customs duty as applicable + Import Incidentals (presently 2.86% of CFR Value) + Commercial loading as applicable - applicable tax credits.	
Note: 1. For Import Consignments Insurance will be arranged by BHEL, Trichy. 2. Exchange rate for converting such offers to INR will as SBI TT selling rate as on the date of Technical/Un-priced bid opening date in case of two part (technical + price bid) bid and price bid opening date in case of single part bid (only price bid). Multiple PO may also be placed considering the applicable duty structure of the respective requirement/Qty. In case the day of bid opening happens to be bank holiday in India, then exchange rate as on previous bank working day will be considered for evaluation. 3. Multiple PO may also be placed considering the applicable duty structure of the respective requirement/Qty. 4. Indian Customs has imposed a penalty on late filing of Bill of Entries (Air/Sea Shipments) by the importer. The maximum free time allowed is 24 hrs from the time of arrival of cargo at final port of discharge. At present penalty is Rs.5000/- per day (for Initial 03 days) & Rs.10000/- per day (thereafter). Hence the supplier shall submit the Non-Negotiable Documents (Bill of Lading, Commercial Invoice, Packing List, Certificate of Origin, etc.) either by email or post/courier to BHEL well before the landing of cargo at final port of discharge. 5. In case of any penalty due to late filing of Bill of entry for reasons attributable to suppliers (as listed below), the same will be recovered from the bills of supplier: i. Non-availability of Non-Negotiable Documents (NNDs) before the cargo arrival ii. Discrepancy in documents iii. Short landing of Consignments (For shipments on CFR- Chennai Port) 6. For all the shipments for the contracts (POs) finalized on CFR- Chennai Port basis, a. Delivery Orders involving multiple agencies like liners/freight forwarders are not allowed. To avoid any delay, BHEL prefers Single agency office at the final discharge Port (Chennai) for issuing the Delivery Order to BHEL. b. The detention/demurrage charges arise due to the delay in collection of Delivery Orders from multiple agencies of liner/freight forwarder also whose offices are not at available Chennai, the same amount will be deducted from Supplier's bills. c. Apart from the Terminal Handling Charges, Container cleaning Charges & Delivery Order Charges at final port of discharge, any other charges will not be borne by BHEL. d. The liner/freight forwarders shall be informed by the Vendor not to claim any additional charges (like charges listed below) for issuing Delivery Order. In case if the liner/freight forwarder claims such charges, the same amount will be deducted from the Vendor bills with/without any prior intimation in order to avoid the delay in Customs clearance. The likely additional/hidden charges are listed below.	
1. CIC - Container Imbalance Charges/Surcharges 2. CAF - Container/Currency Adjustment Factor 3. RDS - Rupee Depreciation Surcharge	4. EIC - Equipment Imbalance Charge/Surcharges 5. BAF - Bunker Adjustment Factor 6. CDS - Currency Depreciation Surcharge

9.	Payment terms:	
	9.1 Indigenous (Manufacturer / Trader / Stockist)	
	a) Payment term is 100% direct EFT payment after 60 days from date of receipt and acceptance of material after testing at our Lab.	
	9.2 Import (Manufacturer)	
	a) BHEL Payment term is 100% payment on CAD basis after 60 days from the date of receipt and acceptance of material after testing at our Lab. Respective bank charges to respective account.	a)
	b) In the case of Usance LC (60 days from the date of receipt of documents, specified in PO, at BHEL bank) the loading will be considered @ 1.5% on the offered Value.	b)
	c) If the LC payment is insisted, TWO sets of original TCs to be submitted prior to dispatch and a certificate to that effect from BHEL should form a part of the documents to be negotiated. If this condition is not complied by the vendor, the offer is liable for rejection.	c)
	d) Quoted currency to be indicated	d)
	9.3 Import (Trader/Stockist)	
	a. BHEL Payment term is 100% payment on CAD basis after 60 days from the date of receipt & acceptance of material after testing at our Lab. Respective bank charges to respective account. Pls note that material acceptance will be based on testing at BHEL, lab.	a.
	b. Offers of import supplier (trader/Stockist) with payment terms as LC will be liable for rejection	b.
	Note: 1. In case of foreign supplier quoting for LC payment, first lot of mutually agreed quantity shall be supplied with payment as CAD basis after 60 days from the date of receipt & acceptance of material after testing at our Lab. After acceptance of first lot, only Usance LC with 60 days credit will be opened and loading shall be considered @1.5% on the offered value. 2. <i>LC will be opened one month prior to material readiness. Hence supplier shall intimate the material readiness accordingly for opening of LC. LC validity period will be 90 days and for any extension applicable charges will be to supplier account.</i>	
10.	Liquidated Damages (both imports & indigenous)	
	a) Time is the essence of the contract. b) The ordered items shall be delivered as per the delivery period mentioned in the Purchase Order. c) In case the supplier supplies the ordered items beyond the delivery period specified, Liquidated Damages -LD - as detailed below shall be levied from the supplier without prejudice to any other relief /compensation available to BHEL, Tiruchirappalli under any other condition of the contract/applicable legal provisions. d) Liquidated damages shall be 0.5% of the undelivered portion/value per week or part thereof subject to a maximum of 10% of the total order.	
	NOTE: Any deviation from the above LD clause, loading will be applied to the extent to which it is not agreed by the bidder (at offered value).	
	For Info. :	☛ Imports: CFR order- LD will be reckoned from B/L date ☛ Indigenous: FOR order - LD will be reckoned from the date of LR/RR/BL / Invoice whichever is later
11.	Acceptance of materials supplied:	
	1. The supply shall strictly as per the specifications in the tender /purchase order. 2. Delivery of the ordered items as per the delivery terms in the Purchase Order does not automatically constitute acceptance of the delivered items. 3. Acceptance of the materials supplied will be based on the inspection and certification documents by the supplier as stipulated in the Purchase order. However, BHEL reserves the right to test the material supplied, if required, at BHEL Lab or any other approved/accredited lab and the result will be binding on the supplier. 4. The acceptance or otherwise of the delivered items will be separately communicated to the supplier by BHEL either through B2B portal or through e-mail within 120 days from the delivery of items or delivery of the required test certificates /other documents whichever is later. 5. In case of rejection of the delivered items, either part or full, the vendor shall replace the rejected items as per the specification in the Purchase order/tender at their cost within 60 days of communication of rejection to the supplier. The supplier shall be given maximum two opportunities to replace the rejected items. 6. After the clearance of the 1 st lot, in case of rejection of the delivered items, either part or full, if the supplier fails to replace the rejected items within 90 days of communication of the rejection, the same shall be treated as failure to execute the contract and actions as per the Guidelines for Suspension of Business Dealings with Suppliers /Contractors available in the webpage: http://www.bhel.com/vender_registration/vender.php . would be taken against such supplier.	

12.	Material Warranty	
	Free replacement of whole material in case of notification of defect in material within the period of One year from TC/Invoice date. Warranty certificate to be produced.	
13.	Defective Material replacement	
	Supplier shall replace defective material free of cost (inclusive of all Testing, Inspection, TPI, Service charges etc.) up to destination within two months from defect notification date.	
14.	Agency commission, if any should be clearly given in the offer (% on FOB / CFR Chennai inclusive).	
15.	Service charges, commission charges and any other incidentals will NOT be paid extra.	
16.	For Imports - Port of discharge shall be Chennai Sea Port . Pls confirm specifically	
17.	For Imports -Indicate the Port of shipment	
18.	For Imports -Indicate the Mill (Name, Location) & Country of origin	
19.	Offer validity of 90 days from Part-I bid opening date is required. Pls confirm specifically	
20.	One Indian agent can represent one foreign principal only and submit one offer for these tender items. Note: In order to maintain sanctity of the tender system it is mandatory that one agent cannot represent two suppliers or quote on their behalf in a particular tender enquiry. If any agent represents more than one supplier, all such offers will be rejected.	
21.	Agency Commission :	
	a) In respect of offers from overseas suppliers, agency commission, if any, payable to their agents in India, shall invariably be shown separately in the Performa invoice & shall be declared in techno-commercial offer itself and this will be paid by us in India, in Indian rupees, on satisfactory completion of the contract. b) For calculation of rupee equivalent for agency commission, exchange rate as prevailing on the date of order will be taken.	
22.	Cartel Formation	
	All the firms should desist from forming cartel as the practice is prohibited under Section 3(3) (a) & (d) of the competition Act 2002. If any such instance is observed during this tender will attract disciplinary action as per BHEL policies.	
23.	Any other conditions which might have been quoted by the seller and are in contravention to the terms prescribed in the order and which have not been specifically accepted in by purchaser will not be applicable to the contract	
24.	Bidders are requested to submit their best competitive prices at the first instant itself and no revision of prices will be entertained after the tenders are opened.	
25.	The due date mentioned in the enquiry is the date of opening of techno-commercial bid. After the scrutiny of technical bids, price bids of only technically accepted offer shall be opened with prior intimation.	
26.	Offer is to be submitted in two part bids system in the E-Procurement portal. Scan copy of the filled Annexure-A, Tender documents etc., shall be uploaded in the EPS portal	
27.	BHEL will consider the ranking after the loading is applied as referred above wherever deviations are observed.	
28.	Documents required for Import suppliers	
	a. Bill of Lading.	
	b. Invoice, should show the description of the goods and the unit rate of each item as in the purchase contract. Against each item in the invoice and packing list, the serial number of the corresponding item in the purchase contract or as per order acknowledgement should be indicated. HSN code to be indicated for each item.	
	c. Packing list must indicate case identification, case dimension, and case contents, no of bundles, gross and net weight.	
	d. Country of origin Certificate. HSN code to be indicated for each item.	
	e. Mill test certificate.	
	All the above documents should be submitted in triplicate & in all documents Contract No., L.C. No. and Import License No. are to be indicated.	

29.	Documents required for Indigenous suppliers	
	1. DFT copy invoice. LR & original TC (Invoice no. & vehicle reference to be mentioned) to be sent along with each vehicle. Without T.C. Vehicle/wagon will not be unloaded. One set of photocopy of all the said documents to be sent along with vehicle. Invoice should mention the no of pieces/bundles.	
	2. One set of MTC, Original invoice (Plus one copy), LR copy shall be sent to MM/Purchase for bill processing.	
30.	Risk Purchase Clause:	
	1. In the event of any successful Tenderer's failure to fulfil any of the tender / Contract obligations including supply of whole or any part of the ordered items as per Contract / Agreement, BHEL has the right to terminate the contract and purchase from elsewhere ,at the risk and cost of the defaulted supplier, either the whole of the goods or any part which the supplier has failed to deliver or dispatch within the time stipulated in the contract or if the same were not available, the best and nearest available substitute thereof. The supplier shall be liable for the additional expenditure/difference in Cost, if any, including consequential losses which BHEL may sustain by reason of risk purchase in addition to the applicable LD as per the Purchase order/contract. 2. The decision of BHEL with regard to the additional expenditure / difference in cost and consequential losses incurred by BHEL shall be final and binding on the supplier. 3. The amount recoverable under risk purchase shall be recovered from the defaulted supplier in all or any of the following manners: i) From dues available in the form of Bills payable to defaulted supplier, SD, BGs against the same contract. ii) from the dues payable to defaulted supplier against other contracts in the same Region/Unit /any other region/unit iii) In-case recoveries are not possible with any of the above available options, Legal action shall be initiated for recovery against defaulted supplier.	
31.	Fraud Prevention Policy	
	Bidder along with its associate /collaborators /sub-contractors /sub-vendors / consultants / service providers shall strictly adhere to BHEL Fraud Prevention Policy displayed on BHEL website http://www.bhel.com and shall immediately bring to the notice of BHEL Management about any fraud or suspected fraud as soon as it comes to their notice.	
32.	Authorisation for participation in EPS portal through DSC	
	a. E-Tender Participation requirements	
	Either Principal or authorised agent shall register their Digital Signature Certificate (DSC) (Class 3-SHA2- 2048 BIT- SIGNING & ENCRYPTION). You are advised to pls go through the FAQ available in the web portal (https://eprocurebhel.co.in). DSC shall be registered for the authorised person and all transaction done using that DSC against our tenders shall be taken as valid communication and shall be binding on principal/agent and is valid legally.	
	b. For foreign Principal	
	In case of Principal (being foreigner) they may apply for DSC through Indian embassy at their country and can register with us for participating in E-tenders. Details of the applicable procedure is available in the webpage http://www.cca.gov.in/cca/ .	
	For Indian agent	
	In case of agents participating/registering their DSC (of authorised person), it will be at the sole authorisation of principal to their agents to participate on their behalf and all transactions done using that DSC against our tenders shall be known as valid communication and shall binding on principal and is legally valid.	
	DSC Authorisation	
	Pls intimate the authorised person name, Mail ID for registering DSC with us to participate in E-Tenders.	

33.	Conditions for transportation:	In the event there is a delay by the Supplier in negotiating / submitting the document, any demurrage / wharfage arising out of the same shall be to the account of the Supplier and shall be deducted from the final payment. Also, in such cases, the Supplier shall authorize the Steamer / Shipping agent / transporter to freely release the consignment to BHEL by providing a "Surrender Bill of Lading". Over-seas Suppliers have to give a No-Objection Certificate to BHEL, authorizing BHEL to get the Delivery Order from the Steamer Agent without producing the Original Bill of Lading. This is required to ensure avoidance of incidence of demurrage at Chennai Sea-port that may arise in case of delayed presentation of documents by the Seller.	
34.	In the event of Force Majeure:	a. Notwithstanding the provisions contained in other clauses, the supplier shall not be liable for imposition of any such sanction so long the delay and/or failure of the supplier in fulfilling its obligations under the contract is the result of an event of Force Majeure. For purposes of this clause, Force Majeure means an event beyond the control of the supplier and not involving the supplier's fault or negligence and which is not foreseeable and not brought about at the instance of the party claiming to be affected by such event and which has caused the non – performance or delay in performance. Such events may include, but are not restricted to, wars or revolutions, hostility, acts of public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restrictions, strikes excluding by its employees , lockouts excluding by its management, freight embargoes and Acts of GOD. b. If a Force Majeure situation arises, the supplier shall promptly notify the Purchaser/Consignee in writing of such conditions and the cause thereof within twenty-one days of occurrence of such event. Unless otherwise directed by the Purchaser/Consignee in writing, the supplier shall continue to perform its obligations under the contract as far as reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event. c. If the performance in whole or in part or any obligation under this contract is prevented or delayed by any reason of Force Majeure for a period exceeding sixty days, either party may at its option terminate the contract without any financial repercussion on either side. d. In case due to a Force Majeure event the Purchaser/Consignee is unable to fulfil its contractual commitment and responsibility, the Purchaser/Consignee will notify the supplier accordingly and subsequent actions taken on similar lines described in above sub-paragraphs.	a. b. c. d.
35.	Role of Agents:	a. BHEL will deal directly with manufacturers only. Offers from Traders & Stockist will not be considered. b. BHEL strongly discourages the engagement of Agents in India by foreign principals, to deal with BHEL, in BHEL's tenders. c. BHEL, due to business reasons would ban, would have banned Indian agents from dealing with BHEL. Any foreign principal who engages such a banned agent, or an employee of the banned agency, or any other person connected with the banned agency, at any time during the tender proceedings, would be disqualified from the tender proceedings. The decision of BHEL in this regard shall be final and be binding on the OEM. Hence in their own interests, prospective tenderers may check with BHEL, the status of their proposed agent vis-à-vis BHEL. d. In view of the requirement of BHEL, it is strongly suggested that in their own interest, foreign principals may desist from engaging any Indian agent and deal with BHEL directly and it is stressed that any Main producer proposing to deal with BHEL by engaging and through an Indian Agent does so at their own risk. BHEL shall in no way be responsible for any consequences that may arise to the foreign principal on account of the antecedents / actions of their Indian Agent.	

36.	Execution of the Order	
	a. BHEL will have the option to pre-inspect the materials at Supplier's works by BHEL's own inspector or by third party agency appointed by BHEL or BHEL's end customer/s. The mere act of the pre-dispatch inspection (PDI) does not absolve the Supplier from giving the specifications as agreed upon in the Purchase Order.	
	b. In the case of overseas suppliers Inspection call for carrying out the inspection shall be given 30 days before the scheduled contract delivery date. The Inspection date/s given by the Supplier shall be on firm basis. For local Suppliers the Notice period of Inspection shall be 10 working days.	
	c. In the event of any short supply, it shall be the responsibility of the supplier to deliver such short supplied/ missing items on Free-of-Cost basis at BHEL stores, including customs clearances at Indian Ports in the case of foreign suppliers.	
37.	Reverse Auction	
	BHEL shall be resorting to Reverse Auction (RA) (Guidelines as available on www.bhel.com) for this tender. RA shall be conducted among the techno-commercially qualified bidders. Price bids of all techno-commercially qualified bidders shall be opened and same shall be considered for RA. In case any bidder(s) do(es) not participate in online Reverse Auction, their sealed envelope price bid along with applicable loading, if any, shall be considered for ranking.	
38.	Evaluation of offer	
	a. The price bids including the impact price (if any) of the technically acceptable offers alone shall be opened.	
	b. Offers with pre-conditions (like conditional discounts) for price are liable to be not considered / rejected. For evaluation such conditions would be removed and only the base offer would be considered for evaluation and comparison.	
	c. BHEL reserves the right to conduct negotiations on the "Price" and "Other Commercial Terms and Conditions" with the lowest ranked offerer at any time after the bid opening but before the release of the Purchase Order.	
	d. In case of more than one bidder happens to occupy L-1 status, effective L-1 will be decided by soliciting discounts from respective L-1 bidders. In case more than one bidder happens to occupy the L-1 status even after soliciting discounts, the L-1 bidder shall be decided by a toss/draw of lots, in the presence of the respective L-1 bidder(s) or their representative(s). Ranking will be done accordingly, BHEL's decision in such situations shall be final and binding.	
	e. In the event of any change in scope / quantity arising out of the discussions, offerer would be given a chance to submit their revised offer / Impact bids. The option for the revised offer / impact offer will be triggered by BHEL. The Supplier then will have the facility to feed-in the revised price / impact price as per the provision given by BHEL. The impact price can be positive or negative (or nil). The impact price option shall contain only the price addition / deletion for such change in the scope / quantities, over and above the original scope and price quoted. The original price quoted would remain unchanged. The total price would then be computed by the arithmetic addition of the original price and the impact price. Where BHEL gives the option of submitting the revised offer, the impact would be computed as the arithmetic difference of the revised price and the original price.	
39.	General terms	
	1. Bids including all enclosures and supporting documents like catalogues, pamphlets, etc., shall be submitted / uploaded in ENGLISH language only. If the documents submitted have other than English language, translation of the same shall be provided for evaluation.	
	2. A person signing (manually or digitally) the tender form or any documents forming part of the contract on behalf of another shall be deemed to warrantee that he has authority to bind such other persons and if, on enquiry, it appears that the persons so signing had no authority to do so, the purchaser may, without prejudice to other civil and criminal remedies, cancel the contract and hold the signatory liable for all cost and damages.	
	3. All uploaded/submitted documents against this tender shall be signed in each page and sign shall be by principal / Mill.	

4. Supplier shall mention the HSN code for each item quoted by them in the offer.	
5. Offers for part quantities on item level basis are not acceptable to BHEL. While tenderers can quote for some or all the tendered items, no supplier shall quote for partial quantity of any given enquiry item. Such partial offer would not be considered in the enquiry for that item.	
6. Any clarification regarding tender shall be done before Part –I due date itself through EPS portal itself, and in case of immediate non-availability of DSC you can clarify through with the following mail id <u>sudheer@bhel.in & mrsamy@bhel.in</u> . The above mail id is provided for initial clarification purpose only and no further correspondences shall be entertained through this mail ids.	
7. Unloading of the materials is in the scope of BHEL. However, Demurrages on account of delay in unloading due to improper packing, non-availability of proper dunnage, not adhering to the tender conditions and other reasons attributable to supplier shall be on supplier's accounts only.	
8. Applicable INCO term for this tender is INCOTERMS 2010	
9. Foreign suppliers has to submit the Non-Negotiable Document to bank/directly to BHEL as per the relevant payment term, well before the shipment reaches the port or else the demurrage and detention charges due to the delay in submission by supplier will be deducted from suppliers invoice.	
10. The supplier shall arrange for packing suitably in all respects for normal transport by sea / rail / road and Materials shall be suitably protected against effect of tropical salt laden atmosphere in the event of shipment being delayed at ports / store yards. In case of dispatch through sea then materials shall be shipped in Sea worthy packing condition. Packing charges will be supplier's account.	
11. In case the day up to which the tenders are to remain valid falls on/ subsequently declared a holiday or closed day for the purchaser, the tender validity shall automatically be extended up to the next working day.	
12. In exceptional cases, the tenderers may be requested by the purchaser to extend the validity of their tenders up to a specified period. Such request(s) and responses thereto shall be conveyed by EPS / e-Mail message. The tenderers, who agree to extend the tender validity, are to extend the same without any change or modification of their original offer.	
13. BHEL Reserves the right to negotiate and re-float the tender if the lowest offered price is not found competitive	
14. Any of the terms and conditions not acceptable to supplier, shall be explicitly mentioned in the tender. Otherwise, it will be treated as that all those terms and conditions as mentioned in the tender are acceptable in Toto.	
15. Deviations shall be summarized and provided in a "Deviation Statement", listing the points and the deviation against each point.	
16. At its option, BHEL may consider extending the due date/s for the tender openings. Sufficient notice would be given by BHEL for such extensions and it will be published as corrigendum in following websites, https://eprocurebhel.co.in	
17. The price break-up should be in line with technical specification / scope of the tender. (Cost of material, packing charges, forwarding charges, freight and insurance charges shall be shown appropriately, as applicable).	
18. Set-off Clause: BHEL shall have the right to recover any money which in the sole opinion of BHEL is due from the Contractor from any money due to the Contractor under this Contract or any other contract or from the Security Deposit furnished by the Contractor under this Contract or any other contract.	
19. In case, there is a discrepancy in the term quoted in techno-commercial bid and price bid, the term as per the techno-commercial bid (Part I) shall hold good and the commercial term quoted in the Price Bid (Part II) shall not be considered.	
20. Indigenous suppliers should submit the prices in Indian Rupees only. Import suppliers may submit their bid in foreign currency. The currency for quoting shall be selected from the drop-down menu provided.	

21.	If any Supplier attempts to bribe, or pay commission, gift or any advantage or bring in undue influence either by himself or on his behalf any one including a stranger to the tender, in addition to instituting legal proceedings as per the extant laws prevailing, will disqualify the supplier from this tender and all future tenders of BHEL. Decision of the Purchaser would be final in this matter.	
22.	In their own interest, all Tenderers are advised to double check their prices, applicable duties and taxes. Incomplete documents / offer will be rejected.	
23.	Duty benefits for Import Vendors	
a.	In case CEPA or any other agreement/treaty between respective Governments/Countries exists for the enquired Items/tender, which entails concessional custom duty or any other benefits for importing the same in India, supplier shall declare/ mention it in their offer. Pls confirm whether any such concessional duty for importing in India is applicable or not.	
b.	For such cases, pls mention the Concessional Customs Duty (% of Basic custom duty) for the offered item/s. Pls mention in percentage only.	
c.	Documentary proof for the applicable Concessional Customs Duty (e.g. CEPA or other agreement) shall be submitted along with the Part-1 bid.	
d.	Relevant documents to avail the above concessional duty benefits by BHEL shall be submitted by the supplier along with dispatch documents. Confirm your acceptance.	
e.	In the event of seller failing to provide appropriate documents along with dispatch documents for purchasers to avail disclosed concessional duty benefits in India, financial loss, so incurred, will be to the seller's account.	
<i>Note: Evaluation of the Price bids will be based on the above details. Unless specifically mentioned/furnished by the supplier in the offer document, Customs Duty benefit may not be applied for evaluation purposes.</i>		
40.	Preference to Make in India: For this procurement, the local content to categorize a supplier as a class I local supplier/class II local supplier /Non-local supplier and purchase preference to class I local supplier, is as defined in Public Procurement (Preference to Make in India), Order 2017 dated 04.06.2020 issued by DPIIT. In case of subsequent Orders issued by the respective Nodal Ministry, changing the definition of local content for the items of the NIT, the same shall be applicable even if issued after issue of this NIT, but before opening of part II bids against this NIT.	
41.	Restrictions for Procurement from a country sharing its land border with India For this procurement, Public procurement order dated 23.07.2020 regarding restrictions under rule 144 (xi) of general financial rules 2017 and clarification dt 08.02.2021 from DoE is applicable. In case of subsequent Orders issued, the same shall be applicable even if issued after issue of this NIT.	
42.	Patent Right: The supplier shall, at all times, indemnify and keep indemnified the purchaser, free of cost, against all claims which may arise in respect of goods & services to be provided by the supplier under the contract for infringement of any intellectual property rights or any other right protected by patent, registration of designs or trademarks. In the event of any such claim in respect of alleged breach of patent, registered designs, trademarks etc. being made against the purchaser, the purchaser shall notify the supplier of the same and the supplier shall, at his own expenses take care of the same for settlement without any liability to the purchaser.	
43.	Resolution of Disputes The Parties agree that if at any time (whether before, during or after the arbitral or judicial proceedings), any Disputes (which term shall mean and include any dispute, difference, question or disagreement arising in connection with construction, meaning, operation, effect, interpretation or breach of the contract/tender which the Parties are unable to settle mutually), arise inter-se the Parties, the same may, be referred 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. The proceedings of Conciliation shall broadly be governed by Part-III of the Arbitration and Conciliation Act 1996 or any statutory modification thereof. 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 X to this Enquiry Conditions.

The Annexure 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 Enquiry Conditions

Except as provided elsewhere in this Contract, in case amicable settlement is not reached between the parties, in respect of any dispute or difference; arising out of the formation, breach, termination, validity or execution of the Contract; or, the respective rights and liabilities of the Parties; or, in relation to interpretation of any provision of the Contract ; or , in any manner touching upon the Contract, then, either Party may , by a notice in writing to other Party refer such dispute or difference to sole arbitration of an arbitrator appointed as per the Arbitration and Conciliation Act, 1996 (India) or statutory modification or re-enactment thereof and the rules made thereunder and for the time being in force .

The Arbitrator shall pass a reasoned award and the award of the Arbitrator shall be final and binding upon the parties. Subject as aforesaid, the provision of Arbitration & Conciliation Act 1996 (India) or statutory modification or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceeding under this clause.

The seat of arbitration shall be Trichy, Tamil Nadu, India.

The cost of arbitration shall be borne as per the award of the Arbitrator.

Subject to arbitration in terms of clause above, the Courts at Trichy, Tamil Nadu, India shall have exclusive jurisdiction over any matter arising out of or in connection with this Contract.

Notwithstanding the existence or any dispute or difference and/or reference for the arbitration, the vendor shall proceed with and continue without hindrance the performance of its obligation under this Contract with due diligence and expedition in a professional manner except where the Contract has been terminated by either Party in terms of this Contract.

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 commercial contract(s) between Central Public Sector Enterprises (CPSEs)/Port Trusts *inter se* and also between CPSEs and Government Departments/Organizations (Excluding disputes concerning Railways, Income Tax, Customs & Excise Departments, such dispute or difference shall be taken up by either party for resolution through AMRCD as mentioned in DPE OM No. 4(1)/2013 –DPE (GM)/FTS-1835 dated 22-05-2018.

44. Suspension of Business Dealings with Suppliers/ Contractors

The offers of the bidders who are under suspension as also the offers of the bidders, who engage the services of the banned firms, shall be rejected. The list of banned firms is available on BHEL web site www.bhel.com.

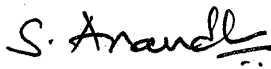
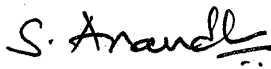
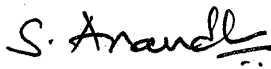
Integrity commitment, performance of the contract and punitive action thereof:

1. Commitment by BHEL

BHEL commits to take all measures necessary to prevent corruption in connection with the tender process and execution of the contract. BHEL will during the tender process treat all Bidder(s) in a transparent and fair manner, and with equity

2. Commitment by Bidder/ Supplier/ Contractor

a	The bidder/ supplier/ contractor commit to take all measures to prevent corruption and will not directly or indirectly influence any decision or benefit which he is not legally entitled to nor will act or omit in any manner which
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	tantamount to an offence punishable under any provision of the Indian Penal Code, 1860 or any other law in force in India.		
b	The bidder/ supplier/ contractor will, when presenting his bid, disclose any and all payments he has made, and is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract and shall adhere to relevant guidelines issued from time to time by Govt. of India/ BHEL		
c	The bidder/ supplier/ contractor will perform/ execute the contract as per the contract terms & conditions and will not default without any reasonable cause, which causes loss of business/ money/ reputation, to BHEL		
	If any bidder/ supplier/ contractor during pre-tendering/ tendering/ post tendering/ award/ execution/ post-execution stage indulges in mal-practices, cheating, bribery, fraud or and other misconduct or formation of cartel so as to influence the bidding process or influence the price or acts or omits in any manner which tantamount to an offence punishable under any provision of the Indian Penal Code, 1860 or any other law in force in India, then, action may be taken against such bidder/ supplier/ contractor as per extant guidelines of the company available on www. bhel.com and/or under applicable legal provisions. Guidelines for suspension of business dealings is available in the webpage: http://www.bhel.com/vender_registration/vender.php		
45.	In the event of our customer order covering this tender being cancelled /placed on hold / otherwise modified, BHEL would be constrained to accordingly cancel / hold / modify the tender/ PO at any stage of execution.		
46.	Caution: ➤ The suppliers are severely cautioned to note that the price bid document accepts the price in figures only. It does not allow the supplier to write the value by words. Therefore, all care shall be exercised by the supplier while filling in the figures. Once the price bid is opened no option is available for the supplier to retract the offer under any grounds. If a supplier, for any reason whatsoever approaches BHEL with a request for change in the price, it would be treated as going back on the offer submitted. In such cases, action would be initiated by BHEL for suspending further business dealings with such suppliers as per policy of BHEL which prevails at that point of time. ➤ The language in the tender documents downloaded by the Bidders shall at no point of time be changed, altered or modified in any manner by the Tenderer. If such changes are made by any tenderer, it shall be considered as tampering with BHEL's terms and the offer shall be summarily rejected, whenever it is noticed by BHEL. Such Bidders would be disqualified from the Bidding Process and their offers would be forfeited / Bank Guarantees invoked. They would also not be allowed to participate in future tenders of BHEL.		
47.	Offers shall be submitted in TWO PART bids system (TECHNO-COMMERCIAL BID + PRICE BID).The bidder shall submit his response through bid submission to the tender on e-procurement platform at https://eprocurebhel.co.in/ within 14:00 Hrs of the due date of this tender. The bidder would be required to register on the e-procurement market place https://eprocurebhel.co.in/ and submit their bids online. SEALED COVER BIDS/ E-MAILS / FAX / MANUAL OFFERS WILL NOT BE ACCEPTED. Supplier shall upload any other tender documents in the E-Procurement Portal only.		
<table border="1"> <tr> <td> On behalf of BHEL  एस. आनंद कुमार / S. ANAND KUMAR वरिष्ठ उप महाप्रबंधक Sr. Deputy General Manager सामग्री प्रबंधन / आरएम Materials Management / RM बीएचईएल, तिरुच्चि / BHEL, Trichy - 620 014 </td> <td> To be filled & Signed by Original Manufacturer/Mill Name of the mill / Principal: Signature: (Affix Seal) (All conditions were read & clearly understood and agreed in totality with the mentioned deviations only) </td> </tr> </table>		On behalf of BHEL  एस. आनंद कुमार / S. ANAND KUMAR वरिष्ठ उप महाप्रबंधक Sr. Deputy General Manager सामग्री प्रबंधन / आरएम Materials Management / RM बीएचईएल, तिरुच्चि / BHEL, Trichy - 620 014	To be filled & Signed by Original Manufacturer/Mill Name of the mill / Principal: Signature: (Affix Seal) (All conditions were read & clearly understood and agreed in totality with the mentioned deviations only)
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Offer submission check list

Sl. No	List of Documents to be submitted along with offer	√ (Enclosed with offer)	X (Not enclosed)	Not applicable
1.	Product catalogue	☐	☐	☐
2.	Point wise confirmation to PQR (Prequalifying requirements)	☐	☐	☐
3.	Details of In-House manufacturing facilities	☐	☐	☐
4.	list of testing equipments & instruments	☐	☐	☐
5.	Certification of Labs as per ISO 17025, if available	☐	☐	☐
6.	ISO 9001 certification / Quality management system / Written down procedure	☐	☐	☐
7.	Proof of supply (Unpriced PO copies, Mill Test Certificates and unpriced Invoice / Bill of lading copy) covering minimum and maximum sizes of the quoted specifications.	☐	☐	☐
8.	Approval certificates issued by international agencies or your customers such as Lloyds, TUV etc.	☐	☐	☐
9.	Audited copies of annual report for last three years for Indigenous suppliers & GST certificate	☐	☐	☐
10.	Latest audited report for Import suppliers (For both Principal & Mill)	☐	☐	☐
11.	Agency agreement (in case of Foreign or Indian agents).	☐	☐	☐
12.	Tax certificates for Indigenous supplier	☐	☐	☐

BHEL recently received guidelines from Govt. Of India and Central Vigilance Commission and we have been asked to comply with the guidelines with regard to dealings with Indian Agent/Foreign Agent of Foreign Suppliers.

1. Mandatory submission of an Agency Agreement

- 1.1 It shall be incumbent on the Indian agent and the foreign principal to adhere to the relevant guidelines of Government of India, issued from time to time.
- 1.2 The Agency Agreement should specify the precise relationship between the foreign OEM/foreign principal and their Indian agent and their mutual interest in the business. All services to be rendered by agent/associate, whether of general nature or in relation to the particular contract, must be clearly stated by the foreign supplier/Indian agent. Any payment, which the agent or associate receives in India or abroad from the OEM, whether as commission or as a general retainer fee should be brought on record in the Agreement and be made explicit in order to ensure compliance to laws of the country.
- 1.3 In the absence of any agency agreement, BHEL shall not deal with any Indian agent (authorized representatives / associate / consultant, or by whatever name called) and shall deal directly with the foreign principal only for all correspondence and business purposes.
- 1.4 Agents will file an authenticated Photostat copy duly attested by a Notary Public / Original certificate of the Principal confirming the agency agreement and giving the status being enjoyed by the agent and the commission / remuneration / salary / retainer ship being paid by the principal to the agent.
- 1.5 Wherever the Indian representatives have communicated on behalf of their principals and the foreign parties have stated that they are not paying any commission to the Indian agents, and the Indian representative is working on the basis of salary or as retainer, a written declaration to this effect should be submitted by the Foreign Principal.

2. Disclosure of particulars of agents / representatives in India

2.1 Tenderers of Foreign nationality shall furnish the following details:

2.1.1 The Bidder(s) / Contractor(s) of foreign origin shall disclose the name and address of the agents / representatives in India if any and the extent of authorization and authority given to commit the Principals. In case the agent / representative be a foreign Company, it shall be confirmed whether it is existing Company and details of the same shall be furnished.

2.1.2 The amount of commission / remuneration included in the quoted price(s) for such agents / representatives in India.

2.1.3 Confirmation of the Tenderer that the commission / remuneration, if any, payable to his agents / representatives in India, paid in Indian Rupees only.

2.2 Tenderers of Indian Nationality shall furnish the following details:

2.2.1 The Bidder(s) / Contractor(s) of Indian Nationality shall furnish the name and address of the foreign principals, if any, indicating their nationality as well as their status, i.e. whether manufacturer or agents of manufacturer holding the Letter of Authority of the Principal specifically authorizing the agent to make an offer in India in response to tender either directly or through the agents / representatives.

2.2.2 The amount of commission / remuneration included in the price(s) quoted by the Tenderer for himself.

2.2.3 Confirmation of the foreign principals of the Tenderer that the commission / remuneration, if any, reserved for the Tenderer in the quoted price(s), paid in India in equivalent Indian Rupees on satisfactory completion of the Project or supplies of Stores and Spares in case of operation items.

2.3 Failure to furnish correct and detailed information as called for in paragraph 2.1 & 2.2 above will render the concerned tender liable to rejection or in the event of a contract materializing, the same liable to termination by BHEL Besides this there would be a penalty of banning business dealings with BHEL or damage or payment of a named sum.

Please furnish the above information immediately

ANNEXURE- M

Special Provisions for Micro and Small Enterprises (MSE)

(Subject to the participating MSE vendors meeting the tender requirements of BHEL)

1. As per Gazette Notification no. S.O. 2119(E) dated 26.06.2020 issued by Ministry of MSME applicable/existing Micro and small suppliers are requested to get registered with Udyam Registration portal and share us the Udyam registration no along with Udyam registration certificate.
2. 25% of the tendered quantity is earmarked for MSE suppliers in this tender, subject to participating MSE Vendors should meet the tender requirements of BHEL. RC will be entered into with MSE vendor accordingly.
3. Payment to MSE vendor will be as per the applicable provisions of the MSMED Act 2006.
4. If L1 offer is from a Micro / Small enterprise, the 25% earmarking provision is not applicable.
5. Out of the 25% tendered quantity reserved for MSE suppliers, 6.25% shall be earmarked for procurement from MSE owned by SC/ST entrepreneurs. Apart from this 3% shall be earmarked for procurement from MSE owned by Women entrepreneurs.
6. Counter offering of L1 rate will not be made with any MSE vendor whose quoted rate is more than the price band of L1+15%. In case of more than one such MSE, the supply shall be shared proportionately.
7. The MSE vendor will be contacted before issuance of order and based their acceptance, formal order will be placed against the RC.
8. Though the Rate Contract will be issued to MSE vendor fulfilling all the mentioned terms, if it not possible to split the ordering qty for one particular location/ unit/ region on account of reasons like customer contract requirement for supply from their approved sources, small qty less than a truck/trailer load etc, then BHEL will not place that order on the MSE vendor.
9. In case of any change in the MSE status of the bidder, it shall be the responsibility of the bidder to notify the change as a part of the bid document. If at a later date it comes to the knowledge of BHEL, that the change in the status has not been intimated by the bidder and the order is obtained under the premise of an MSE then BHEL would cancel the pending order against this tender and take necessary steps for suspension of the business dealing with the bidder as per the procurement policy of BHEL.
10. MSE suppliers can avail the intended benefits only if they submit Valid Udyam registration no along with the Udyam certificate along with the offer. 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. Documents should be notarized or attested by a Gazetted officer. However, credentials of all MSE suppliers will be verified before considering the intended benefits for MSE suppliers at the time of tender evaluation. Non submission of such documents will lead to consideration of their bids at par with other bidders and MSE status of such suppliers shall be shifted to Non MSE supplier till the supplier submits these documents.

BRIEF PROCEDURE FOR CONDUCT OF CONCILIATION PROCEEDINGS

1. 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 herein:
2. The party desirous of resorting to Conciliation shall send an invitation/notice in writing to the other party to conciliate specifying all points of Disputes with details of the amount claimed. The party concerned shall not raise any new issue thereafter. Parties shall also not claim any interest on claims/counter-claims from the date of notice invoking Conciliation till the conclusion of the Conciliation proceedings.
3. The party receiving the invitation/notice for Conciliation shall within 30 days of receipt of the notice of Conciliation intimate its consent for Conciliation along with its counter-claims, if any.
4. The Conciliation in a matter involving claim or counter-claim (whichever is higher) up to Rs 5 crores shall be carried out by sole Conciliator nominated by BHEL while in a matter involving claim or counter-claim (whichever is higher) of more than Rs 5 crores
Conciliation shall be carried out by 3 Conciliators nominated by BHEL.
5. The Parties shall be represented by only their duly authorized in-house executives/officers and neither Party shall be represented by a Lawyer.
6. The first meeting of the IEC shall be convened by the IEC by sending appropriate communication/notice to both the parties as soon as possible but not later than 30 days from the date of his/their appointment. The hearings in the Conciliation proceeding shall ordinarily be concluded within two (2) months and, in exceptional cases where parties have expressed willingness to settle the matter or there exists possibility of settlement in the matter, the proceedings may be extended by the IEC by a maximum of further 2 months with the consent of the Parties subject to cogent reasons being recorded in writing.

7. The IEC shall thereafter formulate recommendations for settlement of the Disputes supported by reasons at the earliest but in any case within 15 days from the date of conclusion of the last hearing. The recommendations so formulated along with the reasons shall be furnished by the IEC to both the Parties at the earliest but in any case within 1 month from the date of conclusion of the last hearing.
8. Response/modifications/suggestions of the Parties on the recommendations of the IEC are to be submitted to the IEC within time limit stipulated by the IEC but not more than 15 days from the date of receipt of the recommendations from the IEC.
9. In the event, upon consideration, further review of the recommendations is considered necessary, whether by BHEL or by the other Party, then, the matter can be remitted back to the IEC with request to reconsider the same in light of the issues projected by either/both the Parties and to submit its recommendations thereon within the following 15 days from the date of remitting of the case by either of the Parties.
10. Upon the recommendations by the Parties, with or without modifications, as considered necessary, the IEC shall be called upon to draw up the Draft Settlement Agreement in terms of the recommendations.
11. When a consensus can be arrived at between the parties only in regard to any one or some of the issues referred for Conciliation the draft Settlement Agreement shall be accordingly formulated in regard to the said Issue(s), and the said Settlement Agreement, if signed, by the parties, shall be valid only for the said issues. As regards the balance issues not settled, the parties may seek to resolve them further as per terms and conditions provided in the contract.
12. In case no settlement can be reached between the parties, the IEC shall by a written declaration, pronounce that the Conciliation between the parties has failed and is accordingly terminated.
13. Unless the Conciliation proceedings are terminated in terms of para 22 (b), (c) & (d) herein below, the IEC shall forward his/its

recommendations as to possible terms of settlement within one (1) month from the date of last hearing. The date of first hearing of Conciliation shall be the starting date for calculating the period of 2 months.

14. In case of 3 members IEC, 2 members of IEC present will constitute a valid quorum for IEC and meeting can take place to proceed in the matter after seeking consent from the member who is not available. If necessary, videoconferencing may be arranged for facilitating participation of the members. However, the IEC recommendations will be signed by all members. Where there is more than one (1) Conciliator, as a general rule they shall act jointly. In the event of differences between the Members of IEC, the decision/recommendations of the majority of the Members of IEC shall prevail and be construed as the recommendation of the IEC.
15. The Draft Settlement Agreement prepared by the IEC in terms of the consensus arrived at during the Conciliation proceedings between the Parties shall be given by the IEC to both the parties for putting up for approval of their respective Competent Authority.
16. Before submitting the draft settlement agreement to BHEL's Competent Authority viz. the Board Level Committee on Alternative Dispute Resolution (BLCADR) for approval, concurrence of the other party's Competent Authority to the draft settlement agreement shall be obtained by the other party and informed to BHEL within 15 days of receipt of the final draft settlement agreement by it. Upon approval by the Competent Authority, the Settlement Agreement would thereafter be signed by the authorized representatives of both the Parties and authenticated by the members of the IEC.
17. In case the Draft Settlement Agreement is rejected by the Competent Authority of BHEL or the other Party, the Conciliation proceedings would stand terminated.
18. A Settlement Agreement shall contain a statement to the effect that each of the person(s) signing thereto (i) is fully authorized by the respective Party(ies) he/she represents, (ii) has fully understood the contents of the same and (iii) is signing on the

same out of complete freewill and consent, without any pressure, undue influence.

19. The Settlement Agreement shall thereafter have the same legal status and effect as an arbitration award on agreed terms on the substance of the dispute rendered by an arbitral tribunal passed under section 30 of the Arbitration and Conciliation Act, 1996.
20. Acceptance of the Draft Settlement Agreement/recommendations of the Conciliator and/or signing of the Settlement Agreement by BHEL shall however, be subject to withdrawal/closure of any arbitral and/or judicial proceedings initiated by the concerned Party in regard to such settled issues.
21. Unless otherwise provided for in the agreement, contract or the Memorandum of Understanding, as the case may be, in the event of likelihood of prolonged absence of the Conciliator or any member of IEC, for any reason/incapacity, the Competent Authority/Head of Unit/Division/Region/Business Group of BHEL may substitute the Conciliator or such member at any stage of the proceedings. Upon appointment of the substitute Conciliator(s), such reconstituted IEC may, with the consent of the Parties, proceed with further Conciliation into the matter either de-novo or from the stage already reached by the previous IEC before the substitution.
22. The proceedings of Conciliation under this Scheme may be terminated as follows:
 - a. On the date of signing of the Settlement agreement by the Parties; or,
 - b. By a written declaration of the IEC, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or,
 - c. By a written declaration of the Parties addressed to the IEC to the effect that the Conciliation proceedings are terminated, on the date of the declaration; or,
 - d. By a written declaration of a Party to the other Party and the IEC, if appointed, to the effect that the Conciliation proceedings are terminated, on the date of the declaration.
 - e. On rejection of the Draft Settlement Agreement by the Competent Authority of BHEL or the other Party.

23. The Conciliator(s) shall be entitled to following fees and facilities:

Sl No	Particulars	Amount
1	Sitting fees	Each Member shall be paid a Lump Sum fee of Rs 75,000/- for the whole case payable in terms of paragraph No. 27 herein below.
2	Towards drafting of settlement agreement	In cases involving claim and/or counter-claim of up to Rs 5crores. Rs 50,000/- (Sole Conciliator)

Sl No	Particulars	Amount
		In cases involving claim and/or counter-claim of exceeding Rs 5 crores but less than Rs 10 crores. Rs 75,000 (per Conciliator) In cases involving claim and/or counter-claim of more than Rs 10 crores. Rs 1,00,000/- (per Conciliator) Note: The aforesaid fees for the drafting of the Settlement Agreement shall be paid on Signing of the Settlement Agreement after approval of the Competent Authority or Rejection of the proposed Settlement Agreement by the Competent Authority of BHEL.
3	Secretarial expenses	Rs 10,000/- (one time) for the whole case for Conciliation by a Sole Member IEC. Where Conciliation is by multi member Conciliators –Rs 30,000/- (one time)- to be paid to the IEC

4	Travel and transportation and stay at outstation i) Retired Senior Officials of other Public Sector Undertakings (pay scale wise equivalent to or more than E-8 level of BHEL)	As per entitlement of the equivalent officer (pay scale wise) in BHEL.
	Others	As per the extant entitlement of whole time Functional Directors in BHEL.
Sl No	Particulars	Amount
		Ordinarily, the IEC Member(s) would be entitled to travel by air Economy Class.
5	Venue for meeting	Unless otherwise agreed in the agreement, contract or the Memorandum of Understanding, as the case may be, the venue/seat of proceedings shall be the location of the concerned Unit / Division / Region / Business Group of BHEL. Without prejudice to the seat/venue of the Conciliation being at the location of concerned BHEL Unit / Division / Region / Business Group, the IEC after consulting the Parties may decide to hold the proceedings at any other place/venue to facilitate the proceedings. Unless, Parties agree to conduct Conciliation at BHEL premises, the venue is to be arranged by either Party alternately.

24. The parties will bear their own costs including cost of presenting their cases/evidence/witness(es)/expert(s) on their behalf. The parties agree to rely upon documentary evidence in support of their claims and not to bring any oral evidence in IEC proceedings.
25. If any witness(es) or expert(s) is/are, with the consent of the parties, called upon to appear at the instance of the IEC in connection with the matter, then, the costs towards such witness(es)/expert(s) shall be determined by the IEC with the consent of the Parties and the cost so determined shall be borne equally by the Parties.
26. The other expenditures/costs in connection with the Conciliation proceedings as well as the IEC's fees and expenses shall be shared by the Parties equally.
27. Out of the lump sum fees of Rs 75,000/- for Sitting Fees, 50% shall be payable after the first meeting of the IEC and the remaining 50% of the Sitting Fees shall be payable only after termination of the conciliation proceedings in terms of para 22 hereinabove.
28. The travelling, transportation and stay at outstation shall be arranged by concerned Unit as per entitlements as per Serial No. 3 of the Table at para 23 above, and in case such arrangements are not made by the BHEL Unit, the same shall be reimbursed to the IEC on actuals limited to their entitlement as per Serial No. 4 of the Table at Para 23 above against supporting documents. The IEC Member(s) shall submit necessary invoice for claiming the fees/reimbursements.
29. The Parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of its implementation and enforcement or as required by or under a law or as per directions of a Court/Governmental authority/ regulatory body, as the case may be.
30. The Parties shall not rely upon or introduce as evidence in any further arbitral or judicial proceedings, whether or not such proceedings relate to the Disputes that is the subject of the Conciliation proceedings:

- a. Views expressed or suggestions made by the other party in respect of a possible settlement of the Disputes;
 - b. admissions made by the other party in the course of the Conciliator proceedings;
 - c. proposals made by the Conciliator;
 - d. The fact that the other Party had indicated his willingness to accept a proposal for settlement made by the Conciliator.
- 31. The Parties shall not present the Conciliator(s) as witness in any Alternative Dispute Resolution or Judicial proceedings in respect of a Disputes that is/was the subject of that particular Conciliation proceeding.
- 32. None of the Conciliators shall act as an arbitrator or as a representative or counsel of a Party in any arbitral or judicial proceeding in respect of a Disputes that is/was the subject of that particular Conciliation proceeding.
- 33. The Parties shall not initiate, during the Conciliation proceedings, any arbitral or judicial proceedings in respect of a Disputes that is the subject matter of the Conciliation proceedings except that a Party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights including for preventing expiry of period of limitation. Unless terminated as per the provisions of this Scheme, the Conciliation proceedings shall continue notwithstanding the commencement of the arbitral or judicial proceedings and the arbitral or judicial proceedings shall be primarily for the purpose of preserving rights including preventing expiry of period of limitation.
- 34. The official language of Conciliation proceedings under this Scheme shall be English unless the Parties agree to some other language.

**FORMAT FOR SEEKING CONSENT FOR REFERRING THE DISPUTES
TO CONCILIATION THROUGH IEC**

To,

M/s. (Stakeholder's name)

Sub: Resolution of the Disputes through conciliation by Independent Expert Committee (IEC).

Ref: Contract No/MoU/Agreement/LOI/LOA& date _____.

Sir,

With reference to above referred Contract/MoU/Agreement/LOI/LOA, you have raised certain Disputes/claims. Vide your letter dated____ you have requested BHEL to refer the Disputes/claims to IEC for Conciliation.

We are enclosing herewith Format (3) for giving consent and the terms and conditions of BHEL Conciliation Scheme, 2018 governing conciliation through IEC. You are requested to give your unconditional consent to the said terms and conditions of the Scheme by returning the same duly sealed and signed on each page. On receipt of your consent, matter will be put to the Competent Authority for consideration and decision.

Please note that BHEL has also certain claims against you (if applicable). BHEL reserves its right to agree or not to agree conciliation of the said disputes through BHEL and this letter is being issued without prejudice to BHEL's rights and contentions available under the contract and law.

Yours faithfully,

Representative of BHEL

Appendix II

FORMAT FOR GIVING CONSENT BY CONTRACTOR/VENDOR/CUSTOMER/COLLABORATOR/CONSORTIUM PARTNERS FOR REFERRING THE DISPUTES TO CONCILIATION THROUGH IEC

To,

BHEL

.....

Sub: Resolution of Disputes through Conciliation by Independent Expert Committee (IEC).

Ref: Contract/MoU/Agreement/LOI/LOA No & date____

With reference to above referred contract, our following bills/invoices/claims submitted to BHEL are still unpaid giving rise to Disputes:

SL. no.	Claim Description	Bill submitted to BHEL (no. and date)	Amount of the bill/claim	Amount received from BHEL	Outstanding Amount

Accordingly we request you to kindly refer the Disputes in respect of above claims to IEC for Conciliation.

We hereby agree and give our unconditional consent to the terms and conditions of BHEL Conciliation Scheme, 2018 governing conciliation through IEC. We have signed the same on each page and enclosed it for your consideration.

Yours faithfully,

(Signature with stamp)

**Authorized Representative of Contractor
Name, with designation
Date**

**STATEMENT OF CLAIMS/COUNTER CLAIMS TO BE SUBMITTED TO
THE IEC BY BOTH THE PARTIES**

1. Chronology of the Disputes
2. Brief of the Contract/MoU/Agreement/LOI/LOA
3. Brief history of the Disputes:
4. Issues:
5. Details of Clam(s)/Counter Claim(s):

Sl. No.	Description of claim(s)/Counter Claim	Amount (in INR)Or currency applicable in the contract	Relevant contract clause

6. Basis/Ground of claim(s)/counter claim(s) (along with relevant clause of contract)

Note– *The Statement of Claims/Counter Claims may ideally be restricted to maximum limit of 20 pages. Relevant documents may be compiled and submitted along with the statement of Claims/Counter Claims. The statement of Claims/Counter Claims is to be submitted to all IEC members and to the other party by post as well as by email.*