

NAME OF THE PROCUREMENT: SUPPLY, INSTALLATION, COMMISSIONING AND TRAINING OF 01 SET OF X Ray Counter Machine AT BHARAT HEAVY ELECTRICALS LIMITED (BHEL) -EDN, BANGALORE.	
TENDER REF NO: SSNECAP002	
PART-I (TECHNO -COMMERCIAL BID)	
A	TECHNICAL BID
BIDDER PROFILE	
NAME OF TENDERER:	
Bidder shall provide Information related to their Organization.	<p style="text-align: center;">Information related to Organization</p> <p><input type="checkbox"/> Enclosed with offer.</p> <p><input type="checkbox"/> Not enclosed with offer.</p>
<p>Bidder Shall provide basic information as per Attached Format. Additional Information may also be enclosed as separate Annexure.</p> <p>The information provided shall be used for communication with the bidder w.r.t Tender.</p> <p>Following document shall also be enclosed</p> <ol style="list-style-type: none"> 1) Income Tax Registration (PAN) 2) GST Registration. 3) Certificate of Incorporation (As applicable) 4) Partnership Deed (As applicable) 5) Power of Attorney (As applicable) 	

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1 STATUS OF THE BIDDER				
	QUALIFYING PARAMETER	QUALIFYING VALUE	BIDDER'S RESPONSE	REAMRKS
	OEM / Authorized Dealer	<p>Bidder shall be Original Equipment Manufacturer (OEM) Based in India.</p> <p>OR</p> <p>Foreign OEM with Authorized Indian dealer(s) / representative(s) for sales, spares and service.</p>	<p>Bidder has quoted as</p> <p><input type="checkbox"/> OEM (Original Equipment Manufacturer)</p> <p><input type="checkbox"/> Authorized Dealer</p> <p>Name of OEM:</p> <p>In case of Authorized Dealer: Authorization letter for the dealer / representative shall be provided</p> <p><input type="checkbox"/> Enclosed with offer.</p> <p><input type="checkbox"/> Not enclosed with offer.</p>	
2 Other details as per RFQ SSNECAP002 & Purchase Specification PS/202/SMT/25-26/009 Rev 00				
	QUALIFYING PARAMETER	QUALIFYING VALUE	BIDDER'S RESPONSE	REAMRKS
	Details required as per RFQ SSNECAP002 & Purchase Specification PS/202/SMT/25-26/009 Rev 00	Details required as per RFQ SSNECAP002 & Purchase Specification PS/202/SMT/25-26/009 Rev 00	<p><input type="checkbox"/> Enclosed with offer.</p> <p><input type="checkbox"/> Not enclosed with offer.</p>	

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Name of Procurement: SUPPLY, INSTALLATION, COMMISSIONING AND TRAINING OF 01 SET OF X Ray Counter Machine				
Subject tender is governed by BHEL ITB and GCC and is available at BHEL- EDN website- https://edn.bhel.com				
TENDER REF NO: SSNECAP002				
PART-II(COMMERCIAL BID)				
B	COMMERCIAL BID:			
1	EARNEST MONEY DEPOSIT (EMD)			
SL	QUALIFYING PARAMETER	QUALIFYING VALUE	BIDDER'S RESPONSE	REMARKS
1.1	EMD (Earnest Money Deposit)	₹ 1,00,000/- Proof of Payment or Valid documentary evidence for availing exemption.	EMD Payment Details:	Non submission of EMD amount / Valid Exemption document along with offer will lead to rejection of offer.

A) EMD is payable in the form of Cash deposit (Before tender opening) / Bankers Cheque / Pay order / DD / FDR drawn in favour of BHEL- EDN, Bangalore (Along with offer) issued from scheduled bank / EFT payment vide SBI Collect as EMD / online payment through NEFT/RTGS (Before tender opening) is acceptable. Proof of payment (in case of EFT payment) to be enclosed along with offer.

B) EMD is waived off for MSE (OEM) and Start Up Bidders based on submission of Valid Udyam Registration Certificate / Valid Start up Registration Certificate / Valid Registration to any other body as specified by ministry of MSME. Bidders having **Valid Udyam Registration Certificate and registered under Major Activity - TRADING are not eligible for EMD exemption or any other MSE benefits** during finalization of contract.

C) For online payment through NEFT/RTGS the Bank details are
Name of Bank: **PUNJAB NATIONAL BANK**, Branch: **BHEL MYSORE ROAD**
IFSC code: **PUNB0424700**, Account Number: **4247002100500157**

The proof of E-receipt must be attached along with Part – I (Techno-Commercial bid).

D) General Terms Related to EMD:

- i) Earnest Money Deposit (EMD) will not carry any interest.
- ii) Earnest Money Deposit (EMD) of the successful tenderer will be refunded to Successful Bidder on conclusion of the order / receipt of a performance security (if called in tender).
- iii) The Earnest Money Deposit (EMD) will be refunded to the unsuccessful tenderers within 30 days of award of contract / EMD of unsuccessful bidders during first Stage i.e., Technical Evaluation shall be returned within 30 days of declaration of result of first Stage i.e., Technical Evaluation.

(Detailed Terms and Conditions w.r.t EARNEST MONEY DEPOSIT (EMD) shall be as per GCC.)

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2 OFFER PRICE AND BID EVALUATION				
SL	DESCRIPTION	DETAILS	BIDDER'S RESPONSE	REMARKS
2.1	OFFER PRICE BREAK UP	<p>Bidder shall quote separate price for "Supply" and " Installation and Commissioning (E&C)".</p> <p>The estimated percentage of E&C value is 5 % of Total Offer Value (Supply + E&C)</p> <p>In case the quoted value is less than the value (%) specified in the tender or separate E&C values are not mentioned in the offer, Value of E&C portion shall be deemed to be considered as the value mentioned above & accordingly supply value will be adjusted from the quoted value and balance will be released as per Payment Term indicated in tender.</p>	<p>Separate Price quoted for " Supply " and "Installation and Commissioning "</p> <p><input type="checkbox"/> Quoted / <input type="checkbox"/> Not Quoted.</p>	<p>Quoting in any other format will lead to rejection of offer.</p>
2.2	BID EVALUATION	<p>The evaluation of Techno-Commercially qualified offers to arrive at L1 (Lowest Bid) shall be done based on "Net Cash Outflow to BHEL" and the evaluation Currency shall be INR.</p>	<p><input type="checkbox"/> Accepted</p> <p><input type="checkbox"/> Not Accepted</p>	<p>Non acceptance will lead to rejection of offer</p>
2.3	BID VALIDITY	<p>Quoted Prices shall remain firm during offer validity period i.e., 90 days from the date of Techno-commercial Bid opening.</p>	<p><input type="checkbox"/> Accepted</p> <p><input type="checkbox"/> Not Accepted</p>	<p>Non acceptance will lead to rejection of offer</p>

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2.4	BID VALIDITY FOR SUCCESSFUL BIDDER	For Successful bidder, the award price shall remain firm during entire contract period or extended contract period. Price variation on any account is not permissible / acceptable.	<input type="checkbox"/> Accepted <input type="checkbox"/> Not Accepted	Non acceptance will lead to rejection of offer
3 PAYMENT TERMS				
3.1	Payment Terms	<p>80% of Supply Value shall be made within 45 days from the date of receipt and acceptance of material at BHEL as per Specification along with necessary documents such as Test Certificates, Manuals or any document as per tender.</p> <p>20% of Supply Value and 100% of Erection and Commissioning (E&C) charges shall be made against E&C Certificate issued by BHEL and submission of Performance Bank Guarantee (PBG).</p> <p>There shall be No Advance Payment against Supply</p>	<p>Payment Terms :</p> <input type="checkbox"/> Accepted <input type="checkbox"/> Not Accepted	Any deviation / Non acceptance will lead to rejection of offer.
4 DELIVERY				

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4.1	Terms of Delivery	DDL- BHEL- EDN , Bangalore (Delivery of Material and Services consequential to supply shall be made to BHEL-EDN, Bangalore)	<input type="checkbox"/> Accepted <input type="checkbox"/> Not Accepted	Non acceptance will lead to rejection of offer.
4.2	Pre shipment inspection	Applicable at Seller's works. Reckoning of Delivery Date for Penalty calculation shall be date of receipt of material at BHEL stores. Pre-Shipment Inspection mail given by supplier shall not be treated as delivery.	<input type="checkbox"/> Accepted <input type="checkbox"/> Not Accepted	Non acceptance will lead to rejection of offer
4.3	Delivery Period: Time Period for "Supply" and "Installation"	<p>Time period Supply & Installation:</p> <p>The time period for Supply & Installation of Equipment shall be within 20 Weeks from issue of Purchase order and Erection & Commissioning within 2 weeks of intimation / clearance from BHEL.</p> <p>The supply period includes the time required for approval of drawing and any other input from BHEL.</p> <p>BHEL reserves the right to accept an offer not meeting the NIT schedule.</p>	<input type="checkbox"/> Accepted <input type="checkbox"/> Not Accepted	

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4.4	Best possible Delivery Period as per Bidder	Bidder shall Indicate their best possible Delivery Period for " Supply" from the date of Issue of PO and best possible time for "E&C" after Intimation from BHEL. BHEL reserves the right to accept an offer not meeting the NIT schedule.	<p>Best possible Delivery Period for</p> <p>"Supply" Weeks from issue of PO.</p> <p>" Installation and Commissioning" Weeks from the date of intimation from BHEL.</p>	
4.5	Rescheduling of Deliveries	BHEL reserves the right of postponement, rescheduling or staggering of delivery based on the project schedule. No compensation / payment shall be admissible on account of rescheduling of deliveries.	<p><input type="checkbox"/> Accepted</p> <p><input type="checkbox"/> Not Accepted</p>	Non acceptance will lead to rejection of offer.
5	LD AND PENALTY			
5.1	Penalty for delay in "Supply" and "Installation"	<p>Penalty on delay in "Supply" and / or "E&C" will be applicable for the delays attributable to vendor. Penalty will be considered separately for "Supply" and Erection and Commissioning (E&C) w.r.t delivery schedule mentioned in PO.</p> <p>For the purpose of penalty for delay in "Supply" of the equipment the duration shall be reckoned from the date of issue of Purchase order by BHEL.</p> <p>The Penalty for delayed supply shall be @0.5% per week of delay of Total PO value (Supply + E&C) in E&C subject to maximum of 10% of total PO value.</p>	<p><input type="checkbox"/> Accepted</p> <p><input type="checkbox"/> Not Accepted</p>	Non acceptance will lead to rejection of offer

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		<p>The Penalty for delayed E&C shall be @0.5% per week of delay of Total PO value (Supply + E&C) in supply subject to maximum of 10% of total PO value. Maximum penalty for delay in Supply and E&C together shall be limited to 15% of Total PO value.</p>		
6	PERFORMANCE SECURITY			
6.1	<p>Performance Bank Guarantee (PBG): (Applicable for Successful Bidder)</p>	<p>The successful bidder shall furnish a Performance Bank Guarantee (PBG) for 10% of total PO value immediately after completion of supply & Installation. The PBG shall be valid until 30 days beyond the warranty Period.</p> <p>If vendor fails to submit PBG on time, vendors agrees to accept for the final 10% payment, payable after the warranty period + 3 months of claim period against supplementary invoice subject to the completion of commissioning (if applicable).</p>	<p><input type="checkbox"/> Accepted</p> <p><input type="checkbox"/> Not Accepted</p>	<p>Non acceptance will lead to rejection of offer</p>

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6.2	Contract Execution Bank Guarantee (CEBG): (Applicable for Successful Bidder)	The successful bidder shall furnish a Contract Execution Bank Guarantee (CEBG) for 10% of total PO value within 30 days of issue of PO and valid until 30 days after the date of Completion certificate, which will be issued on supply, installation and acceptance of the material as per PO, If the supplier fails to submit the CEBG even within 60 days from date of PO, BHEL reserves the right to cancel the PO & forfeit the EMD given by the supplier. In addition, action will be taken in line with extant guidelines for Suspension of Business dealings with supplier.	<input type="checkbox"/> Accepted <input type="checkbox"/> Not Accepted	Non acceptance will lead to rejection of offer
6.3	Bank Charges	All bank charges required to be paid for participating in Tender / to comply with tender terms and conditions during execution of contract shall be borne by Vendor.	<input type="checkbox"/> Accepted <input type="checkbox"/> Not Accepted	Non acceptance will lead to rejection of offer
7 STATUTORY AND LEGAL COMPLIANCE				
7.1	Compliance to GFR 2017 Rule 144(xi) Restrictions on procurement from a bidder of a country which shares a land border with India	Declaration for GFR 2017 Rule 144(Xi) as per attached format to be submitted by bidder.	Declaration for GFR 2017 Rule 144(Xi) as per Format <input type="checkbox"/> Enclosed with offer <input type="checkbox"/> Not enclosed with offer	Non submission of declaration in Bidders Company Letter Head as per Format will lead to rejection of offer.

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7.2	Compliance to clause 9 (a) of Revised Public Procurement (Preference to Make in India Order, 2017) of DPIIT Dated dated 19.07.2024.	Declaration for (Preference to Make in India Order, 2017) of DPIIT dated 19.07.2024 as per attached format to be submitted by bidder.	Declaration for Make in India as per Format <input type="checkbox"/> Enclosed with offer <input type="checkbox"/> Not enclosed with offer	Non submission of declaration in Bidders Company Letter Head as per Format will lead to rejection of offer.
7.3	Compliance to MSME Act 2006, Public Procurement Policy-2012 and Related circulars w.r.t relaxation in EMD, PQR and preference in procurement.	Bidder shall provide details w.r.t Status of firm as Micro / Small Enterprises / Start up recognized by Competent Authority. Valid Registration Certificate to be enclosed. In case valid documents are not provided, Bidder shall not be eligible for relaxation in EMD, PQR and no preference shall be considered in procurement. Any Bidder falling under MSE category shall furnish the following details & submit documentary evidence/ Govt. Certificate etc. in support of the same along with their techno-commercial offer: Type under MSE SC/ST Owned Women Owned Others (excluding SC/ST & Women Owned) Micro Small Note: If the bidder does not furnish the above in the tender, offer shall be processed construing that the bidder is not falling under MSE category.	Status of Bidder: <input type="checkbox"/> Micro Enterprise <input type="checkbox"/> Small Enterprise <input type="checkbox"/> Medium Enterprise <input type="checkbox"/> Start Up Enterprise <input type="checkbox"/> Others Copy of Registration as Micro / Small / Medium / Start up along with CA certificate for MSE status <input type="checkbox"/> Enclosed with offer <input type="checkbox"/> Not enclosed with offer <input type="checkbox"/> Not applicable	

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7.4	<p>No Deviation w.r.t General Terms and Conditions of Contract (GCC) and Special conditions of Contract (STC) as per NIT</p>	<p>Bidder shall provide declaration for unconditional acceptance to General Terms and Conditions of Contract Any deviation mentioned anywhere in the offer shall be ignored and shall not be considered for evaluation.</p>	<p>Declaration for No Deviation as per Format</p> <p><input type="checkbox"/> Enclosed with offer</p> <p><input type="checkbox"/> Not enclosed with offer</p>	<p>Non submission of declaration in Bidders Company Letter Head as per Format will lead to rejection of offer.</p>
7.5	<p>Reverse Auction (RA)</p>	<p>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.</p> <p>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 price bid along with applicable loading, if any, shall be considered for ranking.</p>	<p><input type="checkbox"/> Agreed for participation in RA (Reverse Auction)</p> <p><input type="checkbox"/> Not Agreed for Participation in RA (Reverse Auction)</p>	
<p>8 GOODS AND SERVICES TAX (GST)</p>				
8.1	<p>GST REGISTRATION OF BIDDER</p>	<p>Bidder shall provide GST No. allotted to their organization.</p> <p>Copy of GST and PAN to be enclosed.</p>	<p>PAN:</p> <p>GST No:</p> <p>Copy of PAN and GST Registration</p> <p>Enclosed with offer</p> <p>Not enclosed with Offer.</p>	

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8.2	GST CODES FOR SUPPLY AND SERVICES	HSN code for Material ("Supply") and SAC code for Services ("E&C") and applicable GST % against Supply and E&C to be indicated.	HSN Code for " Equipment ": <input type="checkbox"/> Enclosed / <input type="checkbox"/> Not Enclosed SAC Code for " Installation and commissioning ":	
8.3	SUBMISSION OF GST INVOICE	Bidder shall submit GST invoice complete in all respect as per GST council at least 45 days prior to the cut-off date* (Time limit as declared by GST Council) to enable BHEL to avail GST Credit. *The cut-off date as of now is September of the subsequent Financial year. The provision of Tax Collected at Source (TCS) is applicable for this tender. In case BHEL is not able to avail GST Credit due to non-submission of complete set of invoice and other supporting billing documents as per PO within the above mentioned cut-off date , GST will not be paid to vendor. With effect from 01-October-2025, it is mandatory for all Indigenous Suppliers/ Contractors to register their Supply, Works, and Service invoice, irrespective of the invoice amount exclusively through the SUVIDHA Portal (https://savidha.bhel.in/savidha/) along with the required documents. For net invoice amount exceeding ₹5 lakhs (inclusive of taxes), uploading of a Class 3 digitally signed tax invoice is mandatory. For invoices up to 5 lakhs (inclusive of taxes), a scanned copy may be uploaded; however, submission of the hard copy is mandatory if a Class 3 digitally signed tax invoice is not uploaded.	<input type="checkbox"/> Accepted <input type="checkbox"/> Not Accepted	
9 WARRANTY & GUARANTEE				
9.1	WARRANTY	As per Specification	<input type="checkbox"/> Accepted <input type="checkbox"/> Not Accepted	
9.2	GUARANTEE	As per Specification	<input type="checkbox"/> Accepted <input type="checkbox"/> Not Accepted	

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GENERAL TERMS & CONDITIONS OF CONTRACT (GCC)

1. DEFINITION

In these General Conditions of Contract, the following terms shall have meaning hereby assigned to them, except where the context otherwise requires:

- a) The "Contract" means, the documents forming the tender and acceptance thereof, together with all the documents referred to therein including general and special conditions to contract. All these documents as applicable taken together shall be deemed to form one contract and shall be complementary to one another.
- b) The "Work" means, the work described in the tender documents in individual Purchase orders as may be issued from time to time to the contractor by the Officer-In charge within the power conferred upon him including all notified or additional items of works and obligations to be carried out as required for the performance of contract.
- c) The "contractor" means, the individual Firm or Company whether incorporated or not, undertaking the work and shall include the legal personal representatives of such individuals or the persons composing the firm or Company or the successors of the firm or company and the permitted assigns of such individual or firm or Company.
- d) "The Officer-In charge" means, the Officer deputed by the BHEL to supervise the work or part of the work.
- e) "Approved" and "Directed" means, the approval or direction of the respective area **HOD** or person deputed by him for the particular purposes.
- f) "BHARAT HEAVY ELECTRICALS LIMITED" (hereinafter referred to as BHEL) shall mean the Board of Directors, Chairman, Executive Director, General Manager or, other Administrative Officer of the said Company including **AGM / CCD** authorised to invite tenders and enter into contract for works on behalf of the Company.
- g) The "Contract sum" means, the sum accepted or the sum calculated in accordance with the prices accepted in tender and / or the contract rates as payable to the contractor for the execution of the work during the currency of the contract.
- h) A "week" means, Seven Days, without regard to the number of hours worked or not worked in any day in that week.
- i) A "day" means, the day of 24 hours (TWENTY-FOUR) irrespective of the number of hours worked or not worked in that day.

2. HEADING TO THE CONTRACT

The heading to these conditions shall not affect the interpretations thereof.

3. DEVIATIONS

The contractor shall not carry out any work not covered by schedule except in pursuance of the written instructions of the respective area HOD. No such work shall be valid unless the same has been specifically confirmed and accepted by BHEL in writing and incorporated in the Contract.

4. SUPPLY, ERECTION AND COMMISSIONING TO BE CARRIED OUT

The Contract shall include all labour, materials, tools, plant, equipment and transport which may be required for Supply, Erection and Commissioning of Equipment.

The Contractor will be deemed to have satisfied himself as to the nature of the site, local facilities of access and all matters affecting the execution of the work. No. extra charges consequent on any misunderstanding in these respects or otherwise will be allowed.

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5. ASSIGNMENT OF TRANSFER OF CONTRACT

The Contractor shall not, assign or transfer the contract or any part thereof, or any share, or interest thereon to any other persons.

6. SUB CONTRACT

The Contractor shall not sublet any portion of the contract.

7. COMPLIANCE TO REGULATIONS AND BYE -LAWS

The Contractor shall confirm to the provisions of any statute relating to the work and regulations and Bye- laws of any local authority. The Contractor shall be bound to give all notices required by statutory regulations or by-laws as aforesaid and to pay all fees and taxes payable to any authority in respect thereof.

8. EARNEST MONEY DEPOSIT (EMD) & SECURITY DEPOSIT (SD):

Earnest Money Deposit (EMD):

Tender must be accompanied by Earnest Money for the amount mentioned in tender notice, pledged to BHEL- EDN, BANGALORE in any of the forms mentioned below.

Modes of Deposit:

The EMD shall be accepted only in the following forms:

- a) Cash deposit as permissible under the extant Income Tax Act (before tender opening)
- b) Electronic Fund Transfer credited in BHEL account (before tender opening)
- c) Banker's cheque/ Pay order/ Demand draft, in favour of BHEL (along with offer)
- d) FDR issued by Scheduled Banks/ Public Financial Institutions as defined in the Companies Act (FDR should be in the name of the Contractor, a/c BHEL)
- e) In addition to the above, the EMD amount in excess of ₹2, 00, 000 /- (₹Two lakhs) also acceptable in the form of Bank guarantee from scheduled banks. The bank guarantee in such cases shall be valid for at least six months. (BG Format attached as Annexure-J)

Forfeiture of EMD:

EMD by the tenderer will be forfeited as per tender documents if

- i) After opening the Tender, the Tenderer revokes his tender within the validity period or increases his earlier quoted rates. ii) If only, a part of the Supply, Erection and Commissioning included in the tender has been awarded to the tenderer and the tenderer refuses to take up the work the amount of Earnest Money to be forfeited will be based on the value of the contract so awarded.

General Terms related to EMD:

Earnest Money Deposit (EMD) will not carry any interest.

The Earnest Money Deposit (EMD) will be refunded to the unsuccessful tenderers within 15 days of acceptance of the award of work by successful tenderer / expiry of offer validity period.

PERFORMANCE SECURITY / SECURITY DEPOSIT (SD):

Wherever Security Deposit (covering contract performance) is called for in the Tender /NIT, the Performance Bank Guarantee (PBG) or Security Deposit (SD), hereafter referred as performance security is to be submitted by the successful bidder awarded the contract. Performance security is to be submitted by the date specified in the contract.

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Modes of deposit:

a) Performance security may be furnished in the following forms:

(i) Local cheques of Scheduled Banks (subject to realization)/ Pay Order/ Demand Draft/ Electronic Fund Transfer in favour of BHEL.

(ii) Bank Guarantee from Scheduled Banks / Public Financial Institutions as defined in the Companies Act. The Bank Guarantee format should have the approval of BHEL.

(iii) Fixed Deposit Receipt issued by Scheduled Banks / Public Financial Institutions as defined in the Companies Act (FDR should be in the name of the Contractor, a/c BHEL).

(iv) Securities available from Indian Post offices such as National Savings Certificates, Kisan Vikas Patras etc. (held in the name of Contractor furnishing the security and duly endorsed/ hypothecated/ pledged, as applicable, in favour of BHEL).

(v) Insurance Surety Bond.

(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)

b) In case of GTE tenders, the performance security should be in the same currency as the contract and must conform to Uniform Rules for Demand Guarantees (URDG 758) - an international convention regulating international securities.

a) Performance Security is to be furnished by a specified date (generally 14(fourteen) days after notification of the award) and it should remain valid for a period of 60 (sixty) days beyond the date of completion of all contractual obligations of the supplier, including warranty obligations.

Forfeiture of Performance Security:

The performance security will be forfeited and credited to BHEL's account in the event of a breach of contract by the supplier.

PS shall be refunded to the contractor without interest, after he duly performs and completes the contract in all respects but not later than 60 (sixty) days of completion of all such obligations including the warranty under the contract.

The Performance Security shall not carry any interest.

Composite 'Contract Performance Bank Guarantee' of matching value/ validity, where both Security Deposit and Performance Bank Guarantee are required, shall not be construed as deviation.

Wherever the contract is for supply of Goods processed on labour basis/mixed basis from BHEL supplied materials, the materials shall be issued against a suitable Bank guarantee as specified in the particular Enquiry/STC/ATC/Annexures.

Wherever PBG (covering equipment / system / work performance guarantee) is called for in the Notice Inviting Tender (NIT) deviation shall not be accepted

Bank Guarantee wherever called for, shall be in the BHEL prescribed format. In case the order is to be placed in foreign currency, the BG must also be in Foreign currency, so specified by the Purchaser

Wherever Security Deposit (covering contract performance) is called for in the NIT, deviation shall not be accepted.

Bidder agrees to submit performance security required for execution of the contract within the time period mentioned. In case of delay in submission of performance security, enhanced performance security which would include interest (SBI rate + 6%) for the delayed period, shall be submitted by the bidder. Further, if performance security is not submitted till such time the first bill becomes due, the amount of performance security due shall be recovered as per terms defined in NIT / contract, from the bills along with due interest

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9. GOODS & SERVICE TAX (GST) REGISTRATION & COMPLIANCE

1. Response to Tenders for Indigenous supplier will be entertained only if the vendor has a valid GST registration No (GSTIN) which should be clearly mentioned in the offer. If the dealer is exempted from GST registration, a declaration with due supporting documents need to be furnished for considering the offer. Dealers under composition scheme should declare that he is a composition dealer supported by the screen shot taken from GST portal. The dealer has to submit necessary documents if there is any change in status under GST.
2. Supplier shall mention their GSTIN 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), Billed to party (with GSTIN) & Shipped to party details, item description as per PO, Quantity, Rate, Value, applicable taxes with nomenclature (like IGST, SGST, CGST & UTGST) separately, HSN/ SAC Code, Place of Supply etc.
3. All invoices shall bear the HSN Code for each item separately (Harmonized System of Nomenclature)/ SAC code (Services Accounting Code).
4. Invoices will be processed only upon completion of statutory requirement and further subject to following:
 - a) Vendor declaring such invoice in Form GST ANX-1
 - b) Receipt of Goods or Services and Tax invoice by BHEL
5. 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).
6. In case of discrepancy in the data uploaded by the 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 also to be uploaded in GSTN portal) for the shortages or rejections in the supplies or additional claims, within the calendar month informed by BHEL.
7. 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
8. 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.
9. 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.
10. 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.
11. 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.

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10. ORDERS UNDER THE CONTRACT

All orders, notices etc. to be given under the contract shall be in writing, typescript or printed and if sent by registered post to the address given in the tender of the Contract, shall be deemed to have been served on the date, when in the ordinary course they would have been delivered to him. The Contractor shall carry out without delay all orders given to him.

11. PRECAUTIONS AGAINST RISK

The Contractor shall be responsible for providing at his own expense for all precautions to prevent loss or damage from any and all risks and to minimize the amount of any such loss or damage and for the necessary steps to be taken for the said purpose.

12. DAMAGE / LOSS TO PROPERTY & INJURY TO WORKMEN

The Contractor shall at his own expense reinstate and make good to the satisfaction of the respective area HOD and pay compensation for any injury, loss or damage occurred to any property or rights whatever including property and rights of BHEL (or agents) servants or employee of BHEL, the injury loss or damage arising out of or in any way in connection with the execution or purported execution of the contract and further the contractor shall indemnify BHEL against all claims enforceable against BHEL (or any agent, servant or employee of BHEL) or which would be so enforceable against BHEL, in respect of any such injury (including injury resulting in death) loss or damage to any person whomsoever or property including all claims which may arise under the Employees Compensation Act or otherwise.

15 LAWS GOVERNING THE CONTRACT

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

16. CANCELLATION OF CONTRACT FOR CORRUPT ACTS

BHEL, whose decision shall be final and conclusive, shall without prejudice to any other right or remedy which shall have accrued, shall accrue thereafter to BHEL cancel the contract in any of the following cases and the Contractor shall be liable to make payment to BHEL for any loss or damage resulting from any such cancellation to the same extent as provided in the case of cancellation for default.

If the Contractor shall:

a) Offer or give or agree to give to any person in BHEL service any gift or consideration of any kind, as an inducement or reward for doing or for bearing to do or for having done or for having borne to do any act, in relation to the obtaining or execution of this or any other contract for BHEL service,

OR

b) enter into a contract or understanding with any person in BHEL in connection with which commission has been paid or agreed to be paid by him or with his knowledge, unless the particulars of any such commission and the terms of payment thereof have previously been disclosed in writing to BHEL,

OR

c) To obtain' a contract with BHEL as a result of ring tendering or by non-bonafide methods of competitive tendering, without first disclosing the fact in writing to BHEL.

17. CANCELLATION OF CONTRACT FOR INSOLVANCY ASSIGNMENT OR SUBLETTING OF CONTRACT

BHEL, without prejudice to any other right or remedy, which shall have accrued or shall accrue thereafter to BHEL, shall cancel the contract in any of the following cases:

If the Contractor,

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a) Being an individual or if a firm any partner thereof shall at any time be adjudged bankrupt or have a receiving order for administration of his estate, made against him or shall take any proceedings for liquidation or composition under any bankruptcy Act or assignment of his effects of composition or arrangement for the benefit of his creditors or purport to do so, or if any application made under any Bankruptcy Act for the time being in force for the sequestration of his estate or if a trust deed be granted by him on behalf of his creditors.

OR

b) Being a Company, shall pass a resolution or Court shall make an order for the liquidation of its assets, or a receiver or Manager on behalf of the debenture holders shall be appointed or circumstances shall arise which entitle the Court or debenture holders to appoint a receiver or Manager.

OR

c) Assigns, Transfers, Sublets or attempts to assign, transfer or sublet any portion of the work.

d) Whenever BHEL exercises the authority to cancel the contract under these conditions, BHEL may have the work done by any means at the Contractor's risks and expenses provided always that in the event of the cost of the work so done (as certified by the respective area **HOD**) being less than the contract cost, the advantage shall accrue to BHEL and if the cost exceeds the money due to Contractor under the contract, the Contractor shall either pay the excess amount ordered by the respective area **HOD** or the same shall be recovered from the Contractor by other means.

e) In case BHEL carries out the work under the provisions of this condition, the cost to be taken into account in determining the excess cost to be charged to the Contractor under this condition shall consist of the cost of the materials, hire charges of tools and plants and / or labour provided by BHEL with an addition of such percentage to cover superintendence and establishment charges as may be decided by the respective area **HOD** whose decision shall be final and conclusive.

f) Labour engaged by the contractor should be disciplined & exhibit good behaviour in dealing with employees of BHEL. Any misbehaviour or undesirable conduct of any person engaged by the contractor is reported, contractor shall change that person immediately or else it may even lead to termination of the contract & in such case security deposit will be forfeited as penalty.

18. CANCELLATION OF CONTRACT IN PART OR FULL ON CONTRACTOR'S DEFAULT

If the contractor:

a) makes default in carrying out the work as directed and continues in that state after a reasonable notice from the respective area **HOD** or his authorized representative:

b) fails to comply with any of the terms & conditions of the contract or failure to comply orders after reasonable notice in writing with orders properly issued thereunder:

BHEL may without prejudice to any other right or remedy which shall have accrued or shall accrue thereafter to BHEL CANCEL the contract as whole or in part thereof or only such work order or items of work in default from the contract. Whenever BHEL exercises the authority to cancel the contract as a whole or part under this condition, BHEL may complete the work at the contractor's risk and cost (as certified by the respective area **HOD** which is final and conclusive) being less than the contract cost, the advantage shall accrue to BHEL. If the cost exceeds the money due to the Contractor under this contract, the Contractor shall either pay the excess amount ordered by the respective area **HOD** or the same shall be recovered from the Contractor by other means. In case BHEL carries out the work or any part thereof under the provisions of the conditions the cost to be taken into account in determining the excess cost to be charged to the Contractor under this condition shall consist of the cost of the materials, hire charges of tools and plant and/or labour provided by BHEL with an addition of such percentage to cover the superintendence and establishment charges as may be decided by the respective area **HOD** whose decision shall be final and conclusive.

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19. TERMINATION OF CONTRACT ON DEATH OF CONTRACTOR

Without prejudice to any of the rights or remedies under this contract, if the Contractor dies, or if the firm is dissolved or the company is liquidated, BHEL shall have the option of terminating the contract without compensation to the Contractor.

20. SPECIAL POWER TO TERMINATION

If at any time after the award of contract, BHEL shall for any reason whatsoever not require whole or any part of the work to be carried out the respective area **HOD** shall give notice in writing of the fact to the Contractor who shall have no claim to any payment of compensation or otherwise howsoever on account of any profit or advantage which he might have derived from the execution of the work in full but which he did not derive in consequence of the foreclosing of the work.

21. RECOVERY FROM CONTRACTOR

Whenever under the contract, any sum of money, shall be recoverable from or payable by the Contractor, the same may be deducted from or any sum then due or which at any time thereafter may become due to Contractor under the contract or under any other contract with BHEL or from his Security Deposit unless the contractor pays the claim on demand.

22. POST TECHNICAL AUDIT OF SUPPLY AND BILLS

BHEL reserves the right to carry out the post-payment Audit and technical examination of the Supply, Erection and commissioning of Equipment and final bill including all supporting vouchers, abstracts etc., and enforce recovery of any sum becoming due as a result thereof in the manner provided in the presiding sub- paragraphs. However, no such recovery shall be enforced after three years of passing the final bill.

23. REFUND OF SECURITY DEPOSIT

The Security Deposit may be refunded to the Contractor after completion of the contract provided, after the Contractor shall first have been paid the last and final bill and have rendered a "NO DEMAND CERTIFICATE".

24. FORCE MAJEURE CLAUSE

24.1 "Force Majeure" shall mean circumstance which is:

- a) beyond control of either of the parties to contract,
- b) either of the parties could not reasonably have provided against the event before entering into the contract,
- c) having arisen, either of the parties could not reasonably have avoided or overcome, and
- d) is not substantially attributable to either of the parties

And
Prevents the performance of the contract,
i. War, hostilities, invasion, act of foreign enemies.
ii. Rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war.
iii. Riot, commotion or disorder by persons other than the contractor's personnel and other employees of the contractor and sub-contractors.
iv. Strike or lockout not solely involving the contractor's personnel and other employees of the contractor and sub-contractors.
v. Encountering munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to the contractor's use of such munitions, explosives, radiation or radio- activity.

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- vi. Natural catastrophes such as earthquake, tsunami, volcanic activity, hurricane or typhoon, flood, fire, cyclones etc.
- vii. Epidemic, pandemic etc.

24.2 The following events are explicitly excluded from Force Majeure and are solely the responsibilities of the non-performing party: a) any strike, work-to-rule action, go-slow or similar labour difficulty b) late delivery of equipment or material (unless caused by Force Majeure event) and (c) economic hardship.

24.3 If either party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within 15 (fifteen) days after the occurrence of such event.

24.4 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered or delayed. The Time for Completion shall be extended by a period of time equal to period of delay caused due to such Force Majeure event.

24.5 Delay or non-performance by either party hereto caused by the occurrence of any event of Force Majeure shall not

v) Constitute a default or breach of the Contract.

vi) Give rise to any claim for damages or additional cost expense occasioned thereby, if and to the extent that such delay or non-performance is caused by the occurrence of an event of Force Majeure.

24.6 BHEL at its discretion may consider short closure of contract after 1 year of imposition of Force Majeure in line with extant guidelines. In any case, Supplier/Vendor cannot consider deemed short-closure after 1 year of imposition of Force Majeure.

25. SETTLEMENT OF DISPUTES

If any dispute or difference of any kind whatsoever shall arise between BHEL and the Supplier/Vendor, arising out of the contract for the performance of the work whether during the progress of contract termination, abandonment or breach of the contract, it shall in the first place referred to Designated Engineer for amicable resolution by the parties. Designated Engineer (to be nominated by BHEL for settlement of disputes arising out of the contract) who within 60 days after being requested shall give written notice of his decision to the contractor. Save as hereinafter provided, such decision in respect of every matter so referred shall forthwith be given effect to by the Supplier/Vendor who shall proceed with the work with all due diligence, whether he or BHEL desires to resolve the dispute as hereinafter provided or not.

If after the Designated Engineer has given written notice of this decision to the party and no intention to pursue the dispute has been communicated to him by the affected party within 30 days from the receipt of such notice, the said decision shall become final and binding on the parties. In the event the Supplier/Vendor being dissatisfied with any such decision or if amicable settlement cannot be reached then all such disputed issues shall be resolved through conciliation in terms of the BHEL Conciliation Scheme 2018.

26. CONCILIATION

Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure as per BHEL Conciliation Scheme 2018. The proceedings of Conciliation shall broadly be

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governed by Part-III of the Arbitration and Conciliation Act 1996 or any statutory modification thereof and as provided in - "Procedure for conduct of conciliation proceedings" (as available in www.bhel.com).

Note: Ministry of Finance has issued OM reference No. 1/2/24 dated 03.06.2024 regarding "Guidelines for Arbitration and Mediation in Contracts of Domestic Public Procurement. In the said OM it has been recommended that Government departments/ Entities/agencies are to encourage mediation under the Mediation Act. 2023. Entities/agencies are to encourage mediation under the Mediation Act. 2023. The said Act has not yet been notified by the Government. Therefore, the clause "Settlement of Disputes" shall be modified accordingly as and when the Mediation Act 2023 gets notified.

27. ARBITRATION

27.1 Except as provided elsewhere in this NIT, in case Parties are unable to reach an amicable settlement (whether by Conciliation to be conducted as provided in Clause-26 herein above or otherwise) 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 (hereinafter referred to as the 'Dispute'), then, either Party may, refer the disputes to Arbitral Institution "**Arbitration & Conciliation Centre, Bengaluru (Domestic and International)**" and such dispute to be adjudicated by Sole Arbitrator appointed in accordance with the **Arbitration Centre - Karnataka (Domestic and International) Rules, 2012**.

27.2 A Party willing to commence arbitration proceeding shall invoke Arbitration Clause by giving notice to the other party in terms of section 21 of The Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Notice') before referring the matter to arbitral institution.

The Notice shall be addressed to the Head of the Region, Power Sector/ Unit, BHEL, executing the Contract and shall contain the particulars of all claims to be referred to arbitration with sufficient detail and shall also indicate the monetary amount of such claim including interest, if any.

27.3 After expiry of 30 days from the date of receipt of aforesaid notice, the party invoking the Arbitration shall submit that dispute to the **Arbitration & Conciliation Centre, Bengaluru (Domestic and International)** and that dispute shall be adjudicated in accordance with their respective Arbitration Rules **Arbitration Centre - Karnataka (Domestic and International) Rules, 2012**. The matter shall be adjudicated by a Sole Arbitrator who shall necessarily be a Retd. Judge having considerable experience in commercial matters to be appointed/nominated by the respective institution. The cost/expenses pertaining to the said Arbitration shall also be governed in accordance with the Rules of the respective Arbitral Institution. The decision of the party invoking the Arbitration for reference of dispute to a specific Arbitral institution for adjudication of that dispute shall be final and binding on both the parties and shall not be subject to any change thereafter. The institution once selected at the time of invocation of dispute shall remain unchanged.

27.4 The fee and expenses shall be borne by the parties as per the Arbitral Institutional rules.

27.5 The Arbitration proceedings shall be in English language and the seat and venue of Arbitration shall be in Bengaluru, Karnataka only.

27.6 Subject to the above, the provisions of The Arbitration & Conciliation Act 1996 and any amendment thereof shall be applicable. All matters relating to this Contract and arising out of invocation of Arbitration clause are subject to the exclusive jurisdiction of the Court(s) situated at Bengaluru Karnataka only.

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27.7 Notwithstanding any reference to the Designated Engineer or Conciliation or Arbitration herein, the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree. Settlement of Dispute clause cannot be invoked by the Contractor, if the Contract has been mutually closed or 'No Demand Certificate' has been furnished by the Contractor or any Settlement Agreement has been signed between the Employer and the Contractor.

27.8 It is agreed that Mechanism of resolution of disputes through arbitration shall be available only in the cases where the value of the dispute is less than Rs. 10 Crores.

27.9 In case the disputed amount Claim, Counter claim including interest is Rs. 10 crores and above, the parties shall be within their rights to take recourse to remedies other than Arbitration, as may be available to them under the applicable laws after prior intimation to the other party. Subject to the aforesaid conditions, provisions of the Arbitration and Conciliation Act, 1996 and any statutory modifications or re-enactment thereof as amended from time to time, shall apply to the arbitration proceedings under this clause.

27.10 In case, multiple arbitrations are invoked (whether sub-judice or arbitral award passed) by any party to under this contract, then the cumulative value of claims (including interest claimed or awarded) in all such arbitrations shall be taken in to account while arriving at the total claim in dispute for the subject contract for the purpose of clause 27.9. Disputes having cumulative value of less than 10 crores shall be resolved through arbitration and any additional dispute shall be adjudicated by the court of competent jurisdiction.

27.11 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 (Administrative Mechanism for Resolution of CPSEs Disputes) as mentioned in DPE OM No.05/0003/2019-FTS-10937 dated 14-12-2022 as amended from time to time

28. JURISDICTION:

This contract shall be governed by the Law for the time being in force in the Republic of India.

Indian laws both substantive and procedural, for the time being in force, including modifications thereto, shall govern the Contract. In case of any suit or other legal proceedings arising under or relating to this Contract, the courts at Bengaluru, Karnataka only shall have the Jurisdiction.

29. SECRACY OF CONFIDENTIAL INFORMATION:

The Contractor undertakes and agrees that he/it will not disclose or reveal in part or full the proprietary /confidential information, which terms shall mean and include patents, trademarks, service marks, registered designs, copyright, design rights, know-how, confidential information, trade and business names and any other similar protected information of BHEL received during negotiation or currency of the contract to any third party or governmental authorities without written permission from BHEL. In the event of termination or expiry of the

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contract, the contractor shall return all proprietary/confidential information to BHEL. This clause shall survive termination or expiry of the contract.

BHEL reserves the right to initiate appropriate action including legal proceeds / termination of contract, recovery of damages, penalties etc., if the contractor is found guilty / wrong usage of the documents given by BHEL for any unauthorised activity.

The bidders shall enter into the Non-disclosure agreement separately. (Format attached).

30. SIGNING OF CONTRACT

Each contract document shall be signed by the Contractor with his usual signature. Contract by partnership or Hindu Joint Family firm, may be signed in the FIRM'S name by the Managing Partner or all /one of the Partners on behalf of the firm or the Karta or Manager for HUF as the case may be. Contract by a Company shall be signed with the name of the Company from a person authorised in this behalf and a Resolution or power of attorney or other satisfactory proof, showing that the person signing the Contract documents on behalf of the Company is duly authorised to do so, shall accompany the contract.

29. FRAUD PREVENTION POLICY

The Bidder along with its associate / collaborators / 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 fraud or suspected fraud as soon as it comes to their notice”.

Fraud Prevention policy and List of Nodal Officers shall be hosted on BHEL website, vendor portals of Units / Regions intranet.

30. CONFLICT OF INTEREST

"A bidder shall not have conflict of interest with other bidders. Such conflict of interest can lead to anti-competitive practices to the detriment of Procuring Entity's interests. The bidder found to have a conflict of interest shall be disqualified. A bidder may be

considered to have a conflict of interest with one or more parties in this bidding process, if: a) they have controlling partner (s) in common; or

b) they receive or have received any direct or indirect subsidy/ financial stake from any of them; or c) they have the same legal representative/agent for purposes of this bid; or

d) they have relationship with each other, directly or through common third parties, that puts them in a position to have access to

information about or influence on the bid of another Bidder; or

e) Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the

disqualification of all bids in which the parties are involved. However, this does not limit the inclusion of the components/ subassembly/

Assemblies from. one bidding manufacturer in more than one bid; or

f) In cases of agents quoting in offshore procurements, on behalf of their principal manufacturers, one agent cannot represent two

manufacturers or quote on their behalf in a particular tender enquiry. One manufacturer can also authorize only one agent/dealer.

There can be only one bid from the following:

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1. The principal manufacturer directly or through one Indian agent on his behalf; and
 2. Indian/foreign agent on behalf of only one principal; or
 - g) A Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the contract that is the subject of the Bid; or
 - h) In case of a holding company having more than one independently manufacturing units, or more than one unit having common business ownership/management, only one unit should quote. Similar restrictions would apply to closely related sister companies.
- Bidders must proactively declare such sister/ common business/ management units in same/ similar line of business. "

31. SUSPENSION OF BUSINESS DEALINGS WITH SUPPLIERS / CONTRACTORS:

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

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

If any bidder / supplier / contractor during pre-tendering / tendering / post tendering / award / execution / post-execution stage indulges in any act, including but not limited to, 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 tampers the tendering process 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, or does anything which is actionable under the Guidelines for Suspension of Business dealings, 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

32. BREACH OF CONTRACT, REMEDIES AND TERMINATION:

The following shall amount to breach of contract:

- i. Non-supply of material/ non-completion of work by the Supplier/Vendor within scheduled delivery/ completion period as per contract or as extended from time to time.
- ii. The Supplier/Vendor fails to perform as per the activity schedule and there are sufficient reasons even before expiry of the delivery/ completion period to justify that supplies shall be inordinately delayed beyond contractual delivery/ completion period.
- iii. The Supplier/Vendor delivers equipment/ material not of the contracted quality.
- iv. The Supplier/Vendor fails to replace the defective equipment/ material/ component as per guarantee clause.
- v. Withdrawal from or abandonment of the work by the Supplier/Vendor before completion as per contract.
- vi. Assignment, transfer, subletting of Contract by the Supplier/Vendor without BHEL's written permission resulting in termination of Contract or part thereof by BHEL.
- vii. Non-compliance to any contractual condition or any other default attributable to Supplier/Vendor.
- viii. Any other reason(s) attributable to Vendor towards failure of performance of contract. In case of breach of contract, BHEL shall have the right to terminate the Purchase Order/ Contract either in whole or in part thereof without any compensation to the Supplier/Vendor.

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ix. Any of the declarations furnished by the contractor at the time of bidding and/ or entering into the contract for supply are found untruthful and such declarations were of a nature that could have resulted in non-award of contract to the contractor or could expose BHEL and/ or Owner to adverse consequences, financial or otherwise.

x. Supplier/Vendor is convicted of any offence involving corrupt business practices, antinational activities or any such offence that compromises the business ethics of BHEL, in violation of the Integrity Pact entered into with BHEL has the potential to harm the overall business of BHEL/ Owner.

Note- Once BHEL considers that a breach of contract has occurred on the part of Supplier/Vendor, BHEL shall notify the Supplier/Vendor by way of notice in this regard. Contractor shall be given an opportunity to rectify the reasons causing the breach of contract within a period of 14 days.

In case the contractor fails to remedy the breach, as mentioned in the notice, to the satisfaction of BHEL, BHEL shall have the right to take recourse to any of the remedial actions available to it under the relevant provisions of contract.

REMEDIES IN CASE OF BREACH OF CONTRACT

Wherein the period as stipulated in the notice issued under clause -32 has expired and Supplier/Vendor has failed to remedy the breach, BHEL will have the right to terminate the contract on the ground of "Breach of Contract" without any further notice to contractor.

ii. Upon termination of contract, BHEL shall be entitled to recover an amount equivalent to 10% of the Contract Value for the damages on account of breach of contract committed by the Supplier/Vendor. This amount shall be recovered by way of encashing the security instruments like performance bank guarantee etc. available with BHEL against the said contract. In case the value of the security instruments available is less than 10% of the contract value, the balance amount shall be recovered from other financial remedies (i.e. available bills of the Supplier/Vendor, retention amount, from the money due to the Supplier/Vendor etc. with BHEL) or the other legal remedies shall be pursued.

iii. wherever the value of security instruments like performance bank guarantee available with BHEL against the said contract is 10% of the contract value or more, such security instruments to the extent of 10% contract value will be encashed. In case no security instruments are available or the value of the security instruments available is less than 10% of the contract value, the 10% of the contract value or the balance amount, as the case may be, will be recovered in all or any of the following manners:

iv. In case the amount recovered under sub clause (a) above is not sufficient to fulfil the amount recoverable then; a demand notices to deposit the balance amount within 30 days shall be issued to Supplier/Vendor.

v. If Supplier/Vendor fails to deposit the balance amount within the period as prescribed in demand notice, following action shall be taken for recovery of the balance amount:

- a. from dues available in the form of Bills payable to defaulted Supplier/Vendor against the same contract.
- b. If it is not possible to recover the dues available from the same contract or dues are insufficient to meet the recoverable amount, balance amount shall be recovered from any money(s) payable to Supplier/Vendor under any contract with other Units of BHEL including recovery from security deposits or any other deposit available in the form of security instruments of any kind against Security deposit or EMD.

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c. In-case recoveries are not possible with any of the above available options, Legal action shall be initiated for recovery against defaulted supplier/Vendor.

vi. It is an agreed term of contract that this amount shall be a genuine pre-estimate of damages that BHEL would incur in completion of balance contractual obligation of the contract through any other agency and BHEL will not be required to furnish any other evidence to the Supplier/Vendor for the purpose of estimation of damages.

vii. In addition to the above, imposition of liquidated damages, debarment, termination, descoping, short-closure, etc., shall be applied as per provisions of the contract.

Note:

1) The defaulting Supplier/Vendor shall not be eligible for participation in any of the future enquiries floated by BHEL to complete the balance work. The defaulting contractor shall mean and include:

(a) In case defaulted Supplier/Vendor is the Sole Proprietorship Firm, any Sole Proprietorship Firm owned by same Sole Proprietor.

(b) In case defaulted Supplier/Vendor is The Partnership Firm, any firm comprising of same partners/ some of the same partners; or sole proprietorship firm owned by any partner(s) as a sole proprietor.

33. INTEGRITY COMMITMENTS

Integrity Commitment: 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 website www.bhel.com. Integrity commitment, performance of the contract and punitive action thereof:

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.

COMMITMENT BY BIDDER/ SUPPLIER/ CONTRACTOR

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 tantamount to an offence punishable under any provision of the Indian Penal code, 1860 or any other law in force in India.

- 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

- 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 the extant guidelines of the company available on www.bhel.com and / or under applicable legal provisions.

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-The Bidder declares that they will not enter into any illegal or undisclosed agreement or understanding, whether formal or informal with other Bidder(s). This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.

In case, the Bidder is found having indulged in above activities, suitable action shall be taken by BHEL as per extant policies/ guidelines

34. PREFERENCE TO MAKE IN INDIA

“For this procurement, Public Procurement (Preference to Make in India), Order 2017 dated 15.06.2017 & 28.05.2018 and subsequent Orders issued by the respective Nodal Ministry shall be applicable even if it is issued after this NIT but before finalization of contract / PO / WO against this NIT. In the event of any Nodal Ministry prescribing higher or lower percentage of purchase preference and / or local content in respect of this procurement, same shall be applicable.

35. ELIGIBILITY OF A 'BIDDER FROM A COUNTRY WHICH SHARES A LAND BORDER WITH INDIA'

(Order (Public Procurement No. 1) dated 23.07.2020, Order (Public Procurement No. 2) dated 23.07.2020 and Order (Public Procurement No. 3) dated 24.07.2020 issued by Department of Expenditure, Ministry of Finance, Govt, of India in this regard are available at website <https://doe.gov.in/procurement-policy-divisions>)

1) Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority. [Competent Authority for the purpose of registration shall be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT), as mentioned under Annex I of the Order (Public Procurement No.1) dated 23.07.2020]

2) "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency, branch or office controlled by such person, participating in a procurement process.

3) "Bidder from a country which-shares a land border with India" for the purpose of this Order means; -

- a. An entity incorporated, established or registered in such a country; or
- b. A subsidiary of an entity incorporated, established or registered in such a country; or
- c. An entity substantially controlled through entities incorporated, established or registered in such a country; or
- d. An entity whose beneficial owner is situated in such a country; or
- e. An Indian (or other) agent of such an entity; or
- f. A natural person who is a citizen of such a country; or
- g. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above.

4) The beneficial owner for the purpose of (3) above will be as under:

(i) In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person (s), has a controlling ownership interest or who exercises control through other means.

Explanation

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a. "Controlling ownership interest" means ownership of or entitlement to, more than twenty-five per cent, of shares or capital or profits of the company;

b. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholder's agreements or voting agreements;

(ii) In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;

(iii) In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;

(iv) Where no natural person is identified under (i) or (ii) or (iii) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

(v) In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

5) An Agent is a person employed to do any act for another, or to represent another in dealings with third person.

36. OPTION CLAUSE:

The Purchaser reserves the right to decrease the quantity to be ordered at the time of placement of contract. The purchaser also reserves the right to increase the ordered quantity by up to 25% of the contracted quantity during the currency of the contract at the contracted rates. Bidders are bound to accept the orders accordingly.

37. RIGHT OF REJECTION / NON -PLACEMENT OF PO

BHEL reserves the right to accept the offers in part or in full, or cancel the Tender enquiry without assigning any reason.

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