

Annexure-II

Commercial / General Terms and Conditions

1. BIDDER TO INFORM HIMSELF FULLY:

- 1.1. The bidder shall closely peruse all the clauses, specifications, drawings etc., specified in the tender documents, and the offer made should be in accordance with these documents. If bidder requires any clarification and additional information on any of the tender documents/conditions, the bidder shall contact the BHEL Official inviting bids at the earliest.
- 1.2. Bidders are advised to study all the tender documents carefully and submit their offer and the Bidder is obliged to honor the offer without any modifications. Any offer not meeting the scope/specifications, terms, conditions, and any other clause specified in the tender documents shall be liable to be rejected.
- 1.3. No Counter Conditions will be accepted and bids with counter conditions will be liable for rejection. Any deviations shall be indicated under relevant clauses only.

2. PROCEDURE FOR SUBMISSION OF BIDS

- 2.1. Tender dates and Tender documents are available in the BHEL Website http://bhel.com/tender/list_tender.php. Tender documents may be downloaded. Any corrigendum will be published on the web site only and vendors are advised to periodically visit the web site.
- 2.2. Earnest Money Deposit (EMD): EMD of Rs **2,00,000/-** shall be submitted with the offer, in the form of Demand Draft from any nationalized bank / scheduled bank, drawn in favour of M/s Bharat Heavy Electricals Limited, Ramachandrapuram, Payable at Hyderabad.
- 2.3. The Techno-Commercial bid and the Price Bid shall be submitted on or before 11:00 Hrs of the due date specified in the tender notification.
- 2.4. Offer shall be made in two parts in separate envelopes, as specified below.

Part-I: Techno-Commercial Bid

This part shall consist of the following documents in a separate envelope:

- a. Demand Draft for Rs **2,00,000/** towards EMD (Earnest Money Deposit).
- b. Annexure-I (Scope, Technical Criteria, Maintenance, Lease Rentals), Annexure-II (Commercial / General Terms & Conditions), Annexure-III (Lease Agreement Format) - duly completed and signed.
- c. Annexure-IV - Price Bid without price/values, but specifying the applicable Levies/Taxes - duly completed and signed.
- d. Documents as required for Bidder's qualification criteria.

Part-II: Price Bid

This part shall consist of the following documents in a separate envelope:

- a. Price Bid as per the format defined in Annexure-IV. The prices shall be quoted in Indian Rupees only.
- b. Price Bid shall not contain any technical details and/or Techno-Commercial terms/conditions.

Name:

Company Seal

Signature: with Date:

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3. MARKING ON THE ENVELOPE

3.1 The offer – Part-I and Part-II – shall be enclosed in separate envelopes with bidder’s distinctive SEAL and super-scribed with the details given below:

PART-I: **1. “PART-I: TECHNO-COMMERCIAL BID”**
 2. Tender Reference and Description of the Tender
 3. Due Date for Opening of the Tender

PART-II: **1. “PART-II: PRICE BID”**
 2. Tender Reference and Description of the Tender
 3. Due Date for Opening of the Tender

The two Envelopes of Part-I and Part-II shall be enclosed in another envelope and submitted with markings specified below:

1. Tender Notice / Tender Reference and Description of the Tender
2. Due Date for Opening of the Tender
3. Bidder's Address and SEAL

Note: Un-sealed envelopes and envelopes not super-scribed as above are liable to be rejected.

4. BID SUBMISSION

4.1 Bids shall be sent to the following address:

Sr Manager, Purchase-co-ordination
VENDOR COMPLEX,
BHEL, RAMACHANDRAPURAM,
HYDERABAD – 502032

Alternatively, Bids may be dropped in the tender box in the Vendor Complex.

Late / delayed Bids will be rejected.

5. BID OPENING

5.1 PART-I (Techno-commercial bid) shall be opened on the due date and time as specified in the Tender Notification. Bidder’s representatives may attend Tender Opening and no further intimation will be given in this regard.

5.2 Part-II (Price Bid) shall be opened only for such bids/offers, which have qualified after evaluation of PART-I. For Price Bid (Part-II) opening, date and time of Price opening shall be intimated to the qualified bidders only.

5.3 Not more than two representatives will be permitted to be present for the tender opening. Representative participating in Tender Opening must bring company’s authorization letter.

6. VALIDITY OF OFFER

6.1 The offer shall have a minimum validity period of FOUR months from Tender Opening Date.

7. TENDER EVALUATION

7.1 PART-I will be evaluated to verify bidder satisfying the criteria for Techno-Commercial Bid.

7.2 The offers will be evaluated based on Total Value for the Tender.

7.3 BHEL reserves the right to carry out negotiations with bidder on the tender offer / price.

Name:

Company Seal

Signature: with Date:

7.4 No weightage or preference will be given for higher/additional warranty/configuration/rating, than what is required as per tender specifications.

8. EMD

8.1 EMD of the Bidder will be forfeited if:

- a. after opening the tender, the bidder revokes the bid/offer within the validity period.
- b. the successful bidder does not commence the work as per the terms Contract.

8.2 EMD shall be refunded to unsuccessful bidders, **normally within fifteen days of acceptance** of award of work by the successful bidder.

8.3 EMD of successful bidder will be converted to Security Deposit. If Security Deposit is not applicable or provided in other form/mode, EMD will be refunded after commencement of work.

8.4 EMD shall not carry any interest.

9. DELIVERY, INSATALLTION, PENALTY and TERMINATION

9.1 **DELIVERY:** Delivery Period will be TEN WEEKS for the SAN Storage and SAN Switch, from the Purchase Order Date. Accessories shall be supplied to match the installation schedules. Any delay in supplies will attract Penalty at the rate ½ % per week of delay on Outright Purchase Value, subject to a maximum of 10% of Outright Purchase Value. Total Penalty will be deducted from the initial Lease Payments.

9.2 **INSTALLATION:** Installation / implementation schedules shall be given by the Vendor in consultation with BHEL.

9.3 **TERMINATION:** BHEL reserves the right to cancel the order for delay or non-performance, without any monetary or legal obligations.

10. PERFORMANCE and LEASE RENTAL PAYMENT TERMS

10.1 Lease Rentals will be paid on quarterly basis, on successful completion of each quarter as per SLA and on certification by BHEL, within 90 days from the date of Invoice acceptance. Payment to SSI Units (Registered with BHEL) will be made within 45 days from the date of despatch / invoice. Invoice shall be submitted in TRIPLICATE. In no case BHEL shall accept to pay advance / liability towards interest.

10.2 Any fall in uptime limit of 99.99% on quarterly basis, will result in proportionate deduction (Penalty) from Lease Payments for the quarter.

11. LANGUAGE AND CORRECTIONS

11.1 The offer shall be in English only and international numerals shall be used.

12. AGREEMENT

12.1 The Successful bidder shall enter into a Lease Agreement with BHEL on non-judicial stamp paper of required value, at vendor's own cost, in the format specified by BHEL.

13. GOVERNING LAW

13.1 This contract shall be governed in all respects by India Law.

14. ASSIGNMENT

14.1 No part of this contract shall be assigned without the consent of BHEL.

Name:

Company Seal

Signature: with Date:

15. CONFIDENTIALTY

- 15.1 Vendor shall, at all times, undertake to maintain complete confidentiality of all data, information, software, drawings & documents, etc. belonging to the BHEL and also of the Systems, procedures, reports, input documents, manuals, results and any other company documents discussed and/or finalized during the course of execution of the order/contract.
- 15.2 Non-Disclosure clause will be applicable during the execution of contract.

16. EXEMPTIONS, CHANGES IN CONDITIONS

- 16.1 FORCE MAJURE: BHEL and/or Vendor shall not be responsible for delay or failure of performance of any of its obligations under arising out of this contract if the delay or failure results from any of the following conditions - any unforeseeable acts/events beyond the control of the parties, and include natural disasters (earthquake, storm, floods), wars, riots, accidents, strikes, lockouts, epidemics, fire and Government Regulations superimposed after the date of order/contract.
- 16.2 In the event of the occurrence of any cause constituting FORCE MAJURE, the affected Party shall give notice with full particulars in writing to the other Party, of such occurrence or cause if the affected Party is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under the Contract, within fifteen days from the event of force majeure.
- 16.3 If the Vendor is rendered unable, wholly or in part, by reason of force majeure to perform its obligations and meet its responsibilities under the contract, BHEL shall have the right to terminate the Contract on the same terms and conditions as are provided for in 'Termination' clause.

17. ARBITRATION

- 17.1 All disputes arising in connection with the contract shall be settled by mutual consultation/conciliation. If no agreement is reached, the dispute shall be settled in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and the rules made there under. The dispute shall be referred for arbitration to any arbitrator to be appointed by the Head of the Unit, BHEL. The award of the arbitrator shall be final and binding on both the Parties. The venue of the Arbitration shall be at Hyderabad in India. The Award to be given by the Arbitration shall be a speaking award. All questions, disputes, differences arising under, out of or in connection with this contract shall be to the exclusive jurisdiction of Sangareddy Courts.

18. ALTERATIONS, REJECTION OF BID AND OTHER CONDITIONS

- 18.1 Any clarification pertaining to this tender can be obtained from DGM/IT, Informatics Centre, BHEL, Ramachandrapuram, Hyderabad on all working days of BHEL between 14:00 Hrs to 16:00 Hrs. Bidders are requested to seek appointment on telephone **040-23182188 / 23182654**.
- 18.2 BHEL reserves the right to cancel the tender without assigning any reason.
- 18.3 BHEL reserves the right to reject the technical bid/offer at any stage of the tender with proper reasons.
- 18.4 Bidders are requested to provide complete data / information as required by the tender documents. Any format not properly filled, partially filled or not filled or documents not provided will make the bid liable for rejection.
- 18.5 Non-compliance with any of the requirements and instructions of the Tender Enquiry may result in the rejection of the bid.
- 18.6 Resubmission / cancellation of offers, as desired by bidder, may be done before Tender due Date & Time. The covers containing modified bids shall be clearly marked as 'REVISED BID'.
- 18.7 If the bidder deliberately gives wrong information, BHEL reserves the right to reject such a bid at any stage or to cancel the Order/Contract.

Name:

Company Seal

Signature: with Date:

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Tender Description: ERD-SAN Storage 5-Year Lease

- 18.8 Equipment offered must have certifications as per the tender requirement and/or as applicable by relevant standard. Future expectations of certification, conditional certifications, variation in certification and certification for equipment different from the make and model offered in the bid is not acceptable.
- 18.9 BHEL is entitled to ask for any equipment for evaluation. Bidders are requested to note that they shall provide equipment exactly as per specification without any charge and precondition(s) to BHEL within ONE week of receiving such notice and demonstrate the equipment capability. Upon completion of such evaluation BHEL shall return the equipment to the bidder.

19. CHECKLIST OF FORMATS

SNo	Documents with PART-I: Techno-Commercial Bid	Format / Annexure	Whether Attached(Yes/No)
1	Scope, Technical Criteria, Maintenance, Lease Rentals (duly filled in and signed)	Annexure-I	
2	Commercial / General Terms and Conditions (duly filled in and signed)	Annexure-II	
3	Lease Agreement Format as per Works Contract Policy (duly filled in and signed)	Annexure-III	
4	Copies of documents required for Qualification Criteria – Authorization from OEMs for 5-Year Support, Contracts executed, Annual Financial Statements, etc.		
5	Copies of the certificates in proof of fulfilling statutory requirements / registrations applicable for the execution of Works Contract.		
6	EMD - Rs 2,00,000/- (Copy of Registration with NSIC)		
7	Price Bid without prices, but indicating the applicable Taxes and applicable Rates for the Taxes.	Annexure-IV	
8	Complete Bill of Materials for Solution, with OEM Part Numbers, Technical Data Sheets, Certifications, Interoperability matrix		
9	Installation / Implementation Schedule		

Vendor Details

Vendor Contact Address	
Contact Official	
Phone / Mobile for communication	
Email for correspondence	

Note: Tender documents shall not be modified and bidder shall only fill in the information as required in the tender documents.

Name:

Company Seal

Signature: with Date:

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Annexure-III

Contract Ref: Tender Ref: IT/C/04/2012/ERD_SAN

Agreement for ERD-SAN Storage Lease

This Agreement is made on this _____ day of _____ 2012 between M/s. Bharat Heavy Electricals Limited, a company incorporated under the Indian Companies Act, 1956 having its registered Office at Siri Fort, New Delhi and one of its Units at Ramachandrapuram, Hyderabad (herein after referred to as 'BHEL', which expression shall, unless excluded by or repugnant to the context be deemed to include its successors and assignees) on one part

AND

M/s _____, a company incorporated under the Indian Companies Act, 1956 and having its registered Office at _____ (herein after referred to as 'Vendor', which expression shall, unless excluded by or repugnant to the context be deemed to include its successors and assignees).

WHEREAS, BHEL has invited offers for 'ERD-SAN Storage 5-Year Lease', vide Tender No: _____ Dated: xx.xx.2012. And whereas, the 'Vendor' has proposed to provide the services for the referred work vide ref _____.

In pursuance of the above, BHEL has accepted the said offer and awarded contract to the 'Vendor' through Letter Order: _____ Dated: xx.x.2012 for 'ERD-SAN Storage 5-Year Lease' for Supply, Installation, Configuration and Maintenance of ERD-SAN Storage on Lease basis.

NOW THEREFORE, BOTH THE PARTIES HAVE SET-FORTH THE FOLLOWING TERMS AND CONDITIONS AS HEREUNDER:

Period of the contract: The Lease Contract period shall be FIVE years from the date of commissioning and acceptance by BHEL as per the Order.

SCOPE OF WORK:

- 1.4. The scope of work as per the Letter Order and Tender Documents.
 - 1.1.1 Supply and Installation of Compact High Performance SAN Storage as per this specification at BHEL, Ramachandrapuram, Hyderabad.
 - 1.1.2 Migration of Applications / Data to the new SAN Storage and Technical Support for the operation of SAN.
 - 1.1.3 Comprehensive Maintenance and Support of the ERD-SAN for the Lease period.

SUPPORT and MAINTENANCE:

- 2.1. 'Vendor' is responsible for comprehensive maintenance consisting of:
 - 2.1.1 Service, Repair / Replacement of faulty equipment
 - 2.1.2 Configuration, Trouble shooting, Performance Testing
 - 2.1.3 Service / Support – Next Business Day

Name:

Company Seal

Signature: with Date:

WARRANTY and LICENSE:

- 3.1. The 'VENDOR' shall undertake to provide OEM support for the Equipment and Software during the Lease period.
- 3.2. The 'VENDOR' shall arrange all licenses and applicable updates for the use of the equipment during the Lease Period.

Configuration / Customization:

- 4.1. All configuration and customization of the equipment shall be the property of BHEL and the 'VENDOR' has no right to claim copyrights/patent or whatsoever.

PAYMENT TERMS:

- 5.1. Payment of Lease Rentals will be on quarterly basis as per tender conditions.
- 5.2. 'VENDOR' shall submit bills with performance report after completion of each quarter. BHEL will certify for payment after ensuring the performance / support levels are satisfactory.
- 5.3. Payment will be made within 90 days from the date of Invoice acceptance. Payment to SSI Units (Registered with BHEL) will be made within 45 days from the date of despatch / invoice. In no case BHEL shall accept to pay advance / liability towards interest.

EXECUTION, PENALTY and TERMINATION:

- 6.1. PENALTY: Any fall in uptime below 99.99% in a quarter will result in the deduction of Lease Rental on a proportionate basis.
- 6.2. TERMINATION: BHEL reserves the right to cancel the order for delay or non-performance of the 'VENDOR' i.e. not meeting performance / support / maintenance levels, without any monetary or legal obligations on part of BHEL.

GOVERNING LAW:

- 7.1. This contract shall be governed in all respects by India Law.

ASSIGNMENT:

- 8.1. No part of this contract shall be assigned without the consent of BHEL.

INDEMNITY:

- 9.1. 'VENDOR' shall fulfill all statutory and safety requirements for personnel engaged in the contract execution. Due to noncompliance of the applicable statutory provisions, if BHEL has to incur any expenditure in this regard the same will be compensated by the 'VENDOR'.
- 9.2. Vendor shall indemnify and hold BHEL harmless against any and all claims, suits, damages, costs and other liabilities connected with equipment under lease.

Name:

Company Seal

Signature: with Date:

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CONFIDENTIALTY:

- 10.1. 'VENDOR' shall, at all times, undertake to maintain complete confidentiality of all data, information, software, drawings & documents, etc. belonging to the BHEL and also of the Systems, procedures, reports, input documents, manuals, results and any other company documents discussed and/or finalized during the course of execution of the order/contract. The infringement of this clause shall entail the 'Company' for cancellation of the contract and for forfeiting of EMD / Security Deposit and any amount due to be paid as on that date.
- 10.2. Non-Disclosure: The Vendor agrees to access information that is only relevant for system maintenance / support as per the scope of this contract and not to access any other information in any manner. The information that is accessed / shared with respect to this contract also will be kept confidential and shall not disclose to any other party.

EXEMPTIONS, CHANGES IN CONDITIONS:

- 11.1. FORCE MAJURE: BHEL and/or 'VENDOR' shall not be responsible for delay or failure of performance of any of its obligations under arising out of this contract if the delay or failure results from any of the following conditions - any unforeseeable acts/events beyond the control of the parties, and include natural disasters (earthquake, storm, floods), wars, riots, strikes, lockouts, epidemics, fire and Government Regulations superimposed after the date of order/contract.
- 11.2. In the event of the occurrence of any cause constituting FORCE MAJURE, the affected Party shall give notice with full particulars in writing to the other Party, of such occurrence or cause if the affected Party is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under the Contract, within fifteen days from the event of force majeure.
- 11.3. If the 'VENDOR' is rendered unable, wholly or in part, by reason of force majeure to perform its obligations and meet its responsibilities under the contract, BHEL shall have the right to terminate the Contract on the same terms and conditions as are provided for in 'Termination' clause.

ARBITRATION:

- 12.1. All disputes arising in connection with the contract shall be settled by mutual consultation/conciliation. If no agreement is reached, the dispute shall be settled in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and the rules made there under. The dispute shall be referred for arbitration to any arbitrator to be appointed by the Head of the Unit, BHEL. The award of the arbitrator shall be final and binding on both the Parties. The venue of the Arbitration shall be at Hyderabad in India. The Award to be given by the Arbitration shall be a speaking award. All questions, disputes, differences arising under, out of or in connection with this contract shall be to the exclusive jurisdiction of Sangareddy Courts.

FOR
Bharat Heavy Electricals Limited,
Ramachandrapuram Unit, Hyderabad

FOR
M/s xxxx

(Both parties shall sign above and affix the seal of the Company)

WITNESSES:

- 1.
- 2.

Name:

Company Seal

Signature: with Date: