

Annexure A: Special Conditions of Contract (SCC) for GEM_BHEL SAP ENQUIRY G6A1W36222

SI. No	Detailed Terms & Conditions	Vendor Response										
		Yes/Deviation										
1	<p>Your best quotation/offer for below mentioned requirement, in line with BHEL specification should be submitted online via GeM system.</p> <table border="1" data-bbox="220 524 1233 669"> <thead> <tr> <th data-bbox="220 524 284 595">SI No</th> <th data-bbox="284 524 501 595">Material Code</th> <th data-bbox="501 524 1023 595">Description</th> <th data-bbox="1023 524 1158 595">Quantity</th> <th data-bbox="1158 524 1233 595">MU</th> </tr> </thead> <tbody> <tr> <td data-bbox="220 595 284 669">01</td> <td data-bbox="284 595 501 669">SG9780063013</td> <td data-bbox="501 595 1023 669">MEMBRANE ELECTRODE ASSEMBLY</td> <td data-bbox="1023 595 1158 669">150</td> <td data-bbox="1158 595 1233 669">Nos</td> </tr> </tbody> </table> <p>Specification : SG80063 SPEC-REV: 00 SPEC-VAR:01</p>	SI No	Material Code	Description	Quantity	MU	01	SG9780063013	MEMBRANE ELECTRODE ASSEMBLY	150	Nos	
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01	SG9780063013	MEMBRANE ELECTRODE ASSEMBLY	150	Nos								
2	<p>Delivery schedule:</p> <p>A) Delivery schedule shall be as follows: 3 months from the GEM Contract Date.</p> <p>Vendors are requested to comply with above said delivery schedules. If bidder does not meet the above delivery schedule, BHEL reserves the right to reject the vendor's offer.</p> <p>B) Delivery Terms : FOR BHEL Hyderabad. Vendors/Supplier shall quote the cumulated price of considering Freight & Insurance, P&F , and All taxes like GST the in the quoted price.</p>											
3	<p>Inspection : BY BHEL /TPIA at vendor Works.</p>											
4	<p>Reverse Auction : Reverse auction is applicable for this RFQ.</p>											
5	<p>Note:</p> <p>Bidder to submit duly Signed & Stamped copy of following documents along with Technical bid:</p> <p>a) Annexure 1 - Major Activity timelines shall be considered for Indigenous purchases b) Annexure 2 – Non-disclosure agreement c) Annexure 3 - local content d) Annexure 4 – Restriction of procurement from Countries sharing land</p>											
6	<p>For any Further details/queries regarding this Tender, you may please contact the following Officers:</p> <p>a) Suneel Kumar B, Dy. Manager/Pur/SG – suneelkb@bhel.in b) V Balasubramanian, DGM/Purchase & SC/SG- vbs@bhel.in</p> <p>You can call us on 040-23182457/5033</p>											
7	<p>Special Notes: This RFQ is for Class -1 and Class-2 Vendors , Vendor's shall provide LC content in the given annexure -3.</p>											

Annexure -PQC:

PRE-QUALIFICATION REQUIREMENT				
MEMBRANE ELECTRODE ASSEMBLY (MEA)- MATERIAL CODE SG9780063013				
S.No.	BHEL Requirement	Vendor's Confirmation	Deviation if Any	Remarks
1	All the suppliers need to submit this document i.e. titled pre-qualification requirement and furnish required information along with offer.			
2	<p>a) Name, address, e-mail id, contact no.etc. of manufacturer</p> <p>b) Name, address, e-mail id, contact no. etc. of authorised agency / trading house quoting on behalf of manufacturing company. In case offer is received from authorised agency / trading house, the following requirements shall be full filled. i) Valid letter of authorisation and copy of agreement to be enclosed with offer. ii) The offer shall be either from the authorised agency or from the manufacturer directly. In case of BHEL receiving offer from both, then offer from manufacturer will only be considered. Offer from an unauthorised agency / entity on behalf of any vendor shall be summarily rejected. iii) Name, address, e-mail id, contact no.etc. of entity on whom order to be released in case of L1 shall be clearly indicated.</p>			
3	<p>Supplier to confirm/provide the following criteria/documents for evaluation of offer.</p> <p>(a) Vendor should have at least 3 years of experience of designing, engineering, manufacturing, assembling, testing and supply of Membrane Electrode Assembly (MEA). Particulars of experience / credentials of the orders which are executed of similar nature not older than 3 years (Unpriced PO copies, Quality plans, test reports of the orders) to be enclosed.</p> <p>(b) Vendor should confirm complete compliance to BHEL specifications: SG80063-R00. If any deviation with respect to specification and drawing, vendor has to provide the deviation list for review</p> <p>(c) Supplier needs to provide two nos. sample piece of MEA at free of cost and on non-returnable basis to BHEL HPEP RC Puram along with the techno-commercial offer for verification. Offer submitted without sample would be treated as INVALID and BHEL reserves the right to reject the offer of the bidder (s) in case bidder submit the offer without sample. Sample pieces along with dispatch documents shall be sent to below mentioned address: Suneel Kumar B, Manager, Purchase/SG, BHEL-HPEP, Hyderabad, Telangana, India-502032</p> <p>(d) Bidder to ensure that after placement of purchase order items should not have variance compared to sample pieces. BHEL reserves the right to reject the items in case the items properties varies with respect to Sample piece.</p> <p>(e)The following documents shall be submitted along with offer. 1. Drawings 2. Technical Data 3. Catalogues 4. List of manufacturing & test facilities</p> <p>(f) Vendor is required to submit the signed copy of NDA along with techno commercial bid.</p> <p>(g)The offers of the bidders who are on the banned list and also the offer of the bidders, who engage the services of the banned firm shall be rejected. The list of banned firms is available on BHEL website "www.bhel.com".</p> <p>(h)All the documents shall be furnished only in English. Documents furnished in other langauges will not be considered for further evaluation.</p>			
4	Offers without the requirement as above 3(a),3(b),3(c) , 3 (d), 3 (e) will not be technically evaluated by BHEL. Further, no correspondence in this matter will be entertained.			
5	BHEL team may carry out vendor evaluation/assessment(incase of a new vendor)by a visit to vendor works for qualifying /rejecting the technical bid based on the findings of the visit.			
6	Vendors to submit their bid in 2 - part system i.e. Part-I shall consists of Pre-Qualification Criteria along with the required documents and Techno-Commercial Bid. Part-II shall consists of Price Bid. Offers failing to meet prequalification part will not be considered for further evaluation.			

Annexure-I**Major Activity timelines shall be considered for indigenous purchases**

S.NO	Activity	Agency	Timeline	Acceptance/Remarks
1	PO acknowledgement	Vendor	03 day from receipt of PO	
2	Submission of Drawings/data sheet	Vendor	07 days from receipt of PO	
3	Approval of Drawings /data sheet	BHEL/Customer	07 days from receipt of Rev 00 Drawings	
4	Submission of Revised Drawings/data sheet (if any)	Vendor	07 days from receipt of commented Drawings	
5	Approval of Revised Drawings/data sheet	BHEL/Customer	07 days from receipt of Revised Drawings	
6	Raising of Inspection Call	Vendor	05 days before the proposing Inspection Date.	
7	Inspection completion	BHEL/Third party inspection agency	03 days from scheduled inspection date	
8	Dispatch Instructions	BHEL	03 days from receipt of final inspection clearance report to BHEL.	
9	Receipt of Material	Vendor	as per agreed PO delivery schedule	

Above is illustrative only. However absence of this annexure in NIT will entail non processing of delivery extension cases in case of delay in supplies of goods owing to reason attributable to BHEL.

(To be executed on Non- Judicial Stamp Paper for an appropriate value.

To be stamped as an agreement)

(For Suppliers on Unit's / Division's PMD)

ANNEXURE-II

Framework Confidentiality Agreement Cum Undertaking

This Agreement made on this the _____ day of (month) _____ 20 ____ ("Effective Date") by and between M/s. BHARAT HEAVY ELECTRICALS LIMITED, having registered office at "BHEL House", Siri Fort, New Delhi – 110049 (India), acting through its _____ Unit (hereinafter may be referred to as "BHEL" or "the company").

And

M/s. _____ (address) _____ represented by authorized representative Sri _____ (herein after referred to as the "Supplier").

The supplier and the company may, unless the context otherwise requires, hereinafter be collectively referred to as "Parties" or singly as the "Party".

RECITALS

Whereas, BHEL is engaged in the design, engineering, manufacturing, construction, testing, commissioning and servicing of a wide range of products, systems and services for the core sectors of the economy, viz. Power, Transmission, Industry, Transportation, Renewable energy, Oil & Gas and Defence and providing associated services to varied customers in relation to which BHEL / its affiliates own valuable information of a secret and confidential nature.

Whereas the Company may, in connection with contract(s) (as defined hereunder) placed or to be placed upon the supplier, or otherwise, from time to time, make available, Technical Information as is defined hereunder.

And Whereas BHEL is willing to provide such Technical Information to the Supplier from time to time and the Supplier understands and acknowledges that such Technical Information is valuable for the Company and as such is willing to protect confidentiality of such information, subject to the terms and conditions set out hereunder.

Now therefore, in view of the foregoing premises and in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree as under:

1. Definitions:

Unless the context so requires, in this Agreement, the following terms will bear the meaning ascribed to the said term in this clause.

- A. **“Contract”** means the contract entered into with a supplier and includes a Purchase Order, or a Work Order for procurement of any goods or for provision of any services.
 - B. **“Effective Date”** means the date of this Agreement as mentioned in the preamble of this Agreement.
 - C. **“Supplier”** includes a Contractor or a Vendor of the Company whether for supplying of goods or for providing any services under a Contract or both.
 - D. **“Technical Information”** includes Drawings, and / or Product Standards and / or Specifications and / or Corporate / Plant Specifications and / or Technological Process Sheets and / or Technical Data Sheets and / or Jigs & Fixtures and / or Pattern & Dies and / or Special Gauges and / or Tools etc. Belonging to or wherein the Company has acquired from a third party a right of user and includes any improvement thereto from time to time whether carried out by the Company or by the Suppliers.
 - E. **“Intended Purpose”** means the purpose for which the Technical Information is provided to the supplier under or in connection with a contract.
 - F. **“Improvement”** includes any modification made to, or adaptation of, the Technical Information which enhances or is calculated to enhance the performance (Whether in terms of effectiveness or in terms of efficiency or both) of the product and / or the service to be provided by the Supplier under a Contract.
2. This Agreement shall come into force / deemed to have come into force, as the case may be, on the Effective Date; or, on the first date when the Technical Information or any part thereof is provided by BHEL to the supplier; whichever is earlier.
3. **Agreement deemed to be incorporated in each contract:** Unless and to the extent otherwise stipulated in the Contract, the conditions of this Agreement are deemed to be incorporated in all Contracts which may be entered into between the Company and the Supplier. Further, unless otherwise stipulated, the obligations under this Agreement are and will be independent of the obligations under the Contracts and such obligations of the Supplier hereunder will remain of full effect and validity notwithstanding that the period of validity of the Contract has expired by efflux of time stipulated therein; or, the contract has been discharged by performance or breach; or, the termination of the Contracts for any reason whatsoever.
4. **Ownership:**
- 4.1 The Company may, from time to time, make available to the Supplier, Technical Information on a non-exclusive basis by way of loan.

- 4.2 The Supplier acknowledges and agrees that all Technical Information and copies thereof that are or may be provided by the Company to the Supplier, are and shall remain the property of BHEL or that of the concerned entity from whom BHEL has obtained the Technical Information and such Technical Information are and shall constitute trade secrets of the BHEL. Nothing in this Agreement or in any disclosures made hereunder by or on behalf of the Company shall be construed as granting upon the Supplier any patent, copyright or design or any other intellectual property rights of whatsoever description that subsists or may hereinafter exist in the Technical Information. Furthermore, nothing in this Agreement or in any disclosures made hereunder by or on behalf of the Company shall be construed as granting upon the supplier any license or right of use of such patent, copyright or design or any other intellectual property rights of whatsoever description which may now or hereafter exist in the Technical Information except for use of the Technical Information strictly in accordance with this Agreement and the contract and / or as directed in writing by the Company, solely for the Intended Purpose under the Contract.
- 4.3 Neither party is obligated by or under this Agreement to purchase from or provide to the other party any service or product and that any such purchase / sale of any product and / or service by one party to the other party will be governed by the Contract if any, that may be entered into by and between the Company and the Supplier.
- 4.4 The Supplier is / has been made well aware and acknowledges that the Technical Information being / which may be shared with it by the Company has been either generated by the Company by incurring huge investment and cost or obtained from foreign collaborators under Technical Collaboration Agreement (TCA) with stringent confidentiality conditions.
- 4.5 The supplier agrees and undertakes to adhere to confidentiality requirements as applicable to BHEL under a TCA and also ensure that the confidentiality requirements are adhered to by all its concerned employees or sub-contractors /suppliers (where permitted to be engaged by BHEL). Any damages, losses, expenses of any description whatsoever, arising out of or in connection with a breach of the confidentiality requirements under a TCA owing to any act or omission on the part of the supplier or its employees or sub-contractors / suppliers that is claimed by a foreign collaborator from the Company shall be wholly borne by the Supplier and it shall keep BHEL fully indemnified in this behalf. The demand by the Company shall be conclusive upon the Supplier who shall thereupon forthwith pay to the Company without demur, dispute or delay the amount as demanded without demanding any further proof thereof.
- 4.6 The Supplier agrees and undertakes that unless so decided and advised by the Company in writing all rights / title to any Improvement to the Technical Information shall vest in the Company. The Supplier undertakes and agrees to inform forthwith to the Company of any such Improvement made to the Technical Information and transfer all drawings / documents or other materials connected with such Improvement to the Company and also agrees to fully cooperate with the Company for protecting the Company's interests in such Improvements in

the Technical Information including but not limited to obtaining necessary protection for the intellectual property rights in such improvement, if so desired by the Company. If a question arises whether a modification amounts to improvement to the Technical Information, the same shall be decided by the Company and such decision shall be final and binding upon the supplier.

5. Use and Non – Disclosure:

5.1 Unless otherwise stipulated by the Company, all Technical Information made available to the supplier, by the Company shall be treated as Confidential irrespective of whether the same is marked or otherwise denoted to be Confidential or not.

5.2 The Supplier undertakes and agrees that the Technical Information in its possession shall be held in strict confidence and will be used strictly in accordance with this Agreement and solely for the Intended Purpose under the Contract. Use of the Technical Information for any other purpose other than Intended Purpose is prohibited.

5.3 In particular, the Supplier shall not use Technical Information or any Improvement in its possession for the manufacture or procurement of the product(s) or components or parts thereof or use the Technical Information or any portion thereof or any modification or adaptation thereof in any form to provide any product and / or service to any third party, without the prior written consent of the Company.

5.4 The Supplier shall not disclose any of such Technical Information to any third party without the prior written consent of the Company. The Supplier agrees that without prior written consent of the Company, the supplier shall not disclose to a third party about the existence of this Agreement, or of the fact that it is / was in possession of or has experience in the use of any Technical Information nor shall the Supplier share in any manner whatsoever, with a third party, the name or details of any Contract(s) awarded by the Company to it or performed by the Supplier or the scope of work thereof or share any document or correspondence by and between the Company and the supplier in or in connection with this Agreement or such Contract(s). Notwithstanding what is stated elsewhere, the overall responsibility of any breach of the confidentiality provisions under this Agreement shall rest with the Supplier.

5.5 This Supplier undertakes and agrees not to make copies or extracts of and not to disclose to other any or all of the Technical Information in its possession, except as follows:

(a) The Supplier may disclose the Technical Information to such of its officers and employees strictly to the extent as is necessary for such officer or employee for the Intended Purpose, provided that the Confidential Information (or copies thereof) disclosed shall be marked

clearly as the confidential and proprietary information of Company and that such officers and employees shall similarly be bound by undertakings of confidence, restricted use and non-disclosure in respect of the Technical Information. The Supplier shall be responsible for any breach of such confidentiality provisions by such officers and employees.

- (b) With the prior written consent of Company, the supplier may disclose for the Intended Purpose such Technical Information as is provided for in such consent to such of its professional advisers: consultants, insurers and subcontractors who shall be similarly bound by undertakings of confidence, restricted use and non-disclosure in respect of such Technical Information.

- (c) The Supplier shall not be prevented to make any disclosure required by (i) order of a court of competent jurisdiction or (ii) any competent regulatory authority or agency where such disclosure is required by law, provided that where the supplier intends to make such disclosure, it shall first consult Company and take all reasonable steps requested by it to minimize the extent of the Technical Information disclosed and to make such disclosure in confidence and also shall cooperate with the Company in seeking any protective order or any other remedy from proper authority in this matter.

6. Exceptions:

The Obligations of the Supplier pursuant to the provisions of this agreement shall not apply to any Confidential Information that:

- a) was / is known to, or in the possession of the Supplier prior to disclosure thereof by the Company;
 - b) is or becomes publicly known, otherwise than as a result of a breach of this agreement by the Supplier.
 - c) is developed independently of the Disclosing party by the Supplier in circumstances that do not amount to a breach of the provisions of this Agreement or the Contract;
 - d) is received from a third party in circumstances that do not result in a breach of the provisions of this Agreement.
- 7.** The Obligation of maintaining confidentiality of the Technical Information on each occasion, shall subsist for the entire duration during which the Technical Information / equipment is in possession of the Supplier and shall thereafter subsist for a further period of _____ years from the date when the complete Technical Information has been returned in portions on different dates, the period of ____ years will be reckoned from the date when the last portion of the Technical Information has been returned. Notwithstanding the expiry of the confidentiality obligation, the obligation of the Supplier under clause 5.4 shall continue to subsist for a further period of _____ years.

8. Warranties & Undertakings:

- a) The Supplier undertakes to ensure the due observance of the undertakings of confidence, restricted use and non-disclosure by its persons to whom it discloses or releases copies or extracts of the Technical Information.

- b) The Supplier shall keep the Technical Information or improvement made therein properly segregated and not mix up the same with any other material / documents belonging to him / it or to any other third party.

- c) The Supplier further undertakes that he / it shall not hypothecate or give on lease or otherwise alienate or do away with any of the Technical Information and / or equipment of the Company, made available to him / it, and undertakes that he / it shall hold the same as a trustee, in capacity of custodian thereof and use / utilise the same solely for the purpose of executing the contract awarded by the Company.

- d) The Supplier further undertakes that he / it shall return all the equipment and / or Technical Information as far as practicable in the same condition in which the same was made available to him / it by the Company together with any Improvement thereon and the documents connected with such Improvement, to the Company forthwith upon completion of the scope of work or contract for which such Technical Information was provided by the Company to it or as directed by the Company together with a confirmation by way of an affidavit or in such manner as directed by the Company that it has not retained any equipment and / or Technical Information / improvement thereof. In case any such equipment and / or Technical Information or thereof shall remain in his possession or is not capable of being returned, the retention and use of such Technical Information or improvement thereto shall continue to be governed by this Agreement.

- e) The Supplier undertakes to indemnify the Company for all the direct, indirect and / or consequential losses, damages, expenses whatsoever including any consequential loss of business, profits suffered by the Company owing to breach by the Supplier of its obligations under this Agreement and / or the confidentiality requirements, if any, contained in the Contract and that the Supplier hereby agrees that the decision of the Company in all such or any such matter/s shall be final and binding on the Supplier. On mere written demand of the Company, the Supplier shall forthwith and without demur or delay pay to the Company any such sum as determined by the Company as the amount of loss or damage or expense which has been suffered by the Company. The Supplier agrees that the Company shall be entitled to withhold and appropriate any amount payable to the Supplier under any Contract then existing between the Company and the Supplier, in case the Supplier fails to make payment, in terms of the written demand, within 7 days thereof. Without prejudice to the forgoing actions, in respect to any breach of this Agreement, the Company shall be entitled to take any other action against the Supplier

as per applicable laws, the Contract, Company's applicable policies, guidelines rules, procedures, etc.

9. Without prejudice to any other mode of recovery as may be available to the Company for recovery of the amount determined as due as per Clause 9 (f) hereinabove, the Company shall have a right to withhold, recovery and appropriate the amount due towards such losses, damages, expenses, from any amount due to the Supplier in respect of any other Contract (s) placed on him / it by any department / office / unit/ division of the said Company.

10. Arbitration & Conciliation:

1. Except as provided elsewhere in this contract, in case amicable settlement is not reached between the parties, in respect of any dispute or difference; arising out of the formation, breach, termination, validity or execution of the contract; or, the respective rights and liabilities of the parties; or, in relation to interpretation of any provision of the contract; or, in any manner touching upon the contract, then, either party may, by a notice in writing to the other party refer such dispute or difference to the sole arbitration of an arbitrator appointed by head of the BHEL unit issuing the contract.

The Arbitrator shall pass a reasoned award and the award of the Arbitrator shall be final and binding upon the parties.

Subject as aforesaid, the provisions of Arbitration and Conciliation Act 1996 (India) or statutory modifications or re-enactments thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause, the seat of arbitration shall be at Hyderabad.

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

Subject to the arbitration in terms of clause 55, the courts at Sangareddy, Telangana State shall have exclusive jurisdiction over any matter arising out of or in connection with this contract.

Notwithstanding the existence or any dispute or differences and / or reference for the arbitration, the contractor shall proceed with and continue without hindrance the performance of its obligations under this contract with due diligence and expedition in a professional manner except where the contract has been terminated by either party in terms of this contract.

In case of contract with Public Sector Enterprise (PSE) or a Government Department, the following shall be applicable:

In the event of any dispute or difference relating to the interpretation and application of the provisions of the contract, such dispute or difference shall be referred by either party for arbitration to the sole arbitrator in the Department of Public Enterprises to be nominated by the secretary to the Government of India in-charge of the Department of Public Enterprises. The Arbitration and Conciliation Act, 1996 shall not be applicable to arbitration under this clause. The award of the arbitrator shall be binding upon the parties to the dispute, provided, however, any party aggrieved by such award may make further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law and justice, Government of India. Upon such reference the dispute shall be decided by the Law secretary or the special Secretary or Additional secretary when

so authorized by the Law secretary, whose decision shall bind the parties hereto finally and conclusively. The parties to the dispute will share equally the cost of arbitration as intimated by the arbitrator.

2. INTEREST CLAUSE:

In order to bring uniformity in all the contracts / agreements entered between BHEL and its contractors / vendors / suppliers / service providers etc., it is hereby advised to incorporate the following clause in all tenders and agreements.

“No interest shall be payable by BHEL on earnest money or security deposit or any money due to the contractor by BHEL.”

11. Governing Law & Jurisdiction:

This agreement shall be construed and interpreted in accordance with the laws of India and shall have exclusive jurisdiction of Sangareddy/Hyderabad courts, Telangana, India.

SIGNATURE

WITNESSES

1

Name:

Address:

2

Name:

Address:

Annexure - III

Proforma for self-certification by Supplier for minimum local content on their letter head for tender value less than Rs 10 Crore

"We _____ (Name of Manufacturer) undertake that we meet the mandatory minimum Local Content (LC) requirement i.e. _____ (to be filled as notified in the policy) for claiming Purchase Preference linked with Local Contents under the Govt. policy against tender no. _____."

Sd/-

Authorized Signatory with Stamp

ANNEXURE IV

Proforma for self-certification by Supplier for Compliance to below Clause

Clause: 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 competent authority. <https://www.mea.gov.in/> to be referred for latest details of competent authority and exemptions.

I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and I certify that M/s_____ **(Name of firm)**

(Tick the Appropriate)

- Is not from such a country**
- Is from such a country and has been duly registered with the competent authority.**
(If, Yes Please enclose the Approval obtained from Competent Authority)

I hereby certify M/s _____ **(Name of firm)** fulfills all requirements in this regard and is eligible to be considered (where applicable, valid registration by the competent authority shall be attached)

Sd/-

Authorized Signatory with Stamp