DEVIATIONS ON TECHNICAL AND JOB SPECIFICATIONS

Sr. No.	Reference			BHEL Specification's Requirement	Pre bid query taken by Bidder	BHEL's response on Bidder's Pre bid query.
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1.	MOU	2 and 5	Recitals - Para 2 read with clause 2.8.1	The clause provides the following language: "*QEM has confirmed that they are fully meeting the qualifying criteria for Gas Engine Package as per "Tender" specification, based on the same BHEL as Bidder intends to engage QEM for Basic Engineering, Detailed Engineering, Procurement, Machining & Fabrication, Inspection, Supply, Transportation, Assistance in Erection, Commissioning of Gas Engines package, Performance Guarantee Test Run, Warranty and handing over and O&M of Gas Engine Package as defined in the "Tender" document referred here above and subsequent amendments issued by NVVNL, if any (here in after referred to as "Project")…*"	The scope of work for QEM involves basic engineering, assisting in detailed engineering, ~~procurement, machining & fabrication~~, inspection, supply, transportation, assistance in erection, commissioning and performance guarantee test run etc. in relation to the Gas Engine Package.	The change proposed by Bidder is acceptable – with retention of '*Warranty and handing over and O&M of Gas Engine Package as defined in the "Tender" document referred here above and subsequent amendments issued by NVVNL, if any (here in after referred to as "Project")…*"
2.	MOU	3	Validity period of the MOU	The clause provides the following language: "*Memorandum of understanding (MOU) between Bidder and QEM for executing the scope of work shall remain in force at least till the pendency of the Customer Contract i.e. the Contract between BHEL and NVVNL.*"	It may be advisable to add the following language at the end of the clause: "or the signing date of the BHEL's Sub-Contract or elapse of one (1) year from the date of the MOU, whichever is earlier"	The addition - "or the signing date of the BHEL's Sub-Contract" proposed by Bidder is acceptable Further following text is proposed to be added by BHEL: 'until the occurrence of any of the following: a. Contract is not awarded to BHEL. b. Bankruptcy proceedings being initiated against either of the Parties c. Mutual agreement between the "Parties" d. Tender got cancelled by the Customer
3.	MOU	3	2.1	This clause requires QEM and BHEL to work on a mutually exclusive basis in terms of this MOU, during the complete tendering process and also in terms of the BHEL's Sub-Contract Agreement.	This condition is not acceptable. The QEM should be allowed to participate with other bidders in relation to the Tender.	BHEL reviewed the requirement and the deviation is acceptable.
4.	MOU	3	2.3	The clause provides the following language: "*…. Final accepting authority in any case shall be NVVNL. QEM shall be responsible for the work performed by its sub-contractors/ vendors, however, BHEL may exercise their right to directly interact with QEM subcontractors/vendors after obtaining written consent of QEM, wherever required for speedy and effective execution of the project.*"	This is not acceptable. Since, the sub-contractors to be appointed by QEM will be specific to the requirements of QEM and essential for the scope of work of QEM and hence this right needs to be with the QEM and not NVVNL.	Bidder reviewed the deviation taken and found can be withdrawn
5.	MOU	4	2.4	The clause provides the following language: "*…The agreement with QEM will be on "Back-to-back" basis vis-a-vis "Tender" specifications to the extent modified in this MOU and specific*	This is not acceptable. Any back to back arrangements in relation to the scope of work of QEM shall be restricted to the terms of the MOU or more specifically the BHEL's Sub-Contract (as and when signed) and not otherwise.	Bidder reviewed the deviation taken and found can be withdrawn

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				agreement reached in writing between BHEL and QEM…"		
6.	MOU	4	2.5 Para 2	The clause provides the following language: "*……shall be a formal agreement post approval of competent authority of BHEL and QEM. Based on this agreement on terms and conditions, price bid shall be opened and negotiated if required and based on final mutually agreed prices of QEM's package, this MOU will be formally signed on non-judicial stamp paper followed by submission of bid bond in the form of bank guarantee or security deposit etc @1% of final agreed price of BHEL's sub-contract by QEM to BHEL within 30 days of signing of MOU or date of submission of BHEL bid to NVVNL, whichever is earlier.*	BHEL to clarify if the approval of competent authority means a board resolution/equivalent authorisation from the Board of the QEM is required, reflecting authorisation to enter into this MOU by the hands of person so authorised under such board resolution/equivalent authorisation. Further, in relation to the requisite bid bond, we request BHEL to kindly waive this condition as the bid submission for the Tender is by way of cooperation of parties (BHEL and QEM) through execution of the MOU.	BHEL clarified that board resolution/equivalent authorisation is not envisaged; Approval by competent person in Bidder's organisation is adequate Waival of bid bond requirement cannot be waived. Bidder to revert with information whether Bidder Company is registered with any of BHEL's unit as a supplier, so that relaxation on this requirement can be considered by BHEL
7.	MOU	5	2.5 Para 4	The clause provides the following language: "*BHEL's sub-Contract shall comprise of following:* *A. Contract Agreement Form* *B. Purchase order for supply and separate work order for services covering all terms & conditions stipulated in this MOU…*"	Request you to kindly share the draft of the Contract Agreement Form to be signed in relation to the BHEL's Sub-Contract.	Typical draft Contract Agreement is furnished by BHEL along with these resolutions
8.	MOU	6	3.2	The clause provides the following language: "*Each Party shall be responsible for and shall co-operate with each other in obtaining and maintaining respective permits, licenses and other authorizations required for the performance of its own Scope of Work, except those which are required to be obtained by NVVNL.*"	We understand that QEM is only performing the role of a supplier as per the scope of works under this tender, therefore, all approvals and permits will be the sole responsibility of BHEL Further, QEM may assist BHEL in the event it requires any information/documentation from the QEM.	Deviation noted and agreeable
9.	MOU	6	4.0	The clause provides the following language: "*…QEM have agreed to perform all activities such as design, engineering, procurement, inspection, erection, civil works etc. as per the L1/ L2 schedule to be agreed by BHEL with NVVNL…*" "*…The maximum Supply Schedule for the gas Engine Package and Spares is 15 months from the date of placement of Purchase Order by Bidder on QEM till the material receipt at project site. Assistance in Erection shall be provided by QEM to Bidder timely and Testing & commissioning by QEM shall be completed within 24 months. This shall supersede time schedule as mentioned in the Tender.*"	Please refer to our comment at serial no. 1 above for the scope of work-related changes. Further, the maximum Supply Schedule for the gas Engine Package and Spares is 15 months from the date of placement of Purchase Order by Bidder on QEM. However, the commencement of the aforesaid timeline should be from the date of advance payment received from BHEL against an Advance Bank Guarantee ("**ABG**") (15% of the Total Contract Price of the MOU) and opening of a Letter of credit ("**LC**") for the balance payment.	Delivery shall be on CIF Chennai basis as per BHEL's NIT. Time for supply till Chennai Port shall be 14 months from the date of PO only.
10.	MOU	8	7.0	The clause provides the following language:	This is not acceptable. Request BHEL to accept the following payment terms:	Payment Terms proposed by Bidder are not acceptable to BHEL; Same shall be on back-to-back basis as that in NVVNL's Tender

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				"*The terms of payment for QEM Scope of Work shall be in conformity with the terms of payment as per Customer Contract on back-to- back basis….*" "*Payment shall be received by BHEL from NVVNL and shall be promptly released to QEM for their scope of work upon receipt of such payment from NVVNL subject to the submission of vendors invoice with necessary supporting documents as listed in the BHEL NIT, on back-to-back basis, not later than 15 (Fifteen) days after receipt of payment from NVVNL.*"	a) 15 % advance against an ABG within 1 month from PO; and b) 85 % payment on delivery, through irrevocable LC establishment within 3 months of PO.	
11.	MOU	8	10.0	The clause provides the following language: "*The title of Goods and Material and Plant imported by the Contractor or its Subcontractor for supply to NVVN for the execution of Works shall be transferred by the QEM in favour of NVVN by effecting appropriate sales through endorsement of the Bill of Lading or such other documents of title in relation to such imported Goods and Material and Plant before the same cross the customs frontiers of India on FOB (free on board basis) at the port of loading of the Goods and Material and Plant.*"	This is not acceptable as this sale would be effected for BHEL and the LC would be opened by BHEL. The title of the goods should be first transferred to BHEL on the basis of LC so opened, and thereafter BHEL can transfer the same to NVVNL.	Modification suggested by Bidder is noted and agreeable.
12.	MOU	9	11.1, 11.2. 11.3 and 11.4	Clause pertaining to Taxes and Duties	BHEL to note that all taxes including GST, duties, levies, cess in India shall be borne by BHEL and all the taxes and duties applicable outside India will be borne by the QEM. Request you to kindly modify the clauses accordingly.	Modification suggested by Bidder is noted and agreeable
13.	MOU	10	12.2	The clause provides the following language: "*All obligations and liabilities of BHEL under Customer Contract, pertaining to QEM scope of work shall be covered/ discharged by QEM on back-to-basis as specified under the BHEL's sub-Contract as per MOU.*"	This is not acceptable. The liability of QEM shall not be covered on a back to back basis but shall be restricted to the scope of work agreed to be undertaken by the QEM under this MOU/BHEL's Sub-Contract.	This deviation to be withdrawn by the bidder.
14.	MOU	10	12.3.1	The clause provides the following language: "*(a) In case of any delay by QEM, in supplying the main equipment at site within schedule of 15 months BHEL would levy an amount @ 0.5% per week or part thereof, subject to a maximum 5% of the total BHEL's Sub-Contract price on QEM;* *(b) In case of any delay by QEM, in supplying the Spares at site within schedule of 15 months BHEL would levy an amount @ 0.5% per week or part thereof on the value of undelivered spares, subject*	This is not acceptable. In relation to the liquidated damages, the following sub-clauses to be replaced as mentioned below: (a) In case of any delay by QEM, in supplying the main equipment (on CIF basis) ~~at site~~ within schedule of 15 months BHEL would levy an amount @ 0.5% per week or part thereof, subject to a maximum 5% of the total BHEL's Sub-Contract price on QEM; (b) In case of any delay by QEM, in supplying the Spares in respect of the Gas Engine Package (on	(a) Deviation is acceptable with 14 months schedule (b) Deviation is not acceptable

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				to a maximum 5% of the total Ex-Works price of all spares quoted by BHEL to NVVL; *(c) In case of any delay by QEM, in achieving the project completion schedule of 24 months for the reasons attributable to QEM, BHEL would levy an LD amount which is pro-rata of BHEL's Sub-Contract value to QEM in total order value from NVVNL to BHEL. LD amount to be levied by NVVNL on BHEL is @ INR 19,12,854/- for each day of delay in successful completion of facilities, subject to a maximum 5% of the total BHEL's Contract price with NVVNL;* *(d) LD amount if withheld by NVVNL from BHEL bills, amount shall be withheld by BHEL from QEM bills on applicable LD rates based BHEL's Sub-Contract, pending final settlement of time extension. LD shall be settled between BHEL and NVVNL, in terms of the delay analysis w.r.t. agreed L1/ L2 network as applicable for final completion schedule.* *(e) (ii) In case the Parties are jointly responsible for causing the LD claim due to delay in mechanical completion Schedule of Customer Contract or cause for delay cannot be assigned to any Party, then the resulting LD amount as levied by NVVNL on BHEL will be shared between BHEL and QEM in proportion of share of price in the Contract in Customer Contract. In such an eventuality the provision of Customer Contract shall be applicable on back-to-back basis including maximum applicable LD rate of 5% of BHEL's Sub-Contract Price."*	CIF basis) ~~at site~~ within schedule of 15 months BHEL would levy an amount @ 0.5% per week or part thereof on the value of undelivered spares, subject to a maximum 5% of the total ~~Ex Works price of all spares quoted by BHEL to NVVL~~ BHEL's Sub-Contract price on QEM. Further, the Parties to this MOU agree and acknowledge that the cumulative liquidated damages for delay in supplying the main equipment (CIF basis) and/or Spares in respect of the Gas Engine Package (on CIF basis) as mentioned above, shall not exceed the total capping of 5% of the BHEL's Sub-Contract price at any time. (c) *To be deleted from this clause*; Further, in relation to sub-clause (d), please note that the same is not acceptable. Under this MOU/BHEL Sub-Contract, the recourse of levying liquidated damages is provided to BHEL and therefore withholding of bills is against the spirit of the contract. However, in the event delay analysis report requires QEM to pay LDs, the same can be raised by way of invoice on QEM by BHEL. (e) To be deleted in entirety as the obligations in respect of the completion schedule does not fall in the scope of work of QEM and therefore any corresponding liability arising thereof has to be borne solely by BHEL.	(c) Deletion of clause is not acceptable (d) Deviation is not acceptable (e) Deviation is not acceptable
15.	MOU	11	12.3.2.2	The clause provides the following language: "*In case LD is levied by NVVNL for shortfall in Guaranteed Performance, the same shall be borne in full by QEM, as the entire performance of power plant is dependent on the Gas Engines*"	This is not acceptable as QEM is only providing the prime mover for power generation. However, the performance guarantees under the Tender are based on NET basis and will be dependant on other equipment performance as well. Therefore, the LD in relation to shortfall in guaranteed performance must be evaluated proportionate to the performance of the equipment supplied by QEM vis-à-vis performance of the other equipment.	Deviation is not acceptable
16.	MOU	11	12.3.2.3	The clause provides the following language: "*QEM's aggregate liability to pay liquidated damages for failure to attain the functional guarantee shall not exceed twenty five percent*	We request BHEL to kindly consider overall functional guarantee cap to be 25% (twenty percent) of the BHEL's Sub-Contract price.	Deviation is not acceptable;

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				(25%) of the BHEL's Total Contract Price with NVVNL."		
17.	MOU	12	13.0 Para 2	The clause provides the following language: *"…In terms of the Customer Contract, the Defect Liability Period is 12 months from the scheduled date of commercial operation of main equipment/ plant and if commercial operation is delayed beyond 12 months from the date of mechanical completion for a cause solely attributable to NVVNL, the Defect Liability Period from QEM shall be 18 months from the date of mechanical completion (readiness of all fuel firing in gas engines). In a scenario where there is no delay by either parties, this clause shall be operated on back-to-back basis."*	This is not acceptable. The warranty period shall not exceed 12 months commencing on the earlier of: a) the performance test; or b) with respect to each generator set, the date of the commencement of commercial operation of such generator set. Further, in no event shall the warranty period extend beyond 18 months from the date of arrival of the generator sets or the equipment in the country i.e. India. However, additional warranties can be provided basis mutual agreement of the Parties.	This being the No deviation tender, the warranty requirement has to be complied. Therefore the OEM may be asked to consider the warranty period of 12 months from date of commercial operation or 30 Months from complete receipt of material at site (considering 15 M material receipt; 27 Month as mechanical completion of package; 27-15 = 12 M+18M)
18.	MOU	13	14.1	The clause provides the following language: *"The aggregate liability of the QEM to the BHEL (whether based on contract or tort, including negligence and strict or absolute liability) arising out of or under BHEL's Sub Contract shall not exceed the total value of the BHEL's Sub Contract Price provided that no such limit shall apply in respect of:* *(i) Any liability pursuant to QEM indemnity obligations under the Customer Contract; or* *(ii) any loss resulting from fraud, intentional or willful misconduct or illegal or unlawful acts or omissions of QEM, its affiliates or any sub-contractor or any supplier or any of its or their respective officers, directors, employees, servants or agents; or* *(iii) any liability to rectify, repair, restore or replace any materials and/or works or deficiencies therein in terms of the Customer Contract to the extent applicable as per Annexure -1 to Technical Specification PY51675 R01;* *(iv) any liability under GCC/SCC of "Tender"* *(v) In the event of any claim or loss or damage arising out of infringement of Intellectual Property;* *(vi) For any damage to any third party, including death or injury of any third party caused by the QEM or any person or firm acting on behalf of the QEM in executing the Works;* *(vii) QEM's Liability for Process Guarantees (if any) or other Guarantees as mentioned in the Technical Part of "Tender" to the extent applicable as per MOU*	In relation to this clause, the following to be noted: In respect of sub-clause (i): Not acceptable as the QEM's liability shall be limited to BHEL's Sub-Contract; In respect of sub-clause (ii), revised as follows: "any loss resulting from fraud, intentional or willful misconduct or illegal or unlawful acts or omissions of QEM~~, its affiliates or any sub-contractor or any supplier~~ or any of its ~~or their respective~~ officers, directors, employees, servants or agents;" In respect of sub-clause (iii), revised as follows: "any liability to rectify, repair, restore or replace any materials and/or works or deficiencies therein in terms of the ~~Customer Contract to the extent applicable as per Annexure -1 to Technical Specification PY51675 R01~~ QEM's respective scope of work as per the BHEL Sub-Contract" In respect of sub-clause (iv): Not acceptable as the QEM's liability shall be limited to BHEL's Sub-Contract; In respect of sub-clause (vii): Not acceptable as the same is part of LDs stated aforesaid in clause 12.3.2 of the MOU. In respect of the proviso: Not acceptable as the same should be covered as part of the payment for liquidated damages.	(i) Deviation not acceptable (ii) Deviation acceptable (iii) Deviation acceptable (iv) Deviation not acceptable (v) No deviation taken by Bidder (vi) No deviation taken by Bidder (vii) Deviation acceptable

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				AND provided always that such limitation shall exclude any amounts recovered under any policy(ies) of insurance taken out and/or maintained by the QEM pursuant to the provisions of the Customer Contract."		
19.	MOU	14	16.2 and 16.3	The clause provides the following language: "… *16.2 If such dispute is not resolved as per clause 16.1, either party may, thereafter, notify the other party in writing that such dispute shall be settled by arbitration pursuant to arbitration proceedings under Arbitration and Conciliation Act, 1996 and any amendments thereto as per the Rules under the said Act. Each party shall appoint one arbitrator and the said two arbitrators shall appoint Presiding Arbitrator and the three arbitrators Panel shall be formed.* *16.3 The seat and venue of the Arbitration shall be at Hyderabad in India, language of arbitration would be English and the procedural law to be adopted in such arbitration shall be that in India. The award rendered under arbitration shall be final and binding on the Parties and may be entered in any court of competent jurisdiction in India for its enforcement. The cost of Arbitration as determined by the arbitration Panel shall be borne by the Parties equally.*"	This is not acceptable. Clauses 16.2 and 16.3 to be replaced as follows: Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("**SIAC**") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("**SIAC Rules**") for the time being in force, which rules are deemed to be incorporated by reference in this clause. The Tribunal shall consist of a sole arbitrator to be appointed unanimously between the Parties. If the Parties are unable to agree on the sole arbitrator within 45 (forty five) days from the date that a dispute arises, either of the parties, shall be entitled to approach the SIAC for the appointment of the sole arbitrator. The seat of the arbitration shall be Singapore and the language of the arbitral proceedings shall be English. The cost of Arbitration as determined by the arbitration Panel shall be borne by the Parties equally.	Deviation is not acceptable. However, the place of jurisdiction can be considered as New Delhi as requested by Bidder, in place of Hyderabad.
20.	MOU	15	20.0	The clause provides the following language: "*This MOU is based on present level of price offered by BHEL to NVVNL with the back-up offer from QEM. However, during final negotiation with NVVNL, if any discount is offered to NVVNL by BHEL for total Power Plant package, corresponding reduction is acceptable to QEM subject to BHEL furnishing proof of corresponding reduction passed on by BHEL also to NVVNL.*"	This is not acceptable. The prices post submission of the bid will remain firm. No discount or negotiation is possible at any later date.	Deviation is not acceptable