



# Bharat Heavy Electricals Limited

(A Govt. of India Undertaking)

Transmission Business Group

Materials Management, 5th Floor, Plot No.25,

Sector-16A, Noida, Uttar Pradesh, PIN No: 201301

Phone: 0120-6748541, Email: gaurav.agarwal@bhel.in

## **CORRIGENDUM - 06 TO NIT NO-75967**

**Dated 28.08.2023**

**Subject: Corrigendum-06 to Tender enquiry for Pre-bid Tie up for Supply & Services of 400 kV & 220 KV GIS FOR POWERGRID\_SS27T PROJECT.**

Project : Powergrid\_SS27T (Jewar)  
Equipment / Item : SUPPLY & SERVICES OF 400kV & 220kV GIS  
Enquiry No/Date : 61Q2400146 Dated 04-08-23  
BHEL NIT NO : 75967  
**Original Tender due date : 16.08.2023**

This Corrigendum is issued by BHEL TBG against above mentioned NIT/ enquiry for issuance of Commercial clarifications/changes wrt NIT terms (enclosed).

Due date of offer submission, ie. 29-08-2023, 11:00 Hrs and opening at 11:30 Hrs shall remain same.

All bids received till 11:00 Hrs on 29-08-23 shall be opened on 11:30 Hrs on same day through Tender Box.

All other terms and conditions for this tender enquiry shall remain unchanged.

Bidder to ensure submission of offer on or before due date.

Note: Tender ID in CPP Portal is **2023\_BHEL\_27381\_1**.

Thanking you

-----Sd/-----

Gaurav Agarwal  
BHEL TBG, NOIDA

Project POWERGRID\_SS27T (Jewar)  
Item SUPPLY & SERVICES OF 400kv & 220kv GIS  
NIT No. NIT No\_75967\_Enquiry No\_61Q2400146 Dated 04-08-2023

Please refer following Commercial clarifications/ changes in NIT terms-

Sl.No.	Clause No.	Description as per NIT	Bidder's query/request during pre-bid discussion	BHEL Reply
1	24 of STC	Payment Terms	a) Option for interest bearing initial & engineering advance and  b) removal of MRC from 1st supply payment milestone.	a) Not acceptable  b) MRC shall be issued by BHEL site within 10 working days from date of receipt of last consignment of each dispatch/lot (as per Invoice) of material at site.
2	14 of STC	MOU- In the event of price reduction during negotiation by BHEL with the customer, the corresponding reduction will be passed on to the supplier.	In the event of price reduction during negotiation by BHEL with PGCIL, the corresponding reduction will be passed on to GIS OEM subject to mutual agreement in writing.	Agreed.
3	21 (A) of STC	PBG to BHEL- Supplier shall arrange to submit Performance BG / deposit, on a non-judicial stamp paper appropriate value along with first invoice or within 60 days from placement of Purchase Order (PO) whichever is earlier, of an amount equivalent to 10% (Ten percent) of the PO Ex-works value.	As GIS OEM is required to submit Additional PBG of 2% of the GIS Portion as per PGCIL's Contract (i.e. Total price of items in Supply, F&I and Installation schedules mentioned under Activity titled "GIS portion" in BPS) to PGCIL, this PBG submission to BHEL should be waived off.	Not acceptable.
4	21 (B) of STC	ADDITIONAL PERFORMANCE BG (by GIS OEM/Parent Company to POWERGRID):	Additional PBG to PGCIL: In case PBG provided by GIS OEM to PGCIL is encashed or is required to be extended, by PGCIL for reasons not attributable to GIS OEM, the value of the bank guarantee or cost of any extension or both shall be forthwith due and payable by BHEL to GIS OEM.	Not acceptable.

5	15 of STC	Deed of Joint Undertaking: FORM OF DEED OF JOINT UNDERTAKING TO BE EXECUTED BY THE BIDDER/CONTRACTOR ALONGWITH INDIAN GIS MANUFACTURER WHO HAS BEEN ASSOCIATED FOR SOURCING OF GIS EQUIPMENT	<p>Indemnification: In the event of any liability of GIS OEM towards PGCIL or to any third party caused by any reason other than those attributable to GIS OEM, including breach of BHEL Scope of Work by BHEL or any negligence of BHEL in the performance of BHEL Scope of Work, and the requirement of GIS OEM to step in and perform BHEL Scope of Work, in terms of the JDU, BHEL shall indemnify and hold harmless GIS OEM, its affiliates and their employees and officers (“Indemnified Party Group”). This obligation of BHEL shall survive the termination/ expiration of the Memorandum of Understanding (executed between BHEL &amp; GIS OEM) and/ or the BHEL’s Purchase Order (on GIS OEM) and/ or the PGCIL’s Contract on BHEL. Implementation of Indemnification Agreement as was incorporated in your earlier GIS tenders for pre-bid tie-up might take care of this aspect.</p>	<p>Indemnification Agreement format along with JDU format is enclosed. Bidder to submit the same along with the bid.</p>
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## INDEMNIFICATION AGREEMENT

This Indemnification Agreement is executed at [●] on this the [●] day of [●] 2023

### BY AND BETWEEN

**Bharat Heavy Electricals Ltd.**, a Company incorporated under Companies Act, 1956 having its registered office at BHEL House, Siri Fort, Asiad Village, New Delhi – 110049 and the executing office at TBG, BHEL 5th Floor, Plot No. 25, Sector-16A, Noida-201301, U.P., (which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its legal representatives, nominees, permitted assigns and successors) (hereinafter referred to as “**FIRST PARTY/BHEL**”),

### AND

**(Associate Name / GIS OEM)**, a Company incorporated under Companies Act, 1956/2013 having CIN No. [●] and its registered office/principal place of business at [●] through its duly authorized signatory [●] duly authorized vide Board Resolution dated [●] (which expression shall, unless it be repugnant to the context of meaning thereof, be deemed to include its successors and permitted assignees) (hereinafter referred to as the “**SECOND PARTY/ GIS OEM NAME**”)

“**FIRST PARTY**”, and “**SECOND PARTY**” are individually referred to as “**Party**” and collectively as “**Parties**”.

### WHEREAS

- (A) The First Party is planning to bid for (Employer) enquiry no. CC/T/W-GIS/DOM/A06/23/05446 for the execution of Substation Package SS-27T associated with Intra State Transmission System for Construction of 400/220kV, 2X 500 MVA GIS Substation Jewar, 220/33kV, 2X 60MVA GIS Substation Cantt (Chaukaghat) Varanasi, 220/33kV, 3X 60MVA GIS Substation Vasundhra (Gaziabad), 220/132/33kV, 2X160+2X40MVA Substation at Khaga (Fatehpur) with associated Lines through TBCB route (hereinafter referred to as “**The Project**”).
- (B) As per Clause No. 1 of Annexure A of BDS, Section III, of Vol.– I forming part of the Bidding Documents, the First Party meets the requirement under route 4 and the Second Party meets the requirements under route 1/2/3 for 400 kV & 220 kV GIS Scope.
- (C) In order to participate in the bidding process, The First Party has invited a tender from the qualified GIS manufacturers with a proposal to declare the Second Party as an associate for Design, Manufacture, Supply & Supervision of Erection, Testing & Commissioning of 400 kV & 220 kV Gas Insulated Switchgear (**GIS**) and accessories for execution of the Project.
- (D) The Second Party has agreed to the said proposal and submitted its bid to the first party. The first party selected the second party as the qualified associate through their standard tendering process.
- (E) In line with the POWERGRID’s tender qualifying requirements, for GIS manufacturer to quote as an associate, the associate has to sign a Joint Deed of Undertaking (**JDU**) with the First Party (**Attached as Annexure – 1 with the present agreement**). As per Clause 2 of the JDU, the Associate has to undertake to be jointly and severally liable and bound unto the Employer for successful performance of the GIS portion of the Contract along with the EPC bidder.

- (F) The Parties have therefore agreed that the First Party, as the EPC contractor/Sole Bidder, shall be solely responsible for Supply, Civil and Services portion defined in bidding document by POWERGRID, whereas the scope of the Second Party shall be limited only to Design, Manufacture, Supply and Supervision of Erection, Testing and Commissioning of GIS. The clear responsibility of individual Parties, in terms of the POWERGRID tender, shall form integral part of this Indemnification Agreement. The scope of work of the parties is annexed to this Indemnification Agreement and marked as **Annexure-2**.
- (G) The Parties have agreed to execute this Indemnification Agreement in order to safeguard each other against any loss or damage arising out of any demands/disputes/claims/litigation, etc. that may be raised by POWERGRID or their representatives owing to of any shortfall or deficiency in work carried out by the parties in their respective scope of work as per Annexure-2 during the execution of the Project.
- (H) Accordingly, the parties now wish to set out the mutual responsibilities towards each other arising out of their scope of work as delineated in Annexure-2 before, during, and after the execution of the Project.
- (I) The Parties agree, confirm, undertake and certify that they have all the requisite approvals and permissions including approval of their respective Boards and there is nothing restricting them to execute this Indemnification Agreement and its enforceability under the applicable laws of India.

**Now therefore, in Consideration of premises, mutual agreements, covenants and conditions set forth in this Indemnification Agreement, it is hereby agreed by and between the Parties as follows :-**

1. The above Preamble/Recital shall be considered as an integral part of this Indemnification Agreement.
2. The First Party undertakes and agrees that in the event of the contract being awarded to the First Part (as sole bidder under Route-4 category of POWERGRID), the Second Party shall not be liable to POWERGRID for any breach committed by the First Party in relation to the First Party's scope of work in terms of the requirements mentioned in Clause 2 of the JDU.
3. The Second Party undertakes and agrees that in the event of the contract being awarded to the First Part (as sole bidder under Route-4 category of POWERGRID), the First Party shall not be liable to POWERGRID for any breach committed by the Second Party in relation to the Second Party's scope of work in terms of the requirements mentioned in Clause 2 of the JDU.
4. The First Party undertakes and agrees not to carry out any obligations and responsibilities under the JDU in order to discharge the obligations and responsibilities of the Second Party stipulated in the Contract/Tender with respect to Second Party's scope of work related to Design, Manufacture, Supply & Supervision of Erection, Testing & Commissioning of 420 kV & 220 kV GIS and accessories and more particularly delineated in Annexure-2.
5. The Second Party undertakes and agrees not to carry out any obligation and responsibilities under the JDU in order to discharge the obligations and responsibilities of the First Party stipulated in the Contract/Tender with respect to First Party's scope of work related to remaining Supply, Civil and Services Portion and more particularly delineated in Annexure-2.

6. The First Party hereby irrevocably undertakes and agrees to indemnify and hold the Second Party harmless from and against all actions, proceedings, claims, liabilities, penalties, demands, litigations, costs and losses whatsoever, incurred or suffered or to be incurred or to be suffered by the Second Party on account of any shortfall or deficiency in work carried out by the First Party in its scope as per Annexure-2 during the execution of the Project.
7. The Second Party hereby irrevocably undertakes and agrees to indemnify and hold the First Party harmless from and against all actions, proceedings, claims, liabilities, penalties, demands, litigations, costs and losses whatsoever, incurred or suffered or to be incurred or to be suffered by the First Party on account of any shortfall or deficiency in work carried out by the Second Party in its scope as per Annexure-2 during the execution of the Project.
8. The First Party and Second Party jointly agree to safeguard each other against any loss or damage arising out of any demands/disputes/claims/litigation, etc. that may be raised by POWERGRID or their representatives owing to of any shortfall or deficiency in work carried out by the parties in their respective scope of work as per Annexure-2 during the execution of the Project.
9. All or any dispute, controversy, claim or disagreement arising out of or touching upon or in relation to the terms of this Indemnification Agreement, breach, invalidity, including the interpretation and validity thereof and the respective rights and obligations of the Parties hereof, shall be referred to arbitration which shall be governed by the Arbitration and Conciliation Act, 1996. The Parties shall mutually appoint a sole arbitrator to resolve the dispute or differences, failing which it shall be appointed in accordance with Arbitration and Conciliation Act, 1996. The venue of arbitration shall be New Delhi. The arbitration proceedings shall be conducted as per laws of India and under the Arbitration and Conciliation Act, 1996 in India. The arbitration proceedings shall be conducted in the English language. The costs of the arbitration shall be shared by the Parties equally. The award passed by the Sole Arbitrator shall be final, binding and conclusive between the Parties.
10. This Indemnification Agreement shall be interpreted and governed in all respects by the laws of India and the Courts at New Delhi shall have the exclusive jurisdiction to entertain and try any dispute or matter relating to or arising out of this Indemnification Agreement.
11. If any provision of this Indemnification Agreement is invalid or unenforceable or prohibited by law, it shall be treated for all purposes as severed from this Indemnification Agreement and ineffective to the extent of such invalidity or unenforceability, without affecting in any manner the remaining provisions hereof, which shall continue to be valid and binding.
12. This Indemnification Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof. No variation of this Indemnification Agreement shall be binding on any of the Parties unless, and to the extent that such variation is recorded in a written document executed amongst the Parties.
13. This Indemnification Agreement is intended to inure for the benefit of both the Parties and this Indemnification Agreement shall be binding on both the Parties.
14. Any demand, notice or communication under this Indemnification Agreement shall be in writing and shall be hand delivered or by post or by facsimile or e-mail to the party

receiving such communication at the address specified herein or such other address as either party may in future specify to other party.

Give Address; emails; fax details

15. This Indemnification Agreement is entered amongst the parties hereto on a principal-to-principal basis. Nothing contained in this Indemnification Agreement shall be construed or deemed to create any principal-agent relationship.

In Witness whereof the Parties have signed this Indemnification Agreement on the day, month and year first above written through their respective Authorized Representative/s.

**Witnesses:**

**For, Bharat Heavy Electricals Limited  
(First Party)**

1.

\_\_\_\_\_  
(Authorized Representative)

2.

For, \_\_\_\_\_  
**(Second Party)**

\_\_\_\_\_  
(Authorized Representative)

**FORM OF DEED OF JOINT UNDERTAKING TO BE EXECUTED BY THE BIDDER/CONTRACTOR ALONGWITH INDIAN GIS MANUFACTURER WHO HAS BEEN ASSOCIATED FOR SOURCING OF GIS EQUIPMENT {STIPULATED IN CLAUSE NO. 1.4(iii), ROUTE-4 OF ANNEXURE-A (BDS)}**

**(ON NON-JUDICIAL STAMP PAPER OF APPROPRIATE VALUE)**

This DEED OF UNDERTAKING executed this ..... day of..... Two Thousand ..... by M/s....., a Company incorporated under ..... having its Registered Office at ..... hereinafter called the "Bidder/Contractor" which expression shall include its successors, administrators, executors and permitted assigns and M/s. ...., registered under the Indian Companies Act of 1956 or 2013, as the case may be, and having its Registered Office at ..... hereinafter called the "**GIS Manufacturer**" which expression shall include its successors, administrators, executors and permitted assigns, in favour of ..... (*insert names of the Employer*) ....., a Company incorporated under the Indian Companies Act of 1956 having its registered office at .....(*insert registered address of the Employer*)..... (hereinafter called the "Employer" which expression shall include its successors, executors and permitted assigns)

WHEREAS the "Employer" invited Bid as per its Specification No. .... for the execution of .... (*insert name of the package alongwith project name*) .....

AND WHEREAS Clause No. ...., Section ....., of ....., Vol.-... forming part of the Bidding Documents inter-alia stipulates that the Bidder/Contractor can also participate provided the Bidder meets the requirement and associates with a **Indian** manufacturer for sourcing of GIS equipment, who meets the stipulated requirement of Annexure-A (BDS) and submits a Deed of Joint Undertaking jointly executed by the Bidder/Contractor and its **GIS Manufacturer** in which the Bidder and its **GIS Manufacturer** are jointly and severally bound and responsible for the successful performance of the GIS Portion of the Contract specified in the Bidding Documents in the event the Bid submitted by the Bidder is accepted by the Employer resulting in a Contract.

AND WHEREAS the Bidder has submitted its Bid to the Employer based on above stipulation and has agreed to furnish this Deed of Undertaking to be enforceable in the event of the award of the Contract by the Employer.

AND WHEREAS the Bidder and **GIS Manufacturer** are executing an irrevocable Deed of Joint Undertaking that they shall be held jointly and severally liable and bound unto the Employer for successful performance of the GIS portion of the Contract fully meeting the stipulated technical requirements, guaranteed parameters

and characteristics as per bidding documents, in the event the Bid submitted by the Bidder is accepted by the Employer resulting in a Contract.

NOW THEREFORE, THIS UNDERTAKING WITHNESSETH AS UNDER:

- 1.0 In consideration of the award of Contract by the Employer to the Bidder / Contractor (hereinafter referred to as the "Contract") we, the Bidder/Contractor and the **GIS Manufacturer** do hereby agree and undertake that we shall be jointly and severally responsible to the Employer for design, erection, testing and commissioning of complete GIS portion of the Contract and perform all obligations including the technical guarantee for the complete package..
- 2.0 In case of any breach of the Contract committed by the Contractor, we, the **GIS Manufacturer** do hereby undertake, declare and confirm that we shall be fully responsible for design, manufacturing, erection, testing and commissioning of complete GIS portion under the Contract and undertake to carry out all obligation and responsibilities under this Deed of Joint Undertaking in order to discharge the Contractor's obligations and responsibilities stipulated in the Contract with respect to GIS portion of the Contract. Further, if the Employer sustains any loss or damage on account of any breach with respect to GIS portion of the Contract, we, the **GIS Manufacturer** and the Contractor jointly and severally undertake to promptly indemnify, and pay such losses/damages caused to the Employer on its written demand without any demur, reservation, contest or protest in any manner whatsoever.
- 3.0 Without in any way affecting the generality and total responsibility in terms of this Deed of Undertaking, the Bidder/Contractor hereby agrees to ensure the following:
  - (i) The **GIS Manufacturer** will be fully responsible for design, engineering, manufacture, erection, testing, commissioning and putting into satisfactory operation of complete GIS portion to the satisfaction of the Employer.

Further, the **GIS Manufacturer** shall depute their technical experts from time to time to the Contractor's works/Employer's project site as required by Employer and agreed to by the Contractor/~~Associate~~ **GIS Manufacturer** to facilitate the successful performance of switchyard with respect to GIS portion as stipulated in the Contract.

Further, the **GIS Manufacturer** shall ensure proper design, engineering, manufacture, erection, testing, commissioning and successful performance of GIS portion covered under the said Contract in accordance with the stipulations of the Contract specifications and if necessary the **GIS Manufacturer** shall advise the Contractor suitably modifications of design

and implement necessary corrective measure to discharge the obligations under the Contract.

- (ii) In the event the **GIS Manufacturer** and the Contractor fail to demonstrate successful performance of GIS Portion, the **GIS Manufacturer** and the Contractor shall promptly carry out all the corrective measures at their own expenses and shall promptly provide corrected designs to the Employer.
- (iii) The Contractor and **GIS Manufacturer** will be fully responsible for the quality of all equipment/main assemblies/components manufactured at their works or at their vendor's works or fabricated/constructed at site, and their repairs or replacement if necessary for incorporation on the switchyard with respect to GIS portion of the Contract and timely delivery thereof the meet the completion schedule under the Contract.
- (iv) In case of any issue related to failure and repair of GIS equipment, the Bidder / Contractor and the **GIS Manufacturer** shall ensure the following:
  - a. The **GIS Manufacturer's** Service Engineer(s) shall be deputed to concerned site within 24 Hours plus actual journey time to attend the problem after receiving the information of the same from Employer.
  - b. The **GIS Manufacturer** shall ensure readily availability in their Indian works at least one no. of each type of GIS Module used in the installation under the Contract.

4.0 This Deed of Undertaking shall be construed and interpreted in accordance with the laws of India and the Courts in Delhi shall have exclusive jurisdiction in all matters arising under the Undertaking.

5.0 As a security, the **GIS Manufacturer** shall apart from the Contractor's performance guarantee, furnish a Contract Performance Guarantee from its Bank in favour of the Employer in a form acceptable to the Employer. The value of such guarantee shall be equivalent to 2% (two percent) of the GIS Portion Contract value (i.e. Total price of items in supply, F&I and installation schedules mentioned under Activity titled "GIS portion" in BPS ) awarded by the Employer to the Bidder/Contractor and it shall be part of guarantee towards the faithful performance/compliance of this Deed of Undertaking in terms of the Contract. The guarantee shall be unconditional, irrevocable and valid for the entire period of the Contract, namely till the end of the Defect Liability Period under the Contract. The Bank Guarantee amount shall be payable to the Employer on demand without any reservation or demur. This shall be in addition to the Contract Performance Guarantee to be furnished by the Contractor.

We further agree that this undertaking shall be without any prejudice to the various liabilities of the Bidder / Contractor, including the Contract Performance Security as well as other obligations of the Bidder / Contractor in terms of the Contract.

6.0 We, the **GIS Manufacturer** and Bidder/Contractor agree that this Undertaking shall be irrevocable and shall form an integral part of the Contract and further agree that this Undertaking shall continue to be enforceable till the Employer discharges it. It shall become operative from the effective date of Contract.

IN WITNESS WHEREOF the Contractor and the **GIS Manufacturer** have through their Authorised Representatives executed these presents and affixed Common seals of their respective Companies on the day, month and year first above mentioned.

WITNESS	[For Bidder/Contractor]
Signature .....	(Signature of the authorized representative)
Name .....	Name .....
Office Address .....	Common Seal of Company .....

WITNESS	[For <b>GIS Manufacturer</b> ]
Signature .....	(Signature of the authorized representative)
Name .....	Name .....
Office Address .....	Common Seal of Company .....

**Note:**

1. For the purpose of executing the Deed of Undertaking, the non-judicial stamp papers of appropriate value shall be purchased in the name of executant.
2. The Undertaking shall be signed on all the pages by the authorised representative(s) of the Bidder and the **GIS Manufacturer** and should invariably be witnessed.

**Division of Scope between “FIRST PARTY” and “SECOND PARTY”**

**Scope of Second Party (Associate / GIS OEM)**

Design, Manufacture, Supply (incl. F&I), Testing & Commissioning, Supervision of Erection, and Warranty/Guarantee Obligations for items as per attached “**ANNEXURE\_BOQ\_SS27T**” and **BHEL Technical Specifications** or any subsequent amendment of the same issued by BHEL in line with requirement of M/s POWERGRID tender.

**Scope of First Party (BHEL)**

All the remaining scope (apart from the scope of Second Party identified above) defined in bidding document and subsequent amendments issued by M/s POWERGRID.