

Bharat Heavy Electricals Limited

BHEL HPBP Trichy

Enquiry No: 1502400004

Enquiry Terms & Conditions for Manufacture & Supply of Seamless Tubes

Note: Enquiry terms and conditions has to be mandatorily filled & signed by the manufacturer (or) mill and submitted along with Technical bid.

Any deviation to the below mentioned terms shall be stated specifically in the comments column for each term and also in case of acceptance to our terms, it will be construed that the whole term is understood and agreed in totality without any deviation (until otherwise explicitly indicated).

SI No	BHEL Requirements	Supplier Confirmation / Comments
1	<u>Restrictions for Procurement from a country sharing its land border with India:</u> For this procurement, Public Procurement Order dated 23.07.2020 regarding restrictions under rule 144 (xi) of General Financial Rules 2017 and clarification dt 08.02.2021 from DoE is applicable. In case of subsequent Orders issued, the same shall be applicable even if issued after issue of this NIT.	
2	<u>Preference for Make in India:</u> For this procurement, the local content to categorize a supplier as a Class I Local Supplier / Class II Local Supplier / Non-Local Supplier and purchase preference to Class I Local Supplier is as defined in Public Procurement (Preference to Make in India), Order 2017 dated 04.06.2020 issued by DPIIT. In case of subsequent Orders issued by the respective Nodal Ministry, changing the definition of local content for the items of the NIT, the same shall be applicable even if issued after issue of this NIT, but before opening of Part II bids against this NIT. In case the bid value is less than or equal to Rs. 10.00 Crore, self-certified Make in India declaration indicating the percentage of Local Content in line with PPP-MII order shall be submitted along with Part I bid. In case the bid value is more than Rs. 10.00 Crore, Make in India declaration being submitted by indicating the percentage of Local Content in line with PPP-MII order shall be certified by a statutory auditor or cost auditor of the company (in the case of companies) or by a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies).	
3	<u>Special Provisions for Micro and Small Enterprises (MSE) bidders registered as per MSME act (Subject to participating MSE vendors meeting the tender requirements of BHEL):</u> - As per Gazette Notification No. S.O. 2119(E) dated 26.06.2020 issued by Ministry of MSME applicable / existing Micro and Small suppliers are requested to get registered in Udyam Registration portal and provide copy of Udyam Certificate Registration No along with Udyam Certificate. 25% of the tendered quantity is earmarked for MSE suppliers in this tender, subject to participating MSE bidders meeting the tender requirements of BHEL. In case MSE bidder participating in the tender quotes within the price band of L1 + 15%, they will be allowed	

	to supply the portion of the requirement subject to acceptance of L1 price by the MSE bidder. In case of more than one such MSE bidder within the “L1 + 15% price band”, the supply shall be shared proportionately. • In the event of Non MSE supplier becoming L1 and MSE bidder quotes within the price band of L1 + 15% and it is not possible to split the tendered quantity on account of reasons like customer contract requirement / technical requirements etc, then 100% of the quantity will be offered to MSE suppliers subject to acceptance of L1 price by the MSE supplier. • Counter offering of L1 rate will not be made to any MSE supplier who’s quoted rate is more than the price band of L1 + 15%. • Payment to MSE vendor will be as per the applicable provisions of the MSMED Act 2006. • If L1 offer is from a Micro / Small Enterprise, the 25% earmarking provision is not applicable. • Out of the 25% tendered quantity reserved for MSE suppliers, 6.25% shall be earmarked for procurement from MSE owned by SC / ST entrepreneurs. Apart from this 3% of this shall be earmarked for procurement from MSE owned by Women entrepreneurs. • In case of any change in the MSE status of the bidder, it shall be the responsibility of the bidder to notify the change as a part of the bid document. If at a later date it comes to the knowledge of BHEL that the change in the status has not been intimated by the bidder and the order is obtained under the premise of an MSE then BHEL would cancel the pending order against this tender and take necessary steps for suspension of the business dealing with the bidder as per the procurement policy of BHEL. • MSE suppliers can avail the intended benefits only if they submit along with the offer Udyam Registration Certificate. However, credentials of all MSE suppliers will be verified before considering the intended benefits for MSE suppliers at the time of tender evaluation. Non-submission of above documents will lead to consideration of their bids at par with other bidders and MSE status of such suppliers shall be shifted to Non MSE supplier till the supplier submits this document.	
4	<u>Specification, Size & Quantity:</u> • Relevant Technical Specification, Size and Quantity shall be as per the Enquiry. • Applicable TDC for each line item is as detailed in Annexure II. • In case of any deviation, same shall be clearly indicated by mentioning the specific Clause No of the relevant Technical Specification in the Part I bid itself. In case of technical deviations are not explicitly indicated in the Part I bid, bidder will be deemed to have accepted all the terms and conditions of the relevant Technical Specifications without any deviation. • All the pipes are to be stenciled and color coded, longitudinally and continuously throughout the length of the pipes with specific details as listed out in respective Technical Specifications and SIPPP 21 Rev 08. • All bidder must ensure NTPC approved conditions as specified in their Mill approval letter issued by NTPC. • All pipes are to be supplied as per specific length indicated in the item description. Any deviation in specific length shall be explicitly indicated in the Part I bid itself.	
5	<u>Enquiry Quantity & Length Tolerance during Supply:</u> • Suppliers are to supply the pipes as per Purchase Order quantity only. No excess supply / length tolerance will be allowed. Even in case additional supply is made due to limitations of manufacturing process, payment will be limited to the actual supply quantity limited to PO quantity.	
6	<u>Manufacturing Process for Pipes:</u>	

	Bidders are requested to tabulate and submit the process of Manufacturing of the Pipes for each line item. These details are mandatory required for arriving applicable anti-dumping duty notified by Indian Custom Department from time to time.	
7	<u>NTPC / End Customer Approval</u> Acceptance of offer will be subject to NTPC / customer approval. Offer will be considered from only the bidders, for the specifications, already approved by end Customer / NTPC. The customer approved bidders shall comply without fail all the NTPC approval conditions, already existing, while submitting the offer.	
8	<u>Bid Submission:</u> • This tender is hosted in EPS (E-Procurement System) portal & offer is to be submitted through EPS portal only. You are requested to submit bid in Two Part basis before the due date & time indicated in the Enquiry through NIC (https://eprocurebhel.co.in) only. • Offer is to be submitted on Two Part Bid basis (Technical bid + Price bid) through BHEL's NIC E-Procurement portal (https://eprocurebhel.co.in) only. Sealed cover bids / E-Mails / fax / manual offers will not be accepted. • Scanned copy of the filled in Integrity Pact, Annexure A, B, Tender documents etc shall be uploaded in the EPS portal during Part I bid submission. • At its option, BHEL may consider extending the due date/s for the tender opening. Sufficient notice would be given by BHEL for such extensions and it will be published as corrigendum in the following websites, ○ https://eprocurebhel.co.in • All bidder requested to submit along with offer the filled Annexure IV (Vendor details) of the Enquiry without fail. These details are mandatorily required for contacting bidders for post tender clarification / communication. • All bidder requested to submit along with offer the filled Annexure III (Sister concern declaration)) of the Enquiry without fail. These details are mandatorily as per Conflict of interest clause of this enquiry terms and conditions.	
9	<u>E-Tender Participation Requirements- Authorization for participation in EPS portal with DSC:</u> Either Principal or authorized agent shall register their Digital Signature Certificate (DSC) (Class 3- SHA2- 2048 BIT- SIGNING & ENCRYPTION). Suppliers are advised to go through the FAQ available in the web portal (https://eprocurebhel.co.in). DSC shall be registered for the authorized person and all transaction done using that DSC against our tenders shall be taken as valid communication and shall be binding on principal/agent and is valid legally. • For Foreign Principal- In case of Principal (being foreigner), they may apply for DSC through Indian embassy at their country and can register with us for participating in E-tenders. Details of the applicable procedure is available in the webpage http://www.cca.gov.in/cca/. • For Indian Agent- In case of agents participating / registering their DSC (of authorized person), it will be at the sole authorization of principal to their agents to participate on their behalf and all transactions done using that DSC against our tenders shall be known as valid communication and shall binding on principal and is legally valid.	
10	<u>Price Terms:</u>	

	Bidders are requested to submit their offer for each line item on Firm Price basis only. PVC clause is not applicable for the Enquiry. Conditional offers if any will not be accepted and will be rejected. Bids with conditions of Minimum Order Quantity (MOQ) and / or Minimum Order Value (MOV) will not be accepted and will be rejected.	
11	<u>Reverse Auction:</u> Bidders are requested to submit the competitive rates for each line items and <u>No Reverse Auction</u> is applicable for this tender.	
12	<u>Currency of Quote:</u> Bidder shall indicate the currency of quote. If there is any discrepancy in the terms quoted in Techno-Commercial bid and Price bid, the terms as per the Techno-Commercial bid (Part I) shall hold good and the commercial term quoted in Price bid (Part II) shall not be considered.	
13	<u>Bid Validity:</u> - Bid shall be valid for 90 days from the date of Part I bid opening for price finalization. Post Part I bid opening, quoted rates cannot be changed on any grounds. - Finalized rate shall be valid for Purchase Ordering for another 60 days from the date of Price bid opening.	
14	<u>Delivery Period:</u> Bid shall clearly indicate the delivery period in fixed number of Weeks / Months from the date of Purchase Order. <u>BHEL's preferred delivery period is as indicated below:</u> 4 to 5 months from LOI / PO.	
15	<u>Terms of Delivery (Indigenous vendors):</u> - Bidders shall submit their offer on FOR destination BHEL Trichy Stores basis. Quote should be inclusive of raw material procurement, manufacturing charges, internal testing, inspection, packing & forwarding, freight and insurance (Ex-Works offers will not be considered). - Soft copy of Test certificates, Invoice, LR copy and / or E-Way bill as the case may be shall be forwarded to BHEL immediately upon dispatch.	
16	<u>Terms of Delivery (Import vendors):</u> - Bidders shall submit their offer on CFR Chennai Port basis. Quote should be inclusive of raw material procurement, manufacturing charges, internal testing, inspection, packing & forwarding and freight (Offers on FOB Incoterms will not be considered). - Transit Insurance will be in BHEL's scope. - Soft copies of the Invoices, Packing Slip, TC's, BL and Country of Origin shall be forwarded to BHEL immediately upon shipment.	
17	<u>Additional Terms of Delivery (Applicable only for Import vendors):</u> - Import vendors shall submit their offer on CFR (Cost & Freight) Chennai Port (LILO – Liner in Liner Out) basis. - Port of loading should be indicated without fail. - Port of discharge should be Chennai. - The preferred shipment mode “Containerized Cargo or Break Bulk” shall be clearly indicated in the offer. <u>In case of CFR Incoterms- Containerized Cargo</u>	

- a) For CFR terms, moved through CONTAINERS (Suppliers should clearly specify this in their offer) it would be presumed by BHEL that the freight charges quoted is on LILO (LINER IN LINER OUT) basis including extra charges, if any, like Container Imbalance Charges, Trade Imbalance charges or any other charges payable to the Liner. No other charges other than the quoted Freight rate will be paid by BHEL excepting applicable Terminal Handling Charges, Container cleaning Charges, DO charges to Shipping Liner at Discharge Port. 14 FREE DAYS for Container detention shall be provided. If any deviation is taken by Tenderer, a loading of 22% on the freight rate per MT shall be considered by BHEL for arriving at the Total Landed Cost.
- b) In case of shipment through Containers on CFR basis, the BL should bear the endorsement that "14 free days for Container Detention is applicable".

In case of CFR Incoterms- Breakbulk Cargo

- a) For CFR terms, moved through BREAK BULK BASIS (Suppliers should clearly specify this in their offer) it would be presumed by BHEL that the freight charges quoted is on LILO (LINER IN LINER OUT) basis.
- b) The materials will be Customs cleared from Port itself.

Information to Import Suppliers:

- a) Indian Customs imposed a penalty on late filing of Bill of Entries (Air / Sea Shipments) by the importer. Bill of Entry is required to be Filed Latest by the End of Day Preceding the Day (including Holidays) of Arrival of the Vessel for sea shipments and by the end of same day on arrival of air shipment. Penalty for not filing Bill of Entry within the specified time period is Rs. 5,000/- per day (for Initial 03 days) & Rs. 10,000/- per day (thereafter).

The vendor should furnish the Non-Negotiable Documents (Air Way Bill / Bill of Lading, Commercial Invoice, Packing List, and Certificate of Origin) either by email or post / courier to BHEL well before the landing of cargo at final port of discharge.

Vendor will be held responsible for the penalty arises against the late filing of Bill of entry due to:

- Non-availability of Non-Negotiable Documents (NNDs) before the cargo arrival
- Discrepancy in documents
- Short landing of Consignments (For shipments on CFR/CPT/CIF/CIP – Chennai Port)

- b) All the shipments for the contracts (PO's) finalized on CFR Chennai Port basis.
 - (i) Delivery Orders involving multiple agencies like liners / freight forwarders are not allowed. There must be a single agency office at the final discharge Port (Chennai) for issuing the Delivery Order to BHEL.
 - (ii) The detention/demurrage charges arising due to the nomination of containers under single BL to different / multiple CFS by the liner will be deducted from Vendor's bills only.
 - (iii) The detention / demurrage charges arise due to the delay in collection of Delivery Orders from multiple agencies of liner / freight forwarder also whose offices are not at available Chennai, the same amount will be deducted from Vendor's bills only.
 - (iv) Apart from the normal charges like Terminal Handling Charges, Container cleaning Charges, Delivery Order Charges at final port of discharge no other charges will be borne by BHEL.
 - (v) The liner / freight forwarders should be properly communicated by the Vendor for not to claim such charges for issuing Delivery Order. If the liner / freight forwarder claims such charges in their invoices, the same amount will be deducted from the Vendor bills without any prior intimation in order to avoid the delay in Customs clearance. The likely additional / hidden costs or charges are:

	a. CIC- Container Imbalance Charges / Surcharges b. EIC- Equipment Imbalance Charge / Surcharges c. CAF- Container / Currency Adjustment Factor d. BAF- Bunker adjustment Factor e. RDS- Rupee Depreciation Surcharge f. CDS- Currency Depreciation Surcharge g. PCS- Port Congestion Surcharge h. LSS- Low Sulphur Surcharge i. Devanning Charges	
18	<u>Transport Conditions (Applicable only for Import vendors):</u> Original Documents (Bill of Lading, Invoice, Packing List, Certificate of Origin & Test Certificate) shall reach BHEL well in advance before the vessel arrival. Soft copies of the above documents shall be forwarded to BHEL Purchase Department through mail immediately after shipment. a) 14 FREE DAYS for Container detention at final port of destination shall be provided and the same to be endorsed in the Bill of Lading. If there is no free day or less than 14 free days provided by the supplier, the actual cost incurred towards detention charges due to non-availability of above said free days will be recovered from the supplier Invoice. b) In the event of delayed submission of documents / non-submission of documents by the supplier as per the mutually agreed terms, an amount up to 5% of the invoice value will be retained towards detention / demurrage & other charges and the difference if any between actual charges and recovery will be settled separately through supplementary invoice. c) In such cases, the Supplier shall authorize the Steamer / Shipping agent / transporter to freely release the consignment to BHEL by providing a "Surrender Bill of Lading". d) Otherwise, No-objection Certificate shall be issued to the Liner, authorizing BHEL to get the Delivery Order without producing the Original Bill of Lading. This is required to ensure avoidance of detention / demurrage at Chennai Sea-port that may arise in case of delayed presentation of documents by the Seller.	
19	<u>Evaluation Criteria:</u> Currency of evaluation the Enquiry shall be "INR". Bids will be evaluated on total landed cost to BHEL Trichy Stores basis for each line item. Evaluation process is as detailed below: <u>Indigenous vendors:</u> Total Landed cost = FOR rate in INR (A) + Applicable taxes (B) + Loading for payment term & LD (C) – Applicable input tax credit (D) a) Indigenous vendors shall submit their bid on Free on Road (FOR) BHEL Trichy Stores basis in INR. b) GST and any other charges quoted by indigenous vendors will be added to the base price. c) Loading for payment terms & non-acceptance of Liquidated Damages (LD) will be added on the FOR value for arriving the landed cost to BHEL. d) Input credit is availed for GST (SGST, CGST / IGST) and hence the same will be excluded for arriving at the landed cost to BHEL. <u>Import vendors:</u> Total Landed cost = CFR rate in INR (A) + Applicable duties (B) + Incidental Charges (C) + Loading for payment term & LD (D) a) Import vendors shall submit their bid on CFR (Cost & Freight) Chennai port (LILo – Liner In Liner Out) basis in foreign currency, which will be converted to INR by multiplying with the Exchange Rate (SBI TT Selling rate) as on the Technical bid (Part I) opening date.	

	b) Customs duty, Safe guard duty and antidumping duty as applicable will be added to the INR price. c) Incidental charges as applicable will be added to the CFR Value. The incidental charge is inclusive of Insurance, Port Handling charges & Freight charges for movement from Chennai port to BHEL Trichy. d) Loading for payment terms & Non-acceptance of Liquidated Damages (LD) will be added to the CFR value for arriving at the landed cost to BHEL. Note: In the course of evaluation, if more than one bidder happens to occupy L1 status, effective L1 will be decided by soliciting discounts from the respective L1 bidders. In case more than one bidder happens to occupy the L1 status even after soliciting discounts, the L1 bidder shall be decided by a toss / draw of lots, in the presence of the respective L1 bidders or their representatives. Ranking will be done accordingly. BHEL decision in such situations shall be final and binding.	
20	<u>Goods and Service Tax (GST) Registration & Compliance:</u> <u>Indigenous suppliers:</u> a) Response to Tenders for Indigenous supplier will be entertained only if the vendor has a valid GST registration Number (GSTIN) which should be clearly mentioned in the offer. If the dealer is exempted from GST registration, a declaration with due supporting documents need to be furnished for considering the offer. Dealers under composition scheme should declare that he is a composition dealer supported by the screen shot taken from GSTN portal. The unregistered dealer as well as the composition dealer has to submit an undertaking stating that they will not claim GST during the execution of the contract even if their status under GST changes to regular tax payer. The dealer has to submit necessary documents if there is any change in status under GST. b) Supplier shall mention their GSTIN in all their invoices (incl. credit Notes, Debit Notes) and invoices shall be in the format as specified / prescribed under GST laws. Invoices shall necessarily contain Invoice number (in case of multiple numbering system is being followed for billing like SAP invoice no, commercial invoice no etc., then the Invoice No. which is linked/uploaded in GSTN network shall be clearly indicated), Billed to party (with GSTIN) & Shipped to party details, item description as per PO, Quantity, Rate, Value, applicable taxes with nomenclature (like IGST, SGST, CGST & UTGST) separately, HSN / SAC Code, Place of Supply etc. Wherever E-Invoice is applicable, the tax invoice / CN / DN submitted by the vendor must contain the QR code generated in E-Invoice Portal & IRN. c) All invoices shall bear the HSN Code for each item separately (Harmonized System of Nomenclature)/ SAC code (Services Accounting Code) d) Invoices will be processed only upon completion of statutory requirement and further subject to following: • Vendor declaring such invoice in their GSTR-1 Return / IFF. • Receipt of Goods or Services and Tax invoice by BHEL. e) As the continuous uploading of tax invoices in GSTN portal (in GSTR-1/ IFF) is available for all (i.e. both Small & Large) tax payers, all invoices raised on BHEL may be uploaded immediately in GST portal on dispatch of material / rendering of services. The supplier shall ensure availability of Invoice in GSTN portal before submission of invoice to BHEL. Invoices will be admitted by BHEL only if the invoices are available in GSTN portal (in BHEL's GSTR-2A / GSTR-2B). f) In case of discrepancy in the data uploaded by the supplier in the GSTN portal or in case of any shortages or rejection in the supply, then BHEL will not be able to avail the tax credit and will notify the supplier of the same. Supplier has to rectify the data discrepancy in the GSTN portal or issue credit note or debit note (details also to be	

	uploaded in GSTN portal) for the shortages or rejections in the supplies or additional claims, within the calendar month informed by BHEL. g) In cases where invoice details have been uploaded by the vendor but failed to remit the GST amount to GST Department (Form PMT-06 or GSTR-3B to be filed) within stipulated time, then GST paid on the invoices pertaining to the month for which GST amount not remitted by the vendor will be withheld from other payments of the vendor / recovered from the vendor. h) In case GST credit is denied to BHEL due to non-receipt or delayed receipt of goods and / or tax invoice or expiry of timeline prescribed in GST law for availing such ITC, or any other reasons not attributable to BHEL, GST amount claimed in the invoice shall be disallowed to the vendor. i) Where any GST liability arising on BHEL under Reverse Charge (RCM), the vendor has to submit the invoices to BHEL well within the timeline prescribed in GST Law, to enable BHEL to discharge the GST liability. If there is a delay in submission of invoice by the vendor resulting in delayed payment of GST by BHEL along with Interest, then such Interest payable or paid shall be recovered from the vendor. j) GST TDS will be deducted as per Section 51 of CGST Act 2017 and in line with Notification 50/2018 – Central Tax dated 13.09.2018. GST TDS certificate will be generated in GSTN portal subsequent to vendor accepting the TDS deduction in the GSTN portal & the vendor can directly download the Certificate from the GSTN Portal. Since GST is implemented, taxes & duties will prevail as per the government notification / guidelines. Our Provisional GST registration no. is 33AAACB4146P2ZL. However, it will be mandatory to confirm from BHEL for this mentioned GST no. Suppliers may quote their GST no with valid proof in the quotation. Also before quoting of tender it is suggested to consider all the factors in line with GST guidelines for input tax credit to arrive ranking of quoted suppliers. <u>Import suppliers:</u> Supplier shall mention the HSN code of each item quoted by them in the offer. HSN shall be mentioned in the Invoice also for each item without fail.	
21	<u>Acceptance of Materials Supplied:</u> a) Supply shall strictly as per the specifications in the tender / Purchase Order. b) Delivery of the ordered items as per the delivery terms in the Purchase Order does not automatically constitute acceptance of the delivered items. c) The acceptance or otherwise of the delivered items will be separately communicated to the supplier by BHEL either through B2B portal or through E-Mail within 120 days from the delivery of items or delivery of the required test certificates / other documents whichever is later. d) In case of rejection of the delivered items, either part or full, the vendor shall replace the rejected items as per the specification in the Purchase Order / tender at their cost within specified days / months of communication of rejection to the supplier. e) In case of rejection of the delivered items, either part or full, if the supplier fails to replace the rejected items within the specified days / months of communication of the rejection, the same shall be treated as failure to execute the contract and actions as per the Guidelines for Suspension of Business Dealings with Suppliers / Contractors available in the webpage: http://www.bhel.com/vender_registration/vender.php would be taken against such supplier.	
22	<u>Payment Terms:</u> <u>Indigenous vendors:</u>	

	a) For Micro & Small Enterprises, BHEL Payment term is 100% direct EFT payment within 45 days from Vehicle/Gate entry date at BHEL Trichy. However, payment will be made after acceptance of materials by BHEL. b) For Medium Enterprises, BHEL Payment term is 100% direct EFT payment within 60 days from Vehicle/Gate entry date at BHEL Trichy. However, payment will be made after acceptance of materials by BHEL. c) For Non MSME vendors, BHEL Payment term is 100% direct EFT payment within 90 days from Vehicle/Gate entry date at BHEL Trichy. However, payment will be made after acceptance of materials by BHEL. <u>Import vendors:</u> a) BHEL Payment term is 100% payment on CAD basis after 90 days from the date of receipt of documents, specified in PO at BHEL bank. Respective bank charges to respective account. b) If supplier insists for LC, only Usance LC with 120 days credit will be accepted. Usance LC with 120 days credit will be opened one month prior to material readiness. Hence, supplier will be required to intimate the material readiness along with copy of MTC's for opening of LC. LC validity period will be 90 days and for any extension within the contractually agreed delivery period, applicable charges will be to suppliers account. Further, based on the shipment, LC may be opened in splits after confirmation from the supplier. c) Acceptance of requests for LC extensions beyond the contractually agreed delivery period will be at the discretion of BHEL. In case the request for LC extension beyond the contractually agreed delivery period is not accepted by competent authority of BHEL, then any subsequent bill will be cleared on CAD basis after 90 days. Any deviation to the above payment term will attract loading as mentioned below- • MCLR rate of SBI p.a. + 6% (as applicable on the date of bid opening. Techno-Commercial bid opening in case of Two Part bids) shall be considered for loading for the period of relaxation sought by bidders subject to competent authority approval. Offers with payment terms as advance payment & LC at Sight will be rejected.	
23	<u>Liquidated Damages (Indigenous & Imports):</u> a) Time is the essence of the contract. b) The ordered items shall be delivered as per the delivery period mentioned in the Purchase Order. c) In case the supplier supplies the ordered items beyond the delivery period specified, Liquidated Damages (LD) as detailed below will be levied from the supplier without prejudice to any other relief / compensation available to BHEL Tiruchirappalli under any other condition of the contract / applicable legal provisions. d) LD shall be 0.5% of the undelivered portion per week or part thereof subject to a maximum of 10% of the total order value. e) In case of any deviation from the above LD clause, loading will be applied to the extent to which it is not agreed by the bidder (at offered value). f) For indigenous vendors with "FOR delivery terms", Vehicle/Gate entry date at BHEL Trichy will be taken for LD calculation. g) For import vendors with "CFR delivery terms", BL date will be considered for LD calculation.	
24	<u>Change in Tax Structure</u> "Any change in applicable rates of Tax or any other statutory levies (Direct/Indirect) or any new introduction of any levy by means of statute and its corresponding liability for the deliveries beyond the agreed delivery date for reasons not attributable to BHEL will be to	

	vendors account. BHEL will not reimburse the same and any subsequent claim in this respect will be summarily rejected."	
25	<u>Warranty:</u> a) Supplier to accept warranty against manufacturing defect and non-compliance to Technical Specifications of the Enquiry for "18 months from dispatch or 12 months from commissioning, whichever is earlier". b) Supplier shall replace defective material free of cost (inclusive of all testing, inspection, TPI, service charges etc) up to the destination (on DDP basis) within two months from defect notification date.	
26	Breach of contract, Remedies and Termination: In case of breach of contract, wherever the value of security instruments like performance bank guarantee available with BHEL against the said contract is 10% of the contract value or more, such security instruments to the extent of 10% contract value will be encashed. In case no security instruments are available or the value of the security instruments available is less than 10% of the contract value, the 10% of the contract value or the balance amount, as the case may be, will be recovered in all or any of the following manners: - from dues available in the form of Bills payable to defaulted supplier against the same contract. - from the dues payable to defaulted supplier against other contracts in the same Region/Unit /any other region/unit - In-case recoveries are not possible with any of the above available options, Legal action shall be initiated for recovery against defaulted supplier. Further, levy of liquidated damages, debarment, termination, de-scoping, short-closure, etc., will be applied as per provisions of the contract.	
27	<u>Set-Off Clause:</u> BHEL shall have the right to recover any money, which in the sole opinion of BHEL is due from the Contractor, from any money due to the Contractor under this Contract or any other contract or from the Security Deposit & bank Guarantee's, if any, furnished by the Contractor under this Contract or any other contract.	
28	<u>Non-Disclosure Agreement (NDA):</u> The bidders shall enter into the Non-Disclosure Agreement totally voluntarily, with full knowledge of its meaning and without duress. Format for NDA is enclosed alongwith the Enquiry.	
29	<u>Intellectual Property Right:</u> The supplier shall, at all times, indemnify and keep indemnified the purchaser, free of cost, against all claims which may arise in respect of goods & services to be provided by the supplier under the contract for infringement of any intellectual property rights or any other right protected by patent, registration of designs or trademarks. In the event of any such claim in respect of alleged breach of patent, registered designs, trademarks etc. being made against the purchaser, the purchaser shall notify the supplier of the same and the supplier shall, at his own expenses take care of the same for settlement without any liability to the purchaser.	

30	Particulars to be furnished by Foreign vendors for evaluation of bids with Customs Duty Benefit:	
	a) Whether PTA / CEPA or any other agreement / treaty between respective Governments / Countries exists and the same is applicable for your supplies w.r.t this Enquired Items / tender.	Yes / No
	b) If yes, mention the Concessional Customs Duty (Such Duty Benefits)	%
	c) Documentary proof for the applicable Concessional Customs Duty (eg. PTA / CEPA or other agreement) shall be submitted along with the Part I bid.	
	d) Relevant documents and details to avail the above concessional duty benefits by BHEL shall be submitted by the supplier along with dispatch documents.	
	e) In the event of seller failing to provide appropriate documents along with dispatch documents for purchasers to avail disclosed concessional duty benefits in India, financial loss, so incurred will be to the sellers account.	
	Note: Evaluation of the Price bids will be based on the above details only and unless mentioned / furnished by the vendor, Customs Duty benefit will not be applied for evaluation purposes.	
31	<u>Role of Agents</u> - BHEL strongly discourages the engagement of Agents by foreign principals to deal with BHEL in BHEL's tenders. - In case of foreign suppliers representing through their Indian / foreign agents, agency agreement should be submitted, else offer is liable for rejection. Agency agreement requirements attached as separate file and full compliance to it shall be ensured while submitting the same. - BHEL, due to business reasons would ban, would have banned Indian agents from dealing with BHEL. Any foreign principal who engages such a banned agent, or an employee of the banned agency, or any other person connected with the banned agency, at any time during the tender proceedings, would be disqualified from the tender proceedings. The decision of BHEL in this regard shall be final and be binding on the OEM. Hence in their own interests, prospective tenderers may check with BHEL. The list of banned firms is available on BHEL website www.bhel.com. - Vendors / principals proposing to deal with BHEL by engaging and through an Indian Agent does so at their own risk. BHEL shall in no way be responsible for any consequences that may arise to the foreign principal on account of the antecedents / actions of their Indian agent.	
32	<u>Agency Commission:</u> - If overseas principal has any tie-up with any third party / agents, it should be declared while submitting offers. - In respect of offers from overseas suppliers, agency commission, if any, payable to their agents in India, shall invariably be shown separately in the Performa invoice and this will be paid by BHEL in India, in Indian rupees, on satisfactory completion of the contract. - Copies of current agency agreement / authorization letter in respect of agency commission shall be furnished along with offer. - For calculation of rupee equivalent agency commission, exchange rate as prevailing on the date of order will be taken.	
33	As per extant provisions of Income Tax Act, 1962 in India, foreign suppliers have to submit the following documents to avail benefits under DTAA at time of each dispatches, failing which TDS will be applicable considering Business Income in India. (Current TDS rate @ 40% as per the extant law provisions) plus applicable surcharge and cess is to be deducted u/s. 195 of I.T Tax Act. - Valid Tax Residency Certificate issued by Govt / Tax agency of country. - Form 10F duly filed signed. - No PE and No Business connection declaration in supplier's letter head.	

	Declaration of No Significant Economic Presence (SEP) in India as per Indian I.T Rule 11UD & indemnity to pay taxes at later stages on demand. Self-declaration that Non-resident is eligible to obtain benefits of relevant DTAA between India and Supplier's country.	
34	<u>General condition:</u> - Bids including all enclosures and supporting documents like catalogues, pamphlets, etc., shall be submitted / uploaded in ENGLISH language only. If the documents submitted have other than English language, translation of the same shall be provided for evaluation. - In addition to TCs in relevant IBR forms corresponding mill TCs should also be provided along with dispatch of tubes & pipes. Two sets of original of all such TCs are to be provided to BHEL, Trichy. - Material is to be inspected by third party inspection agency as approved by IBR and test certificate are to be countersigned by respective Inspection agency in case the Mill is not approved by IBR. - While dispatching the tubes & pipes, in addition to bundling with metal straps, we require slinging arrangement with nylon belt (not rope) for easy handling at loading and unloading points. - Multiple PO may also be placed considering the applicable duty structure of the respective requirement/Qty. - No revision of prices will be entertained after the tenders are opened. - For the evaluation purposes, exchange rate (TT selling rate of SBI) as on schedule date of tender opening (Part I, i.e technical bid, in case of two part bid) shall be considered. - BHEL will consider the ranking after the loading is applied wherever deviations are observed. - BHEL reserves the right to negotiate L1 rate or re-float the tender opened if L1 price is not the lowest acceptable price to them inter-alia other reasons. - In the event of our customer order covering this tender being cancelled / placed on hold / otherwise modified, BHEL would be constrained to accordingly cancel / hold / modify the tender / your purchase order at any stage of execution. - Offer will be evaluated based on Landed cost to BHEL- Trichy on individual line item basis only. - Vendor should physically weigh the materials before stuffing them into container and incorporate the same in BL and packing slip - Offers for partial quantities of a given item are not acceptable to BHEL. While tenderers can quote for some or all the tendered items, no supplier shall quote for partial quantity of any given enquiry item. Such partial offer would not be considered in the enquiry for that item. - No payment will be made for the excess quantity / length.	

	o) Offer should be submitted only as per the Unit of Measurement (UOM) specified in the enquiry. p) All documents submitted with the offer shall be signed and stamped in each page by authorized representative of the bidder. q) Any change in applicable rates of Tax or any other statutory levies (Direct / Indirect) or any new introduction of any levy by means of statute and its corresponding liability for the deliveries beyond the agreed delivery date for reasons not attributable to BHEL will be to suppliers account. BHEL will not reimburse the same and any subsequent claim in this respect will be summarily rejected. r) This Tender is hosted in EPS portal & offer to be submitted through EPS portal only. You are requested to submit your 2 parts offer before due date & time of the enquiry through NIC (https://eprocurebhel.co.in) only. SEALED COVER BIDS / E-MAILS / FAX / MANUAL OFFERS WILL NOT BE ACCEPTED.	
35	<u>Fraud Prevention Policy:</u> The bidder along with its associate / collaborators / sub-contractors / consultants / service providers shall strictly adhere to BHEL Fraud prevention policy displayed on BHEL website http://www.bhel.com and shall immediately bring to the notice of BHEL Management about fraud or suspected fraud as soon as it comes to their notice.	
36	<u>Suspension of Business Dealings with Suppliers/Contractors:</u> The offers of the bidders who are under suspension as also the offers of the bidders, who engage the services of the banned firms / principal / agents, shall be rejected. The list of banned firms is available on BHEL web site www.bhel.com. If any bidder / supplier / contractor during pre-tendering / tendering / post tendering / award / execution / post-execution stage indulges in any act, including but not limited to, mal-practices, cheating, bribery, fraud or and other misconduct or formation of cartel so as to influence the bidding process or influence the price or tampers the tendering process or acts or omits in any manner which tantamount to an offence punishable under any provision of the Indian Penal Code, 1860 or any other law in force in India, or does anything which is actionable under the Guidelines for Suspension of Business dealings, action may be taken against such bidder / supplier / contractor as per extant guidelines of the company available on www.bhel.com and / or under applicable legal provisions. Guidelines for suspension of business dealings is available in the webpage: http://www.bhel.com/vender_registration/vender.php.	
37	Integrity commitment, performance of the contract and punitive action thereof: Commitment by BHEL BHEL commits to take all measures necessary to prevent corruption in connection with the tender process and execution of the contract. BHEL will during the tender process treat all Bidder(s) in a transparent and fair manner, and with equity. Commitment by Bidder/ Supplier/ Contractor The bidder / supplier / contractor commit to take all measures to prevent corruption and will not directly or indirectly influence any decision or benefit which he is not legally entitled to nor will act or omit in any manner which tantamount to an offence punishable under any provision of the Indian Penal Code, 1860 or any other law in force in India.	

	- The bidder / supplier / contractor will, when presenting his bid, disclose any and all payments he has made, and is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract and shall adhere to relevant guidelines issued from time to time by Govt. of India / BHEL. - The bidder / supplier / contractor will perform / execute the contract as per the contract terms & conditions and will not default without any reasonable cause, which causes loss of business / money / reputation, to BHEL.																							
38	<u>Cartel Formation:</u> The Bidder declares that they will not enter into any illegal or undisclosed agreement or understanding, whether formal or informal with other Bidder(s). This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process. In case, the Bidder is found having indulged in above activities, suitable action shall be taken by BHEL as per extant policies / guidelines.																							
39	<u>Integrity Pact (IP):</u> Integrity Pact (IP) attached is an integral part of commercial terms and conditions of this Enquiry. IP shall be signed and submitted along with the Part I bid as a token of acceptance of the conditions of the pact. IP is applicable as per Govt. guidelines & all bidders shall submit duly signed and stamped IP to qualify for further processing of the bid. IP is a tool to ensure that activities and transactions between the Company and its Bidders / Contractors are handled in a fair, transparent and corruption free manner. Following Independent External Monitors (IEMs) on the present panel have been appointed by BHEL with the approval of CVC to oversee implementation of IP in BHEL. <table><tr><th>IEM</th><th>Email</th></tr><tr><td>Shri Otem Dai, IAS (Retd.)</td><td>iem1@bhel.in</td></tr><tr><td>Shri Bishwamitra Pandey, IRAS (Retd.)</td><td>iem2@bhel.in</td></tr><tr><td>Shri Mukesh Mittal, IRS (Retd.)</td><td>iem3@bhel.in</td></tr></table> The IP as enclosed with the tender is to be submitted (duly signed by authorized signatory) along with techno-commercial bid (Part-I, in case of two/ three part bid). Only those bidders who have entered into such an IP with BHEL would be competent to participate in the bidding. In other words, entering into this Pact would be a preliminary qualification. Please refer Section-8 of IP for Role and Responsibilities of IEMs. In case of any complaint arising out of the tendering process, the matter may be referred to any of the above IEM(s). All correspondence with the IEMs shall be done through email only. No routine correspondence shall be addressed to the IEM (phone/ post/ email) regarding the clarifications, time extensions or any other administrative queries, etc on the tender issued. All such clarification/ issues shall be addressed directly to the tender issuing (procurement) department's officials whose contact details are provided below: Details of contact person(s): <table><tr><td>Name</td><td>Mr. Bhaskarnath Biswas</td><td>Mr. K Udaya Kumar</td></tr><tr><td>Dept.</td><td>Dy. Engineer/MM/Purchase/Tubes</td><td>Manager / MM / RM</td></tr><tr><td>Address</td><td>4th Floor, 24 Building, HPBP BHEL Trichy 620014.</td><td>4th Floor, 24 Building, HPBP BHEL Trichy 620014.</td></tr><tr><td>Phone</td><td>0431-257-7958</td><td>0431-257-7030</td></tr><tr><td>Email</td><td>bhaskarnath@bhel.in</td><td>udayakumar.k@bhel.in</td></tr></table>	IEM	Email	Shri Otem Dai, IAS (Retd.)	iem1@bhel.in	Shri Bishwamitra Pandey, IRAS (Retd.)	iem2@bhel.in	Shri Mukesh Mittal, IRS (Retd.)	iem3@bhel.in	Name	Mr. Bhaskarnath Biswas	Mr. K Udaya Kumar	Dept.	Dy. Engineer/MM/Purchase/Tubes	Manager / MM / RM	Address	4th Floor, 24 Building, HPBP BHEL Trichy 620014.	4th Floor, 24 Building, HPBP BHEL Trichy 620014.	Phone	0431-257-7958	0431-257-7030	Email	bhaskarnath@bhel.in	udayakumar.k@bhel.in
IEM	Email																							
Shri Otem Dai, IAS (Retd.)	iem1@bhel.in																							
Shri Bishwamitra Pandey, IRAS (Retd.)	iem2@bhel.in																							
Shri Mukesh Mittal, IRS (Retd.)	iem3@bhel.in																							
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	Bids of the bidders who are under suspension / banned and also the bids of the bidders, who engage the services of the banned firms, shall be rejected. List of banned firms is available at https://www.bhel.com/supplier-registration. While submission of IP, following requirements shall be adhered to- • Authorized signatory of the bidder should sign along with seal on all the pages of the IP. • Bidder should mention their full name with address on first page of the IP. • Authorized signatory of the bidder should sign along with seal on the last page of the IP. • Witness shall sign with name and address on the last page of the IP.
40	<u>Resolution of Disputes:</u> The Parties agree that if at any time (whether before, during or after the arbitral or judicial proceedings), any Disputes (which term shall mean and include any dispute, difference, question or disagreement arising in connection with construction, meaning, operation, effect, interpretation or breach of the contract / tender which the Parties are unable to settle mutually), arise inter-se the Parties, the same may, be referred by either party to Conciliation to be conducted through Independent Experts Committee to be appointed by competent authority of BHEL from the BHEL Panel of Conciliators. Notes: 1. No serving or a retired employee of BHEL / Administrative Ministry of BHEL shall be included in the BHEL Panel of Conciliators. 2. Any other person(s) can be appointed as Conciliator(s) who is / are mutually agreeable to both the parties from outside the BHEL Panel of Conciliators. The proceedings of Conciliation shall broadly be governed by Part-III of the Arbitration and Conciliation Act 1996 or any statutory modification thereof and as provided in Annexure I to this Enquiry Conditions. The Annexure I together with its appendices will be treated as if the same is part and parcel hereof and shall be as effectual as if set out herein in these Enquiry Conditions. 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 other Party, refer such dispute or difference to sole arbitration of an arbitrator appointed as per the Arbitration and Conciliation Act, 1996 (India) or statutory modification or re-enactment thereof and the rules made thereunder and for the time being in force. The Arbitrator shall pass a reasoned award and the award of the Arbitrator shall be final and binding upon the parties. This contract shall be governed, construed and interpreted in accordance with the laws of India. Subject as aforesaid, the provisions of Arbitration & Conciliation Act 1996 (India) or statutory modification or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceeding under this clause. The seat of arbitration shall be Trichy, Tamil Nadu, India. The cost of arbitration shall be borne as per the award of the Arbitrator. Subject to arbitration in terms of clause above, the Courts at Trichy, Tamil Nadu, India shall have exclusive jurisdiction over any matter arising out of or in connection with this Contract. Notwithstanding the existence or any dispute or difference and / or reference for the arbitration, the vendor / contractor shall proceed with and continue without hindrance the performance of its obligation 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.

	<u>In Case of Contract with Central Public Sector Enterprise (PSE) or a Government Department / Organization, the following shall be applicable:</u> In the event of any dispute or difference relating to the interpretation and application of the provisions of commercial contract(s) between Central Public Sector Enterprises (CPSEs) / Port Trusts inter se and also between CPSEs and Government Departments / Organizations (Excluding disputes concerning Railways, Income Tax, Customs & Excise Departments, such dispute or difference shall be taken up by either party for its resolution through AMRCD as mentioned in DPE OM No.05/003/2019-FTS-10937 dtd. 14th December, 2022 and the decision of AMRCD on the said dispute will be binding on both the parties.
41	<u>In the event of Force Majeure:</u> - Notwithstanding the provisions contained in other clauses, the supplier shall not be liable for imposition of any such sanction so long the delay and / or failure of the supplier in fulfilling its obligations under the contract is the result of an event of Force Majeure. For purposes of this clause, Force Majeure means an event beyond the control of the supplier and not involving the supplier's fault or negligence and which is not foreseeable and not brought about at the instance of the party claiming to be affected by such event and which has caused the non – performance or delay in performance. Such events may include, but are not restricted to, wars or revolutions, hostility, acts of public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restrictions, strikes excluding by its employees, lockouts excluding by its management, freight embargoes and Acts of GOD. - If a Force Majeure situation arises, the supplier shall promptly notify the Purchaser / Consignee in writing of such conditions and the cause thereof within twenty-one days of occurrence of such event. Unless otherwise directed by the Purchaser / Consignee in writing, the supplier shall continue to perform its obligations under the contract as far as reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event. - If the performance in whole or in part or any obligation under this contract is prevented or delayed by any reason of Force Majeure for a period exceeding sixty days, either party may at its option terminate the contract without any financial repercussion on either side. - In case due to a Force Majeure event the Purchaser / Consignee is unable to fulfil its contractual commitment and responsibility, the Purchaser / Consignee will notify the supplier accordingly and subsequent actions taken on similar lines described in above sub-paragraphs.
42	<u>Execution of the Order:</u> - BHEL will have the option to pre-inspect the materials at Supplier's works by BHEL's own inspector or by third party agency appointed by BHEL or BHEL's end customer/s. - If the inspection fails, the vendor shall offer the material again as per ordered terms and specifications for further inspection. - The mere act of the pre-dispatch inspection (PDI) does not absolve the Supplier from giving the specifications as agreed upon in the Purchase Order. - In the case of overseas suppliers Inspection call for carrying out the inspection shall be given 30 days before the scheduled contract delivery date. The Inspection date/s given by the Supplier shall be on firm basis. For local Suppliers the Notice period of Inspection shall be 10 working days. - In the event of any short supply, it shall be the responsibility of the supplier to deliver such short supplied / missing items on Free-of-Cost basis at BHEL stores, including customs clearances at Indian Ports in the case of foreign suppliers.
43	<u>Caution:</u> The suppliers are severely cautioned to note that the price bid document accepts the price in figures only. It does not allow the supplier to write the value by words. Therefore, all care shall be exercised by the supplier while filling in the figures. Once the price bid is opened no option is available for the supplier to retract the offer under any grounds. If a supplier, for any reason whatsoever approaches BHEL with a request for change in the price, it would be treated as going back on the offer submitted. In such cases, action would be initiated by BHEL for suspending further business dealings with such suppliers as per policy of BHEL which prevails at that point of time.

	The tender documents downloaded by the Bidders shall at no point of time be changed, altered or modified in any manner by the Tenderer. If such changes are made by any tenderer, it shall be considered as tampering with BHEL's terms and the offer shall be summarily rejected, whenever it is noticed by BHEL. Such Bidders would be disqualified from the Bidding Process and their offers would be forfeited / Bank Guarantees invoked. They would also not be allowed to participate in future tenders of BHEL.		
44	<u>Conflict of Interest:</u> A bidder shall not have conflict of interest with other bidders. Such conflict of interest can lead to anti-competitive practices to the detriment of Procuring Entity's interests. The bidder found to have a conflict of interest shall be disqualified. A bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if: a) they have controlling partner (s) in common; or b) they receive or have received any direct or indirect subsidy/ financial stake from any of them; or c) they have the same legal representative/agent for purposes of this bid; or d) they have relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder; or e) Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all bids in which the parties are involved. However, this does not limit the inclusion of the components / sub-assembly / Assemblies from one bidding manufacturer in more than one bid; or f) In cases of agents quoting in offshore procurements, on behalf of their principal manufacturers, one agent cannot represent two manufacturers or quote on their behalf in a particular tender enquiry. One manufacturer can also authorize only one agent / dealer. There can be only one bid from the following: 1. The principal manufacturer directly or through one Indian agent on his behalf; and 2. Indian/foreign agent on behalf of only one principal; or h) In case of a holding company having more than one independently manufacturing units, or more than one unit having common business ownership / management, only one unit should quote. Similar restrictions would apply to closely related sister companies. Bidders must proactively declare in Annexure III attached, such sister / common business / management units in same / similar line of business.		
45	<u>Enclosures:</u> 1. Enquiry terms and conditions with Annexure -1. 2. TDC 102 Rev 20 3. SIPPP21 Rev08- Colour Codes 4. SIPRM01-Rev03-Creep Testing Procedure 5. Annexure III – Sister unit's details 6. Annexure IV – Vendor details 7. Non-Disclosure Agreement 8. Pre-signed Integrity Pact 9. Agency Agreement 10. BOQ Price bid format 11. NTPC Questionnaires		
<table border="1"> <tr> <td data-bbox="47 1646 758 2018">On behalf of BHEL HPBP Trichy,</td> <td data-bbox="758 1646 1591 2018"> <u>To be signed by Manufacturer / Mill</u> Name of Manufacturer / Mill: Name of authorized person: Designation / Department: E-Mail ID's for tender correspondence: </td> </tr> </table>		On behalf of BHEL HPBP Trichy,	<u>To be signed by Manufacturer / Mill</u> Name of Manufacturer / Mill: Name of authorized person: Designation / Department: E-Mail ID's for tender correspondence:
On behalf of BHEL HPBP Trichy,	<u>To be signed by Manufacturer / Mill</u> Name of Manufacturer / Mill: Name of authorized person: Designation / Department: E-Mail ID's for tender correspondence:		

	a) b) c) Seal & Signature:
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Annexure-1 to Enquiry terms and conditions for supply of Seamless Tubes.

BRIEF PROCEDURE FOR CONDUCT OF CONCILIATION PROCEEDINGS

1. The proceedings of Conciliation shall broadly be governed by Part-III of the Arbitration and Conciliation Act 1996 or any statutory modification thereof and as provided herein:
2. The party desirous of resorting to Conciliation shall send an invitation/notice in writing to the other party to conciliate specifying all points of Disputes with details of the amount claimed. The party concerned shall not raise any new issue thereafter. Parties shall also not claim any interest on claims/counter-claims from the date of notice invoking Conciliation till the conclusion of the Conciliation proceedings.
3. The party receiving the invitation/notice for Conciliation shall within 30 days of receipt of the notice of Conciliation intimate its consent for Conciliation along with its counter-claims, if any.
4. The Conciliation in a matter involving claim or counter-claim (whichever is higher) up to Rs 5 crores shall be carried out by sole Conciliator nominated by BHEL while in a matter involving claim or counter-claim (whichever is higher) of more than Rs 5 crores. Conciliation shall be carried out by 3 Conciliators nominated by BHEL.
5. The Parties shall be represented by only their duly authorized in-house executives/officers and neither Party shall be represented by a Lawyer.
6. The first meeting of the IEC shall be convened by the IEC by sending appropriate communication/notice to both the parties as soon as possible but not later than 30 days from the date of his/their appointment. The hearings in the Conciliation proceeding shall ordinarily be concluded within two (2) months and, in exceptional cases where parties have expressed willingness to settle the matter or there exists possibility of settlement in the matter, the proceedings may be extended by the IEC by a maximum of further 2 months with the consent of the Parties subject to cogent reasons being recorded in writing.
7. The IEC shall thereafter formulate recommendations for settlement of the Disputes supported by reasons at the earliest but in any case within 15 days from the date of conclusion of the last hearing. The recommendations so formulated along with the reasons shall be furnished by the IEC to both the

Parties at the earliest but in any case within 1 month from the date of conclusion of the last hearing.

8. Response/modifications/suggestions of the Parties on the recommendations of the IEC are to be submitted to the IEC within time limit stipulated by the IEC but not more than 15 days from the date of receipt of the recommendations from the IEC.
9. In the event, upon consideration, further review of the recommendations is considered necessary, whether by BHEL or by the other Party, then, the matter can be remitted back to the IEC with request to reconsider the same in light of the issues projected by either/both the Parties and to submit its recommendations thereon within the following 15 days from the date of remitting of the case by either of the Parties.
10. Upon the recommendations by the Parties, with or without modifications, as considered necessary, the IEC shall be called upon to draw up the Draft Settlement Agreement in terms of the recommendations.
11. When a consensus can be arrived at between the parties only in regard to any one or some of the issues referred for Conciliation the draft Settlement Agreement shall be accordingly formulated in regard to the said Issue(s), and the said Settlement Agreement, if signed, by the parties, shall be valid only for the said issues. As regards the balance issues not settled, the parties may seek to resolve them further as per terms and conditions provided in the contract.
12. In case no settlement can be reached between the parties, the IEC shall by a written declaration, pronounce that the Conciliation between the parties has failed and is accordingly terminated.
13. Unless the Conciliation proceedings are terminated in terms of para 22 (b), (c) & (d) herein below, the IEC shall forward his/its recommendations as to possible terms of settlement within one (1) month from the date of last hearing. The date of first hearing of Conciliation shall be the starting date for calculating the period of 2 months.
14. In case of 3 members IEC, 2 members of IEC present will constitute a valid quorum for IEC and meeting can take place to proceed in the matter after seeking consent from the member who is not available. If necessary, videoconferencing may be arranged for facilitating participation of the members. However, the IEC recommendations will be signed by all members. Where there is more than one (1) Conciliator, as a general rule they shall act

jointly. In the event of differences between the Members of IEC, the decision/recommendations of the majority of the Members of IEC shall prevail and be construed as the recommendation of the IEC.

15. The Draft Settlement Agreement prepared by the IEC in terms of the consensus arrived at during the Conciliation proceedings between the Parties shall be given by the IEC to both the parties for putting up for approval of their respective Competent Authority.
16. Before submitting the draft settlement agreement to BHEL's Competent Authority viz. the Board Level Committee on Alternative Dispute Resolution (BLCADR) for approval, concurrence of the other party's Competent Authority to the draft settlement agreement shall be obtained by the other party and informed to BHEL within 15 days of receipt of the final draft settlement agreement by it. Upon approval by the Competent Authority, the Settlement Agreement would thereafter be signed by the authorized representatives of both the Parties and authenticated by the members of the IEC.
17. In case the Draft Settlement Agreement is rejected by the Competent Authority of BHEL or the other Party, the Conciliation proceedings would stand terminated.
18. A Settlement Agreement shall contain a statement to the effect that each of the person(s) signing thereto (i) is fully authorized by the respective Party(ies) he/she represents, (ii) has fully understood the contents of the same and (iii) is signing on the same out of complete freewill and consent, without any pressure, undue influence.
19. The Settlement Agreement shall thereafter have the same legal status and effect as an arbitration award on agreed terms on the substance of the dispute rendered by an arbitral tribunal passed under section 30 of the Arbitration and Conciliation Act, 1996.
20. Acceptance of the Draft Settlement Agreement/recommendations of the Conciliator and/or signing of the Settlement Agreement by BHEL shall however, be subject to withdrawal/closure of any arbitral and/or judicial proceedings initiated by the concerned Party in regard to such settled issues.
21. Unless otherwise provided for in the agreement, contract or the Memorandum of Understanding, as the case may be, in the event of likelihood of prolonged absence of the Conciliator or any member of IEC, for any reason/incapacity, the Competent Authority/Head of Unit/Division/Region/Business Group of

BHEL may substitute the Conciliator or such member at any stage of the proceedings. Upon appointment of the substitute Conciliator(s), such reconstituted IEC may, with the consent of the Parties, proceed with further Conciliation into the matter either de-novo or from the stage already reached by the previous IEC before the substitution.

22. The proceedings of Conciliation under this Scheme may be terminated as follows:

- a. On the date of signing of the Settlement agreement by the Parties; or,
- b. By a written declaration of the IEC, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or,
- c. By a written declaration of the Parties addressed to the IEC to the effect that the Conciliation proceedings are terminated, on the date of the declaration; or,
- d. By a written declaration of a Party to the other Party and the IEC, if appointed, to the effect that the Conciliation proceedings are terminated, on the date of the declaration.
- e. On rejection of the Draft Settlement Agreement by the Competent Authority of BHEL or the other Party.

23. The Conciliator(s) shall be entitled to following fees and facilities:

Sl No	Particulars	Amount
1	Sitting fees	Each Member shall be paid a Lump Sum fee of Rs 75,000/- for the whole case payable in terms of paragraph No. 27 herein below.
2	Towards drafting of settlement agreement	In cases involving claim and/or counter-claim of up to Rs 5crores. Rs 50,000/- (Sole Conciliator)

Sl No	Particulars	Amount
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		In cases involving claim and/or counter-claim of exceeding Rs 5 crores but less than Rs 10 crores. Rs 75,000 (per Conciliator) In cases involving claim and/or counter-claim of more than Rs 10 crores. Rs 1,00,000/- (per Conciliator) Note: The aforesaid fees for the drafting of the Settlement Agreement shall be paid on Signing of the Settlement Agreement after approval of the Competent Authority or Rejection of the proposed Settlement Agreement by the Competent Authority of BHEL.
3	Secretarial expenses	Rs 10,000/- (one time) for the whole case for Conciliation by a Sole Member IEC. Where Conciliation is by multi member Conciliators Rs 30,000/- (one time)- to be paid to the IEC
4	Travel and transportation and stay at outstation i) Retired Senior Officials of other Public Sector Undertakings (pay scale wise equivalent to or more than E-8 level of BHEL)	As per entitlement of the equivalent officer (pay scale wise) in BHEL.

	Others	As per the extant entitlement of whole time Functional Directors in BHEL.
Sl No	Particulars	Amount
		Ordinarily, the IEC Member(s) would be entitled to travel by air Economy Class.
5	Venue for meeting	Unless otherwise agreed in the agreement, contract or the Memorandum of Understanding, as the case may be, the venue/seat of proceedings shall be the location of the concerned Unit / Division / Region / Business Group of BHEL. Without prejudice to the seat/venue of the Conciliation being at the location of concerned BHEL Unit / Division / Region / Business Group, the IEC after consulting the Parties may decide to hold the proceedings at any other place/venue to facilitate the proceedings. Unless, Parties agree to conduct Conciliation at BHEL premises, the venue is to be arranged by either Party alternately.

24. The parties will bear their own costs including cost of presenting their cases/evidence/witness(es)/expert(s) on their behalf. The parties agree to rely upon documentary evidence in support of their claims and not to bring any oral evidence in IEC proceedings.
25. If any witness(es) or expert(s) is/are, with the consent of the parties, called upon to appear at the instance of the IEC in connection with the matter, then, the costs towards such witness(es)/expert(s) shall be determined by the IEC with the consent of the Parties and the cost so determined shall be borne equally by the Parties.
26. The other expenditures/costs in connection with the Conciliation

proceedings as well as the IEC's fees and expenses shall be shared by the Parties equally.

27. Out of the lump sum fees of Rs 75,000/- for Sitting Fees, 50% shall be payable after the first meeting of the IEC and the remaining 50% of the Sitting Fees shall be payable only after termination of the conciliation proceedings in terms of para 22 hereinabove.
28. The travelling, transportation and stay at outstation shall be arranged by concerned Unit as per entitlements as per Serial No. 3 of the Table at para 23 above, and in case such arrangements are not made by the BHEL Unit, the same shall be reimbursed to the IEC on actuals limited to their entitlement as per Serial No. 4 of the Table at Para 23 above against supporting documents. The IEC Member(s) shall submit necessary invoice for claiming the fees/reimbursements.
29. The Parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of its implementation and enforcement or as required by or under a law or as per directions of a Court/Governmental authority/ regulatory body, as the case may be.
30. The Parties shall not rely upon or introduce as evidence in any further arbitral or judicial proceedings, whether or not such proceedings relate to the Disputes that is the subject of the Conciliation proceedings:
 - a. Views expressed or suggestions made by the other party in respect of a possible settlement of the Disputes;
 - b. admissions made by the other party in the course of the Conciliator proceedings;
 - c. proposals made by the Conciliator;
 - d. The fact that the other Party had indicated his willingness to accept a proposal for settlement made by the Conciliator.
31. The Parties shall not present the Conciliator(s) as witness in any Alternative Dispute Resolution or Judicial proceedings in respect of a Disputes that is/was the subject of that particular Conciliation proceeding.
32. None of the Conciliators shall act as an arbitrator or as a representative or counsel of a Party in any arbitral or judicial proceeding in respect of a Disputes that is/was the subject of that particular Conciliation proceeding.
33. The Parties shall not initiate, during the Conciliation proceedings, any arbitral or judicial proceedings in respect of a Disputes that is the subject matter of the

Conciliation proceedings except that a Party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights including for preventing expiry of period of limitation. Unless terminated as per the provisions of this Scheme, the Conciliation proceedings shall continue notwithstanding the commencement of the arbitral or judicial proceedings and the arbitral or judicial proceedings shall be primarily for the purpose of preserving rights including preventing expiry of period of limitation.

34. The official language of Conciliation proceedings under this Scheme shall be English unless the Parties agree to some other language.

**FORMAT FOR SEEKING CONSENT FOR REFERRING THE DISPUTES
TO CONCILIATION THROUGH IEC**

To,

M/s. (Stakeholder's name)

Sub: Resolution of the Disputes through conciliation by Independent Expert Committee (IEC).

Ref: Contract No/MoU/Agreement/LOI/LOA& date _____.

Sir,

With reference to above referred Contract/MoU/Agreement/LOI/LOA, you have raised certain Disputes/claims. Vide your letter dated____ you have requested BHEL to refer the Disputes/claims to IEC for Conciliation.

We are enclosing herewith Format (3) for giving consent and the terms and conditions of BHEL Conciliation Scheme, 2018 governing conciliation through IEC. You are requested to give your unconditional consent to the said terms and conditions of the Scheme by returning the same duly sealed and signed on each page. On receipt of your consent, matter will be put to the Competent Authority for consideration and decision.

Please note that BHEL has also certain claims against you (if applicable). BHEL reserves its right to agree or not to agree conciliation of the said disputes through BHEL and this letter is being issued without prejudice to BHEL's rights and contentions available under the contract and law.

Yours faithfully,

Representative of BHEL

**FORMAT FOR GIVING CONSENT BY
CONTRACTOR/VENDOR/CUSTOMER/COLLABORATOR/CONSORTIUM PARTNERS FOR REFERRING THE DISPUTES TO CONCILIATION
THROUGH IEC**

To,

BHEL

.....

**Sub: Resolution of Disputes through Conciliation by Independent
Expert Committee (IEC).**

Ref: Contract/MoU/Agreement/LOI/LOA No & date____

With reference to above referred contract, our following bills/invoices/claims submitted to BHEL are still unpaid giving rise to Disputes:

SL. no.	Claim Description	Bill submitted to BHEL (no. and date)	Amount of the bill/claim	Amount received from BHEL	Outstanding Amount

Accordingly we request you to kindly refer the Disputes in respect of above claims to IEC for Conciliation.

We hereby agree and give our unconditional consent to the terms and conditions of BHEL Conciliation Scheme, 2018 governing conciliation through IEC. We have signed the same on each page and enclosed it for your consideration.

Yours faithfully,

(Signature with stamp)

**Authorized Representative of Contractor
Name, with designation
Date**

**STATEMENT OF CLAIMS/COUNTER CLAIMS TO BE SUBMITTED TO
THE IEC BY BOTH THE PARTIES**

1. Chronology of the Disputes
2. Brief of the Contract/MoU/Agreement/LOI/LOA
3. Brief history of the Disputes:
4. Issues:

5. Details of Claim(s)/Counter Claim(s):

SI. No.	Description of claim(s)/Counter Claim	Amount (in INR)Or currency applicable in the contract	Relevant contract clause

6. Basis/Ground of claim(s)/counter claim(s) (along with relevant clause of contract)

Note– *The Statement of Claims/Counter Claims may ideally be restricted to maximum limit of 20 pages. Relevant documents may be compiled and submitted along with the statement of Claims/Counter Claims. The statement of Claims/Counter Claims is to be submitted to all IEC members and to the other party by post as well as by email.*