



ISG, Bangalore

TENDER Ref: [IS -1-09-2004](#)

Date: 24. 07.2009

Notice inviting Tender for Pre tender tie up for CHP - 2X520 MW HINDUJA  
NPC VIZAG

**NIT – MECH - PKG**



ISG, Bangalore

TENDER Ref: IS -1-09-2004

Date: 24. 07.2009

**Notice inviting Tender for Pre tender tie up for CHP - 2X520 MW HINDUJA NPC VIZAG**

1	Tender inviting Officer :	Anil Kumar / DGM (BG - 1A) Bharat Heavy Electricals Ltd. Industrial Systems Group P.B. No. 1249, IISc Post Malleswaram BANGALORE 560 012 E-mail: <a href="mailto:ak@bhelisg.com">ak@bhelisg.com</a> Phone: 080 2218 4045
2	Scope of work :	<b>MECHANICAL SYSTEM FOR 2X520 MW-HINDUJA NPCL – COAL HANDLING PLANT IN ANDHRA PRADESH STATE</b> Tender Ref: IS-1-09-2004/002
3	Tender document available place :	BHEL web site <a href="http://www.bhel.com">www.bhel.com</a> , <a href="http://www.bhelisg.com">www.bhelisg.com</a> and Government web site <a href="http://tenders.gov.in">http://tenders.gov.in</a>
4	Due date and time for submission of tender	For Part I : 17-08-2009 by 11.00 AM For Part II & III : Will be informed later through website.
5	Place of submission of tender :	ISG Tender box placed at the Reception of ISG & EPD at the following address: Bharat Heavy Electricals Limited Industrial Systems Group Opp. to Prof. CNR Rao Circle Malleswaram BANGALORE 560 012
6	Place of tender opening	Part I ( <u>Qualifying Requirement</u> ) will be opened in public on 17-08-2009 at 3.00 PM at BHEL/ISG. Part II ( Techno – commercial bid ) : Date of opening will be informed later. Part III ( Price bid ) of vendors qualifying the pre-qualification criteria will be opened in-camera.
7	IEM identified for Integrity Pact	Shri. Kanwarjit Singh, IRS (Retd.), D6/12 (G.F.), Vasant Vihar, New Delhi – 110053 E-mail : kanwarfeb@gmail.com

**8. Registration of the Bidder:**

The bidders , who are not already registered with BHEL/ISG, shall include the following information and documents with their bids and they should get registered as the Vendor . Vendor registration forms can be down loaded form BHEL/ISG web site, namely, [www.bhelisg.com](http://www.bhelisg.com).

- I. Copies of original documents defining the constituent local status, place of registration, and principal place of business.



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- II. Total monetary value of turnover of a firm, each of the last ten years.
  - III. Major Project executed in the last Three years.
  - IV. Qualification & Experience in case of Indian Agency:  
Reports of the financial standing such as profit and loss account, balance sheet, information regarding any reputation in which the bidder is involved.
9. Amendment of the bidding documents:
- Before the dead-line of submission of bids, the Employer may modify the bidding documents by issuing addendum.
- Any addendum such issued carry part of the bidding documents and this will be available at the web site from where the original documents have been received /Downloaded by the bidder.
10. Language of the tender Submission of bids : Only in English
11. Sealing & marking of bids:
- The tender shall be submitted for each items in three parts, Part-I , Part-II& Part- III Each shall be placed in an independent sealed envelope, each part shall be labelled as follows:

Part-I :

Qualifying Requirement Envelope

Tender No. : IS-1-09-2004/002 Dt.24-07-2009

Enquiry No. :

Specification No.:

Due date & time: As per sl no. 4 above.

This envelope shall consist of the following:

1. Covering Letter
2. Qualification documents mentioned in this NIT/ addendum.
3. Documentary evidence of fulfilment of eligibility criteria.
4. Latest income tax clearance certificate and sales tax clearance certificate.
5. Duly filled in forms with supporting Documents for Vendor Registration with BHEL/ISG, for the bidders , who are not already registered with BHEL/ISG,.
6. Integrity pact signed by the vendor.
7. Techno – commercial & Price bids of vendors qualifying with above criteria only, will be opened.

Part – II

Techno-Commercial Tender Envelope

Tender No. : IS-1-09-2004/002 Dt.24-07-2009



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Enquiry No. :  
Specification No.:  
Due date & time: As per sl no. 4 above.

- 1) Declaration of the Tenderer that this tender is without any technical and commercial deviations and if the deviations are there, they are as mentioned in the deviation format as per Specification.
- 2) The complete tender document available on the web site shall be signed by the authorised signatory and should be enclosed in this cover.
- 3) Full technical description of the items and services proposed by the Tenderer.
- 4) Necessary catalogues, technical brochures and list of items which shall be part of the scope of this tie up.
- 5) Details of manpower and Organization who execute this tie- up.
- 6) Work methodology and plan.
- 7) Confirmation of performance guarantee and liability period as mentioned in the tender.
- 8) Confirmation of techno-commercial terms and conditions.
- 9) Any other technical details.
- 10) The technical tender envelope shall not contain schedule of price or any other price information. Any indication either direct or indirect shall cause outright disqualification of the tender document.
- 11) The un-priced bid confirming quoting as per BOM,

**Part-III:**

**Price envelope**

Tender No. : IS-1-09-2004/002 Dt.24-07-2009  
Enquiry No. :  
Specification No.:  
Due date & time: As per sl no. 4 above.

Price format as enclosed in the tender which are duly filled in and signed.

Part-I, Part-II & Part – III shall be submitted on the prescribed date mentioned in the web site.



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TENDER Ref: [IS -1-09-2004](#)

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## NIT – CIVIL - PACKAGE



ISG, Bangalore

TENDER Ref: IS -1-09-2004

Date: 24. 07.2009

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**HINDUJA NPC VIZAG**

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2	Scope of work :	<b>CIVIL &amp; STRUCTURAL WORKS FOR 2X520 MW-HINDUJA NPCL – COAL AND ASH HANDLING PLANT IN ANDHRA PRADESH STATE</b> Tender Ref: IS-1-09-2004/001
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- II. Total monetary value of turnover of a firm, each of the last ten years.
- III. Major Project executed in the last Three years.
- IV. Qualification & Experience in case of Indian Agency:

Reports of the financial standing such as profit and loss account, balance sheet, information regarding any reputation in which the bidder is involved.

9. Amendment of the bidding documents:

Before the dead-line of submission of bids, the Employer may modify the bidding documents by issuing addendum.

Any addendum such issued carry part of the bidding documents and this will be available at the web site from where the original documents have been received /Downloaded by the bidder.

10. Language of the tender Submission of bids : Only in English

11. Sealing & marking of bids:

The tender shall be submitted for each items in three parts, Part-I , Part-II& Part- III Each shall be placed in an independent sealed envelope, each part shall be labelled as follows:

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Part – II

Techno-Commercial Tender Envelope

Tender No. : IS-1-09-2004/001 Dt.24-07-2009

Enquiry No. :

Specification No.:

Due date & time: As per sl no. 4 above.

Declaration of the Tenderer that this tender is without any technical and commercial deviations and if the deviations are there, they are as mentioned in the deviation format as per Specification.

- 1) The complete tender document available on the web site shall be signed by the authorised signatory and should be enclosed in this cover.
- 2) Full technical description of the items and services proposed by the Tenderer.
- 3) Necessary catalogues, technical brochures and list of items which shall be part of the scope of this tie up.
- 4) Details of manpower and Organization who execute this tie- up.
- 5) Work methodology and plan.
- 6) Confirmation of performance guarantee and liability period as mentioned in the tender.
- 7) Confirmation of techno-commercial terms and conditions.
- 9) Any other technical details.
- 10) The technical tender envelope shall not contain schedule of price or any other price information. Any indication either direct or indirect shall cause outright disqualification of the tender document.
- 11) The un-priced bid confirming quoting as per BOM,

Part-III:

Price envelope

Tender No. : IS-1-09-2004/001 Dt.24-07-2009

Enquiry No. :

Specification No.:

Due date & time: As per sl no. 4 above.

Price format as enclosed in the tender which are duly filled in and signed.

Part-I, Part-II & Part – III shall be submitted together on the prescribed date mentioned in the web site.





# **COMMERCIALTERMS ANNEXURE – 2 CIVIL**



BHEL ISG REF: IS-1-09-2004/001

**CIVIL & STRUCTURAL WORKS - 2X520 MW- HINDUJA NPCL – COAL AND ASH HANDLING PLANT IN ANDHRA PRADESH STATE****Commercial Terms and Conditions**

Name of the Bidder	
Tender Ref. and Date	IS-1-09-2004/001 Dt.24-07-2009
Enquiry Ref. and Date	
Project	<b>Pre-Tender tie-up for 2X520 MW- HINDUJA NPCL – COAL AND ASH HANDLING PLANTS IN ANDHRA PRADESH STATE</b>
Scope of Work	Civil and Structural works

Sl No	BHEL Requirement	Vendor Acceptance / Remarks
1	All Commercial terms & conditions are on <b>‘back to back’</b> basis in line with ultimate customer contract terms detailed in tender volumes.	
2	<b>Validity:</b> Vendor shall extend validity of MOU prices as required time to time inline with ultimate customer’s requirement of BHEL’s offer validity	
3	In the event of price reduction during negotiation by BHEL with the ultimate customer, corresponding reduction (i.e., on pro-rata basis with respect to vendor’s price) shall be effected on to the vendor’s MOU price	
4	BID BOND : 1% of the value of MOU price shall be furnished by the successful vendor through bank guarantee within 30 days of signing MOU .	
5	For execution of Security Deposit applicable as per enclosed Annexure 3.	
6	Detailed item wise price break up shall invariably be furnished strictly in line with price format / BOQ along with Addition / Deletion / Takeoff prices	
7	<b>Price Bid opening:</b> Vendor shall submit their most competitive offer. Price bids shall be opened <b>in Camera</b> . ‘L1’ party would be decided based on competitive price bids received from vendors for the “Pre Tender tie-up”	



BHEL ISG REF: IS-1-09-2004/001

Sl No	BHEL Requirement	Vendor Acceptance / Remarks
8	Once vendor qualifies for entering in to MOU then the vendor shall refrain from quoting directly to ultimate customer, Hinduja NPCL for this package. The tie-up shall be exclusive with BHEL so that the vendors will not participate with other competitors	
9	Integrity pact rules as applicable will be followed.	

**Important Notes:**

1. Deviations will not be accepted by BHEL. Bids with deviations will be rejected.
2. Vendor shall fill all the above columns by indicating 'Accepted' and deviations if any to be indicated clearly against each clause. All the pages of terms & specifications to be signed with seal as token of acceptance
3. No prices to be filled in this format. All prices are to be filled up in the enclosed price bid format. Break-up prices shall be indicated as per price bid format.
4. Un-priced bid to be enclosed with the techno commercial bid.



# **COMMERCIAL TERMS ANNEXURE – 2 MECH**

**MECHANICAL SYSTEM - 2X520 MW- HINDUJA NPCL – COAL HANDLING PLANT IN ANDHRA PRADESH STATE****Commercial Terms and Conditions**

Name of the Bidder	
Tender Ref. and Date	IS-1-09-2004/002 Dt.24-07-2009
Enquiry Ref. and Date	
Project	<b>Pre-Tender tie-up for 2X520 MW- HINDUJA NPCL – COAL HANDLING PLANT IN ANDHRA PRADESH STATE</b>
Scope of Work	Mechanical System

Sl No	BHEL Requirement	Vendor Acceptance / Remarks
1	All Commercial terms & conditions are on <b>‘back to back’</b> basis in line with ultimate customer contract terms detailed in tender volumes.	
2	<b>Validity:</b> Vendor shall extend validity of MOU prices as required time to time inline with ultimate customer’s requirement of BHEL’s offer validity	
3	In the event of price reduction during negotiation by BHEL with the ultimate customer, corresponding reduction (i.e., on pro-rata basis with respect to vendor’s price) shall be effected on to the vendor’s MOU price	
4	BID BOND : 1% of the value of MOU price shall be furnished by the successful vendor through bank guarantee within 30 days of signing MOU .	
5	For execution of Performance Bank Guarantee applicable as per enclosed Annexure 3.	
6	Detailed item wise price break up shall invariably be furnished strictly in line with price format / BOQ along with Addition / Deletion / Takeoff prices	
7	<b>Price Bid opening:</b> Vendor shall submit their most competitive offer. Price bids shall be opened <b>in Camera</b> . ‘L1’ party would be decided based on competitive price bids received from vendors for the “Pre Tender tie-up”	



BHEL ISG REF: IS-1-09-2004/002

Sl No	BHEL Requirement	Vendor Acceptance / Remarks
8	Once vendor qualifies for entering in to MOU then the vendor shall refrain from quoting directly to ultimate customer, Hinduja NPCL for this package. The tie-up shall be exclusive with BHEL so that the vendors will not participate with other competitors	
9	Integrity pact rules as applicable will be followed.	

**Important Notes:**

1. Deviations will not be accepted by BHEL. Bids with deviations will be rejected.
2. Vendor shall fill all the above columns by indicating 'Accepted' and deviations if any to be indicated clearly against each clause. All the pages of terms & specifications to be signed with seal as token of acceptance
3. No prices to be filled in this format. All prices are to be filled up in the enclosed price bid format. Breakup prices shall be indicated As per price bid format
4. Unpriced bid to be enclosed with the techno commercial bid.

## **COMMERCIAL TERMS – ANNEXURE -3**

### ANNEXURE 3 - MECH AND CVL & STRL

#### **PBG applicable for execution of Mechanical Supply & E&C**

**Performance Bank Guarantee :** PBG for 10% of the total order value including Supply and E&C scope is to be submitted by the successful vendor and shall be kept valid up to the Guarantee period with claim period of 3 months more than the Guarantee period. This PBG is to be submitted along with first invoice or earlier by the successful vendor. PBG shall be of BHEL Consortium Banks and in BHEL PBG Format. PBG should be sent directly by the Banker only.

#### **Security Deposit applicable for execution of Civil and Structural Works**

**SECURITY DEPOSIT:** Security Deposit shall be furnished by the successful tenderer. The rate of security deposit will be as below:

- Up to Rs.10 Lakhs: 10%
- Above Rs.10 Lakhs up to Rs.50 Lakhs: Rs.1 Lakh + 7.5% of the amount exceeding Rs.10 Lakhs.
- Above Rs.50 Lakhs Rs.4 Lakhs + 5% of the amount exceeding Rs.50 Lakhs.

Security Deposit should be furnished before the start of the work in any of the following forms :

- i) Cash (as permissible under the Income Tax Act)
- ii) Pay Order, Demand Draft in favour of BHEL.
- iii) Local cheques of scheduled banks, subject to realization.
- iv) Securities available from Post Offices such as National Savings Certificates, Kisan Vikas Patras etc. (Certificates should be held in the name of Contractor furnishing the security and duly pledged in favour of BHEL and discharged on the back).
- v) Bank Guarantee from Scheduled Banks / Public Financial Institutions as defined in the Companies Act subject to a maximum of 50% of the total security deposit value. The balance 50% has to be remitted either by cash or in the other form of security. The Bank Guarantee format should have the approval of BHEL.
- Vi) Fixed Deposit Receipt issued by Scheduled Banks / Public Financial Institutions as defined in the Companies Act. The FDR should be in the name of the contractor, A/C BHEL, duly discharged on the back..
- vii. Security deposit can also be recovered at the rate of 10% from the running bills. However in such cases at least 50% of the Security Deposit should be collected before start of the work and the balance 50% may be recovered from the running bills.
- viii. EMD of the successful tenderer shall be converted and adjusted against the security deposit.
- ix. The security deposit shall not carry any interest.

**NOTE:** Acceptance of Security Deposit against Sl. No. (iv) and (vi) above will be subject to hypothecation or endorsement on the documents in favour of BHEL. However, BHEL will not be liable or responsible in any manner for the collection of interest or renewal of the documents or in any other matter connected therewith. Security deposit shall be refunded to the contractor after successful completion of defect liability period.





# **ELIGIBILITY CRITERIA ANNEXURE – 1 CIVIL**



BHEL ISG REF: IS-1-09-2004

**CIVIL & STRUCTURAL WORKS - 2X520 MW- HINDUJA NPCL – COAL AND ASH HANDLING PLANT IN ANDHRA PRADESH STATE**

Tender Ref: IS-1-09-2004/001

**PRE QUALIFICATION CRITERIA FOR CIVIL AND STRUCTURAL CONTRACTORS:**

Civil construction agency(s) should have executed industrial structure, similar to Thermal power project structure involving civil, Structural and Architectural within the preceding 7 years consisting of the following quantum of work:

- Minimum 30000 cum of reinforced cement concrete work in any one (1) year in a single contract.
- Minimum 8000 MT of fabrication and erection of structural steel in a period of any one (1) year in a single contract.

Out of above,

The Bidder should have successfully designed and executed at least 1 turnkey contract which is in successful operation for not less than two years as on the date of opening of tender with the following details.

- a) Designed and executed basement type structures such as Wagon Tipler of, Tunnels, (at least 12 m below ground level) involving deep excavation, extensive dewatering and industrial buildings.
- b) Designed and executed RCC piles of 750 mm dia to a minimum depth of 25-30 meters below ground level. (Based on soil data to be furnished by customer this depth will be modified accordingly)
- c) Designed and executed RCC concreting of 25,000 m<sup>3</sup> of industrial type civil works in a span of 2 years in a single project for coal Handling Plant.
- d) Designed and executed Structural works of 5000 MT of industrial type structural works in a span of 2 years in a single project for coal Handling Plant.
- e) Designed and executed coal/ Raw material transfer tower of height more than 50 meter in at least 2 projects
- f) Designed and executed RCC Ash silo of minimum capacity 1200 Tons.
- g) Bidder shall submit relevant certificate for meeting the above qualification criteria along with the offer.



# **ELIGIBILITY CRITERIA ANNEXURE – 1 MECH**



BHEL ISG REF: IS-1-09-2004

## **MECHANICAL SYSTEM - 2X520 MW- HINDUJA NPCL – COAL HANDLING PLANT IN ANDHRA PRADESH STATE**

Tender Ref: IS-1-09-2004/002

### **PRE QUALIFICATION CRITERIA FOR MECHANICAL VENDORS :**

- a) Mechanical Vendor should have designed, engineered, supplied, erected and commissioned CHP, the particular type of equipment or system rated at least for the duty specified or required is in successful operation in at least two (02) coal fired Thermal Power Plants for a minimum period of two years in the preceding ten (10) years as on the date of bid opening. To enable the approval of sub vendors, the bidder shall provide all necessary data such as type, design, make, capacity, duty conditions, date of commissioning and commercial operation.
- b) Vendors, who designed, manufactured, supplied, erected and commissioned conveyor system of rated capacity above 1000 TPH are only eligible to apply.
- c) Capacity requirement of other major equipments like crusher, stacker reclaimer etc shall be brought out as part of enquiry specifications for Mechanical.
- d) The bidder shall provide all necessary data such as type, design, make, capacity, duty conditions, date of commissioning and commercial operation.
- e) Mechanical Vendor shall register with BHEL vendor list and satisfy customer assessment.
- f) Bidder shall submit relevant certificate for meeting the above qualification criteria along with the offer.

# **INTEGRITY PACT**

## **INTEGRITY PACT**

### **Between**

Bharat Heavy Electricals Ltd. (BHEL), a company registered under the Companies Act 1956 and having its registered office at “BHEL House”, Siri Fort, New Delhi – 110049 (India) hereinafter referred to as “The Principal”, which expression unless repugnant to the context or meaning hereof shall include its successors or assigns of the ONE PART

### **and**

\_\_\_\_\_, (description of the party along with address), hereinafter referred to as “The Bidder/ Contractor” which expression unless repugnant to the context or meaning hereof shall include its successors or assigns of the OTHER PART

### **Preamble**

The Principal intends to award, under laid-down organizational procedures, contract/s for



\_\_\_\_\_. The Principal values full compliance with all relevant laws of the land, rules and regulations, and the principles of economic use of resources, and of fairness and transparency in its relations with its Bidder(s)/ Contractor(s).

In order to achieve these goals, the Principal will appoint Independent External Monitor(s), who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

## **Section 1 – Commitments of the Principal**

- 1.1 The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles:-
  - 1.1.1 No employee of the Principal, personally or through family members, will in connection with the tender for, or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
  - 1.1.2 The Principal will, during the tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential / additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.
  - 1.1.3 The Principal will exclude from the process all known prejudiced persons.
- 1.2 If the Principal obtains information on the conduct of any of its employees which is a penal offence under the Indian Penal Code 1860 and Prevention of Corruption Act 1988 or any other statutory penal enactment, or if there be a substantive suspicion in this regard, the Principal will inform its Vigilance Office and in addition can initiate disciplinary actions.

## **Section 2 – Commitments of the Bidder(s)/ Contractor(s)**

- 2.1 The Bidder(s)/ Contractor(s) commit himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.
  - 2.1.1 The Bidder(s)/ Contractor(s) will not, directly or through any other person or firm, offer, promise or give to the Principal or to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material, immaterial or any other benefit which he / she is not legally entitled to, in

order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.

- 2.1.2 The Bidder(s)/ Contractor(s) will not enter with other Bidder(s) into any illegal or undisclosed agreement or understanding, whether formal or informal. 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.
- 2.1.3 The Bidder(s)/ Contractor(s) will not commit any penal offence under the relevant IPC/ PC Act; further the Bidder(s)/ Contractor(s) will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
- 2.1.4 The Bidder(s)/ Contractor(s) 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.
- 2.2 The Bidder(s)/ Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.

### **Section 3 – Disqualification from tender process and exclusion from future contracts**

If the Bidder(s)/ Contractor(s), before award or during execution has committed a transgression through a violation of Section 2 above, or acts in any other manner such as to put his reliability or credibility in question, the Principal is entitled to disqualify the Bidders(s)/ Contractor(s) from the tender process or take action as per the separate “Guidelines for Suspension of Business Dealings with Suppliers/ Contractors” framed by the Principal.



## **Section 4 – Compensation for Damages**

- 4.1 If the Principal has disqualified the Bidder(s) from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposit/ Bid Security.
- 4.2 If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to section 3, the Principal shall be entitled to demand and recover from the Contractor liquidated damages equivalent to 5% of the contract value or the amount equivalent to Security Deposit/Performance Bank Guarantee, whichever is higher.

## **Section 5 – Previous Transgression**

- 5.1 The Bidder declares that no previous transgressions occurred in the last 3 years with any other company in any country conforming to the anti-corruption approach or with any other Public Sector Enterprise in India that could justify his exclusion from the tender process.
- 5.2 If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

## **Section 6 – Equal treatment of all Bidders/ Contractors/ Sub-contractors**

- 6.1 The Bidder(s)/ Contractor(s) undertake(s) to demand from his sub-contractors a commitment consistent with this Integrity Pact. This commitment shall be taken only from those sub-contractors whose contract value is more than 20% of Bidder's/ Contractor's contract value with the Principal.
- 6.2 The Principal will enter into agreements with identical conditions as this one with all Bidders and Contractors.
- 6.3 The Principal will disqualify from the tender process all bidders who do not sign this pact or violate its provisions.

## **Section 7 – Criminal Charges against violating Bidders/ Contractors /Sub-contractors**

If the Principal obtains knowledge of conduct of a Bidder, Contractor or Subcontractor, or of an employee or a representative or an associate of a Bidder, Contractor or Subcontractor which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the Vigilance Office.

## **Section 8 –Independent External Monitor(s)**

- 8.1 The Principal appoints competent and credible Independent External Monitor for this Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
- 8.2 The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He reports to the CMD, BHEL.
- 8.3 The Bidder(s)/ Contractor(s) accepts that the Monitor has the right to access without restriction to all contract documentation of the Principal including that provided by the Bidder(s)/ Contractor(s). The Bidder(s)/ Contractor(s) will grant the monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his contract documentation. The same is applicable to Sub-contractor(s). The Monitor is under contractual obligation to treat the information and documents of the Bidder(s)/ Contractor(s) / Sub-contractor(s) with confidentiality.
- 8.4 The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the contract provided such meetings could have an impact on the contractual relations between the Principal and the Contractor. The parties offer to the Monitor the option to participate in such meetings.
- 8.5 As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform the Management of the Principal and request the Management to discontinue or

take corrective action, or heal the situation, or to take other relevant action. The Monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.

- 8.6 The Monitor will submit a written report to the CMD, BHEL within 8 to 10 weeks from the date of reference or intimation to him by the Principal and, should the occasion arise, submit proposals for correcting problematic situations.
- 8.7 The CMD, BHEL shall decide the compensation to be paid to the Monitor and its terms and conditions.
- 8.8 If the Monitor has reported to the CMD, BHEL, a substantiated suspicion of an offence under relevant IPC / PC Act, and the CMD, BHEL has not, within reasonable time, taken visible action to proceed against such offence or reported it to the Vigilance Office, the Monitor may also transmit this information directly to the Central Vigilance Commissioner, Government of India.
- 8.9 The number of Independent External Monitor(s) shall be decided by the CMD, BHEL.
- 8.10 The word 'Monitor' would include both singular and plural.

## **Section 9 – Pact Duration**

- 9.1 This Pact begins when both parties have legally signed it. It expires for the Contractor 12 months after the last payment under the respective contract and for all other Bidders 6 months after the contract has been awarded.
- 9.2 If any claim is made / lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified as above, unless it is discharged/ determined by the CMD, BHEL.

## Section 10 – Other Provisions

- 10.1 This agreement is subject to Indian Laws and jurisdiction shall be registered office of the Principal, i.e. New Delhi.
- 10.2 Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.
- 10.3 If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.
- 10.4 Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.
- 10.5 Only those bidders/ contractors who have entered into this agreement with the Principal would be competent to participate in the bidding. In other words, entering into this agreement would be a preliminary qualification.

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For & On behalf of the Principal  
(Office Seal)

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For & On behalf of the Bidder/ Contractor  
(Office Seal)

Place-----

Date-----

Witness: \_\_\_\_\_

(Name & Address) \_\_\_\_\_

\_\_\_\_\_

Witness: \_\_\_\_\_

(Name & Address)\_\_\_\_\_

\_\_\_\_\_

# **MOU FORMAT**

## **Memorandum of understanding**

**Project: Tender & Project name**

**This Memorandum of Understanding made on exclusive basis on this 26 th June 2009 between M/s. BHARAT HEAVY ELECTRICALS LIMITED, an existing company registered under the Companies Act, 1956 and having its**

registered office at BHEL House, Siri fort, New Delhi 110043 (hereinafter called “BHEL”, which expression shall repugnant to the context of meaning thereof, include its successors and assigns) of the ONE PART,

AND

M/s. **XXXX Private Limited**, an existing company having its registered office at **XXXX yyyyyy** (hereinafter referred to as “XXXX”, which expression shall repugnant to the context of meaning thereof, include its successors and assigns) of the OTHER PART,

1. WHEREAS, M/s **zzzzzzzz**, an existing company registered under the Companies Act, 1956 and having its registered office at **bbbbbbbbb** (hereinafter referred to as ‘CUSTOMER’ to whom BHEL shall submit the bid for Design, Engineering, Manufacture / Supply of Plant and Equipment and technological structures, Dismantling, Civil work, Erection, Testing and Commissioning, Demonstration and Establishment of Performance Guarantee and Handing Over of “Augmentation of Raw Material Receipts & Handling Facilities with New OHP, Part B” (Hereinafter referred to as “Project”) against tender no.
2. AND WHEREAS pursuant to BHEL tender Ref **Noyyyyyyyyy** dated 21.03.2009 for pretender tie up for Design, Engineering, dismantling, supply of material and all civil construction works including demonstration of performance guarantee pertaining to civil works and Handing over as per project requirement , for the “**Project Name** as per Annexure I, **XXXX** became the successful bidder. In case of award of work to BHEL by CUSTOMER, **XXXX** has agreed to execute the above job upon quoted price on back to back basis and other terms and conditions and deviations as agreed with BHEL.
3. WHEREAS **XXXX** shall furnish all documents / technical details for bid preparation as per NIT requirements. On securing the Order, Bank Guarantee shall also be furnished by **XXXX** as per NIT conditions for pro-rata value to their scope of work.

4. WHEREAS the parties agree that in so far as applicable the rights and obligations of the Main Contract between the Employer and BHEL become part of the Agreement between BHEL and XXXX for agreed scope of work.
5. NOW THEREFORE, in consideration of the above, the following broad understanding is mutually agreed between the parties and their relationship for the project will be guided as follows:

***Article 1 – Purpose of Agreement of Association***

XXXX and BHEL will work jointly to execute the project. BHEL will be the prime Bidder and XXXX will be the Associate for the agreed Scope of work.

***Article 2 – Responsibilities of XXXX and BHEL***

- i. XXXX's Scope of work will be limited to Design, Engineering, dismantling, supply of material and all civil construction works including demonstration of performance guarantee pertaining to civil works and Handing over as per project requirement for the "Augmentation of Raw Material Receipts & Handling Facilities with New OHP, Part B" as agreed on back to back basis, generally enumerated but not limited to the details as per Annexure I.
- ii The price quoted by XXXX will be discussed, negotiated and finalized with BHEL before their submission of BID to CUSTOMER.
- iii Any further price discounts, to be given to CUSTOMER by BHEL to secure the order, will be shared by BHEL and XXXX pro-rata for their scope of work after mutual discussions and consent.



- iv. In case of BHEL getting Order for the Project from CUSTOMER, BHEL will place order on XXXX for the respective Scope of work based on agreed price and terms and conditions.
- v. XXXX shall execute their scope of work to meet requirements of project completion schedule of BHEL/CUSTOMER. However, during negotiations with CUSTOMER, if any, adjustment is required to be done, the same shall be mutually discussed and agreed.
- vi. The XXXX shall execute his scope of work, in line with L2 network, to be worked out during the detailed engineering and adhere to the project completion schedule.
- vii. Technical Specification shall be as per tender document and all the subsequent discussions with CUSTOMER, CONSULTANT & BHEL. These shall be consolidated and enclosed along with the Order on XXXX.
- viii. The Technical specification for design, engineering, dismantling & civil works shall be as per clause vii above, however depending on technical discussion with CUSTOMER during execution, XXXX shall agree to the specification as finally accepted by CUSTOMER within Tender scope of work and the performance guarantee parameters pertaining to civil works without any cost implications. Any requirement beyond Tender Scope of Work, which will have financial implications, will be discussed jointly with CUSTOMER and the resultant financial implication shall be discussed and mutually agreed upon.
- ix. BHEL along with XXXX will participate in the discussions with CUSTOMER, as required, to give all technical clarifications.

- x. All Commercial Terms and conditions (except payment terms) shall be as per DGM/PCC/TK/5(490)/2008/4993 dated 27/10/2008 tender Documents on back to back basis as per the Bidding Documents issued by CUSTOMER and the subsequent Minutes of Meeting and correspondence between BHEL and CUSTOMER.
- xi. XXXX shall confirm validity of their offer for one month beyond the date Contract is signed with CUSTOMER, in the event of BHEL getting the order.
- xii. XXXX shall be fully responsible and liable for the complete execution of its SCOPE OF WORK according to the CONTRACT and shall bear all cost whatsoever connected therewith.
- xiii. XXXX shall be responsible for the completion of project as per the agreed schedule for his scope of work as indicated in Annexure- 1. and any other item required for completion of his scope of work, shall be included and carried out without any commercial implication.
- xiv. XXXX shall closely cooperate in order to obtain the award of the CONTRACT and to achieve a smooth and complete performance thereof.
- xv. The XXXX shall prepare and submit in due time all data and information Necessary for the fulfillment of the SCOPE OF WORK.
- xvi. In case of an order, XXXX and BHEL shall take respective leading role to get the design/ drawing approved by CUSTOMER for respective scope of work.

- xvii. The XXXX is responsible for getting the approval from CUSTOMER for undertaking all civil works of their scope. BHEL will provide necessary support.
- xviii. XXXX will take entire responsibility for correct design, engineering, & civil works in XXXX's scope.
- xix. The XXXX shall be responsible for the performance guarantee parameters pertaining to civil works as per the contract.
- xx. All drawings documents design calculations operation and maintenance manual erection drawings, as-built drawings etc to the extent applicable shall be submitted by XXXX in requisite numbers. These shall be as per CUSTOMER requirement plus two copies for BHEL's use. XXXX will also furnish the reproducible and CD as per CUSTOMER's requirement plus(1) one set for BHEL's use.
- xxi. In case the CONTRACT will not be awarded to BHEL, any claim by the XXXX is excluded.

### ***Article 3 – Exchange of Information & Completeness***

The XXXX is obliged to execute the job on the basis of the CONTRACT and this MOU. Separate Purchase Order will be placed on XXXX by BHEL after signing of Contract between BHEL and CUSTOMER.

Civil Services and material supplies which are not specified in the SCOPE OF WORK, but necessary for the completeness of the project pertaining to civil works shall be executed by XXXX .

Each party shall exchange with the other party in a timely manner all necessary information required by the other party, so as to effect full and timely completion of work of the tender/contract.

#### ***Article 4 – Confidentiality***

Each party shall be obliged to keep in strict confidence, and bind all of its employees / associates and subcontractors to keep in strict confidence all information received directly or indirectly from the other party under this agreement and shall not at any time, disclose such information to any third party without prior written consent of the other party.

Any such disclosure to a third party shall be limited to the extent required for the completion of this PROJECT and the third party shall be bound to the provisions of secrecy and restriction of use as expressed herein.

Press releases, prospectuses and official publications relating to the PROJECT will be agreed upon between the PARTIES beforehand.

Publications concerning only one PARTY's SCOPE OF WORK must contain a suitable reference to the type and scope of the other PARTY's SCOPE OF WORK.

This MOU shall not be disclosed by the XXXX to any third party unless agreed upon by BHEL.

#### ***Article 5 – Amendments***

In case of any amendment to this agreement, it must be in writing and signed by the duly authorized representatives of both the parties. The provisions of the Article 5 shall survive till expiration or termination of this MOU.

#### ***Article 6 – Duration of MOU***

**This Agreement shall be valid from the date of signing, and continue to be in force, and terminate without prejudice to any antecedent liabilities upon the occurrence of any of the following, whichever is earliest:**

- a) By mutual agreement**
- b) By substituting this Memorandum of Understanding with a detailed Purchase Order**
- c) If the contract is awarded by CUSTOMER on other Bidder.**

#### **Article 7 – Force Majeure**

**Without prejudice and without antecedent liability, neither party shall be responsible for non-performance or non-fulfillment of any nor all their obligations under this agreement if such non-performance or non-fulfillment is due to “Force Majeure” as defined in the Tender Document of CUSTOMER**

#### ***Article 8 – EMD/ Security Deposit/ Performance Guarantee/Payment***

**XXXX shall furnish a Bank Guarantee for 1% of the value of the XXXX’S scope as per MOU within 30 days of signing the MOU. This BG shall be valid till a formal Purchase Order is placed on the XXXX.**

**BHEL shall agree to furnish DD / Bank Guarantees for EMD for the entire Project, as applicable. XXXX shall furnish all BG for their respective scope of work to BHEL as per Tender/contract conditions agreed with CUSTOMER and BHEL.**

**Project financing shall be by the respective partners for execution of the project.**

**All invoicing of XXXX shall be to BHEL. Payment against Civil Engineering work and services provided by the XXXX shall be made within 15 days from date of receipt of the payment from CUSTOMER by BHEL., wherever applicable.**

**This MOU will be amended with consideration of the development in the PRECONTRACT PHASE and of the final provisions of the CONTRACT.**

**The failure of any PARTY to enforce at any time any of the provisions of this MOU shall in no way be construed to be a waiver of such provision, nor in any way to affect the validity of this MOU or any part hereof.**

**Should elements of this MOU be discovered to be ineffective, or contain omission's all remaining clauses of the MOU shall continue to be effective.**

**With regard to the ineffective or missing elements, the PARTIES shall agree upon a correction to these elements which corresponds to the spirit of this MOU as well as its economic purpose and sense, which in any case the PARTIES would have agreed upon, if the ineffective or missing elements would have been discovered before the signature of this MOU.**

**No. PARTY shall assign or in any way transfer its rights or obligations arising out of the present MOU without obtaining the prior written consent of the other PARTY hereto.**

**All notices to be given under this MOU shall be in writing and shall be deemed to have been properly given upon dispatch by registered or certified mail or e-mail or telefax to the PARTY's address as set forth below or to such other address as the PARTY may subsequently designate;**

**BHARAT HEAVY ELECTRICALS LIMITED  
INDUSTRIAL SYSTEMS GROUP,**

**PB NO 1249, PROF. CNR RAO CIRCLE,  
MALLESWARAM  
BENGALURU- B560012, INDIA  
FAX NO: 080 2356 2713**

**M/s XXXX PRIVATE LIMITED  
XXXX HOUSE,  
NANDINI ROAD,  
BHILAI 490 011, (CG)**

**Article 9 Arbitration**

**Any dispute or question that may arise between the parties as to the meaning and or interpretation of any matter pertaining to or arising out of this agreement shall be settled according to Indian Arbitration and conciliation ACT 1996.**

***Article 10 Approval of Make***

**It shall be the responsibility of XXXX to get the any make of civil materials and works subcontract other than NIT approved makes, approved by CUSTOMER, if necessary. In the event of non-approval, XXXX shall supply and carryout as per the approved makes of NIT. BHEL shall offer necessary support to XXXX in the approval process.**

**In witness whereof BHEL and XXXX through their authorized representatives have executed these present and affixed common seal of their respective companies on the DAY, month and year first mentioned above.**

**The following Annexeres form integral parts of this MOU:**

**Annex -1 SCOPE OF WORK of each PARTY**

**Annex -2 Standard Bidding Documents**

**For BHARAT HEAVY ELECTRICALS  
LIMITED**

**For XXXX Private Ltd.**

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**Witnesses:**

**1)**

**2)**