

ADDITIONAL TERMS & CONDITIONS
Transformer spares for TANTRANSCO Ariyalur Project PROJECT
Enquiry No: Dated.....

1. For any technical clarification, kindly contact **Ms. Shobhna Singh, Sr. Manager (TBEM)**
BHEL, Transmission Business Group
10th Floor, Plot No.C-20/1A/1, Joy Towers, Sector-62, Noida, Uttar Pradesh, Pin No: 201301
Phone: +91 (0) 0120- 674-8514, E-mail: shobhna@bhel.in

2. For any commercial clarification, kindly contact **Sandeep, Deputy Manager (TBMM);**
BHEL, Transmission Business Group
10th Floor, Plot No.C-20/1A/1, Joy Towers, Sector-62, Noida, Uttar Pradesh, Pin No: 201301
Contact No. 0120 6748450; E-mail: kumar.sandeep@bhel.in.

3. **Proposed delivery plan: IMMEDIATE.** However, vendor to dispatch the material as per delivery plan mentioned in **ACTIVITY SCHEDULE** to meet the project requirement. In case, BHEL's delivery requirement is not met by vendor(s), then a chance may be given to all such vendors to review their quoted delivery schedule in line with BHEL's delivery requirement. However, if vendor fails to meet the requisite delivery plan, then BHEL reserves the right not to consider the offer of such vendor(s).

		Deviation	Remarks if any
1.	Schedule of Commercial Deviation, if any	NIL	
2.	Schedule of Technical Deviation, if any (Against Technical Specification)	NIL	

4. **REVERSE AUCTION – Not APPLICABLE**

5. **MOP Circular: NOT APPLICABLE.**

6. **INTEGRITY PACT: Not Applicable.**

7. **PRICE BID FORMAT:** Bidder to submit un priced bid with their offer (Format Attached).

8. **Guarantee Clause (Defect Liability Period):** As per clause no. 05 of GTC

9. **Performance Bank Guarantee–** As per clause no. 07 i.e. "Option B".

10. **Payment Terms –** 100% of Payment within 90 days upon submission of billing documents.

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11. **Liquidation Damage-** In case of delay in execution of Purchase Order beyond the contractual delivery time, an amount of 0.5% of the Total PO Ex- Works value & F&I Charges for supply per week of delay or part thereof subject to a maximum of 10% of the Total PO Ex-works value & F&I Charges shall be deducted as Liquidated Damages (LD) along with applicable GST (If any) on LD.

12. Following confirmation to be provided by vendor:

Un-Priced Bid

Sl No.	Item Description	Quantity	Unit Price (Inclusive of F&I & GST)	GST % Applicable
01	TRANSFORMER: 52kV ,3150A RIP Bushing Note: 52kV , 3150A RIP Bushing details as per enclosed reference Drg. No. 75366, Rev-03 supplied vide PO No. 157P217 Dated: 18.12.2017	06	Quoted	Quoted

“We confirm that we have quoted as per specified price format provided along with this tender”.

NAME & SEAL OF TENDERER

Addend to enera Ter and Cond t on TC-201

1	Offer Submission/ Opening Time	Offer Submission Time: 14:00 Hrs IST Offer Opening Time: 14:30 Hrs IST
2	Instruction to Bidder(s)	<p>(a) For Supply where Supervision of Erection, Testing & Commissioning (ETC) at Site is in the scope of the supplier or Supply where Testing & Commissioning (T&C) at Site is in scope of the supplier, minimum 10% of total ex-works value shall be quoted under supervision of ETC/T&C. In case bidder quotes less than 10%, then 10% of Total PO value excluding GST and F&I shall be allocated to the supervision of ETC/T&C scope. Service charges shall be back calculated to keep 10% of total cost to BHEL (without GST). This price adjustment shall be done from supply Ex works prices only on prorata basis for all supply line items.</p> <p>(b) For Supply where Erection, Testing & Commissioning (ETC) at Site is in the scope of the supplier, minimum 20% of total ex-works value shall be quoted under ETC. In case bidder quotes less than 20%, then 20% of Total PO value excluding GST and F&I shall be allocated to the ETC scope. Service charges shall be back calculated to keep 20% of total cost to BHEL (without GST). This price adjustment shall be done from supply Ex works prices only on prorata basis for all supply line items.</p> <p>(c) Bidder's offer will be technically acceptable subject to final acceptance of vendor by ultimate customer as approved supplier. Price Bid will be opened only for those bidders in respect of which vendor approval is received from respective customer. Necessary credentials/documents to be submitted to customer for approval.</p>
3	Offer Submission Mode	<p>Clause No. 1.3 of GTC – Tender is invited through e-Procurement System only. The bidder shall submit their bid through e-Procurement platform at https://bhel.abcpocure.com.</p> <p>Vendors participating through e-procurement portal for this tender should have Class-III Digital Signature Certificate (DSC) for Signing & Encryption of bids issued by any of the valid Certifying Authorities (approved by Controller of Certifying Authorities) in India.</p>
4	Validity of Purchase Order	Purchase order shall be valid for two years from date of Purchase Order.
5	Work Address	<p>Bidder to mention their works address below from where material will be supplied</p> <p>Works Address----- ----- -----</p>
6	Pre- Qualification Requirement(PQR)	<p>As per Annexure-I</p> <p>The bidder must ensure that they are meeting the PQR (Technical) and should submit all the requisite credentials as per PQR.</p>
7	Deviation	<p><u>Technical Deviation</u>: No Technical Deviation is envisaged.</p> <p><u>Commercial Deviation</u>: No Commercial Deviation envisaged except defined in GTC.</p>
8	Delivery Plan	As per Activity Schedule-Annexure-II
9	Terms of Payment	As per clause 3.1 to 3.7 of GTC (as applicable). Supplier to submit bills alongwith billing checklist as per Annexure-III
10	Performance Bank Guarantee (PBG)	<p>Clause No. 7 of GTC, If no option is specified by the bidder, by default option – B for Bank Guarantee shall be considered.</p> <p>BG for Main supply items and Spares shall be submitted separately alongwith first bill.</p> <p>Note BG should be submitted on non-judicial stamp paper of appropriate value by the supplier alongwith first submission of bill to BHEL.</p>

Addend to General Terms and Conditions TC-201

11	Liquidated Damage	<p>Clause no. 13 of GTC - In case of delay in execution of Purchase Order beyond the contractual delivery time, an amount of 0.5% of delayed lot value (Ex Works and F&I charges) for supply per week of delay or part thereof subject to a maximum of 10% of delayed lot value (Ex Works and F&I charges) shall be deducted as Liquidated Damages (LD) along with applicable GST (if any) on LD.</p> <p>LD will calculated for lotwise and Manufacturing Clearance (MFC) date will be the last date of inputs for that particular lot</p> <p>Lot-1: items for which MFC is issued from 1-15 days of calendar month Lot-2: items for which MFC is issued from 16-30/31 days of calendar month Lot-3: items for which MFC is issued from 1-15 days of next calendar month, Lot-4: items for which MFC is issued from 16-30/31 days of next calendar month and so on...</p>
12	Arbitration	As per Annexure-IV
13	Reverse Auction	<p>"BHEL shall be resorting to Reverse Auction (RA) (Guidelines as available on www.bhel.com) for this tender. RA shall be conducted among all the techno-commercially qualified bidders. Price bids of all techno-commercially qualified bidders shall be opened and same shall be considered as initial bids of bidders in RA. In case any bidder(s) do(es) not participate in online Reverse Auction, their sealed envelope price bid along with applicable loading, if any, shall be considered for ranking."</p> <p>Abridged Version of "Guidelines for Reverse Auction-2020" may also be seen at BHEL website (www.bhel.com) on "Supplier Registration" Page.</p>
14	Splitting of Contract	Splitting of Contract not applicable for this tender.
15	Make In India (PPP-MII)	<p>For this procurement, the local content to categorize a supplier as 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 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.</p> <p>"Bidder to specify the percentage of local content as per the format of self-declaration for local content" as per Annexure-V."</p> <p>"This tender is not a global tender and only class-I and Class II suppliers as defined under the DPIIT order no. P-45021/2/2017-PP (BE-II) dated 04.06.2020 are eligible to bid in this tender. Bids received from Class-II & Non-Local supplier shall be rejected."</p>
16	Compliance to GOI Order for restrictions under Rule 144 (xi) of General Financial Rules (GFRs), 2017	Refer Clause at Annexure-VI and Certification at Annexure-VII / Annexure-VIII (whichever is applicable) regarding restrictions under Rule 144 (xi) of General Financial Rules (GFRs), 2017. Bidder to comply the clause and submit the certification. Non-compliance/ Non-submission of certification will lead to rejection of Offer.
17	MOP Circular	<p>Bidder to comply the MOP circular dated 02-07-2020 (Annexure-IX) and its subsequent amendment, if any, in prescribed format (Annexure-X). Non-compliance/ Non-submission will lead to rejection of Offer [Not Applicable for cases where local content is 100%].</p> <p>Vendor to quote as per specified price format of NIT, otherwise their offer shall be liable to be rejected.</p> <p>Following confirmation to be provided by vendor: "We confirm that we have quoted as per specified price format provided along with this tender".</p>
18	Integrity Pact	As per Annexure-XI.
19	Risk and Cost	As per Annexure-XII.
20	Prevention for cartel formation	<p>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.</p> <p>In case, the Bidder is found having indulged in above activities, suitable action shall be taken by BHEL as per extant policies/ guidelines.</p>

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21	Documents Required for Customer approval	Bidders to submit below documents alongwith their offer but not limited to: (a) PAN, GST, Certificate of Incorporation (b) Factory Registration Certificate (c) Overall organization Chart with Manpower Details (Design/Manufacturing/Quality etc.) (d) List of Plant and Machinery (e) List of Testing and Measuring equipment (f) Third party approval, if any (viz. ISO, BIS) (g) Pollution clearance wherever applicable (h) Energy conservation & Efficiency Report(Applicable to industries having contact load more than 100KVA) (i) Manufacturing Quality Plan (MQP) (j) List of past supplies references along with copy of major PO (k) Performance certificate from end user (l) Photographs of factory, plant and machinery & testing facilities
22	BHEL Supplier Registration Portal	The link for Online Supplier registration Portal is https://supplier.bhel.in/ The link for Online Supplier Registration Portal may also be seen at BHEL website (www.bhel.com) on "Supplier Registration" Page.

The Notice Inviting Tender (NIT)/ the tender requirement of BHEL will not be henceforth published in newspapers. All the concerned are hereby notified that tender enquiries of BHEL will be published on BHEL tender website (www.bhel.com) and Government's Central Public Procurement Portal (<https://eprocure.gov.in/>).

Signed and sealed for the Director

**BHARAT HEAVY ELECTRICALS LTD.
(TRANSMISSION BUSINESS GROUP)**

GENERAL TERMS AND CONDITIONS FOR TENDER ENQUIRY / CONTRACT

This is to be submitted duly signed by bidder in original. Clause-wise deviations and / or additional conditions / clarifications, if any, are to be brought out clearly in “Schedule of Commercial Deviation”. Deviations and / or additional conditions / clarifications, if any, mentioned elsewhere in the bid / offer, shall not be considered.

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1.	<p>INSTRUCTION TO BIDDERS :</p> <p>1.1 Sealed bids are invited for the items mentioned in the tender enquiry conforming to the NIT including Technical Specifications. Bids should be typed and free from overwriting and erasures. Corrections or additions / deletions, if any, must be clearly written and attested, otherwise offer may be rejected.</p> <p>1.2 Bidder must ensure that their bid is submitted / dropped in the tender box on or before 14-00 Hrs. IST on the due date of opening, unless otherwise specified in the NIT, at the address as follows :-</p> <p style="padding-left: 40px;">Tender Box, Materials Management, Transmission Business Group, Bharat Heavy Electricals Limited, 5th Floor, Tower-A, Advant Navis IT Business Park, Plot-7, Sector-142, Noida Expressway, Noida, Dist. G. B. Nagar, U. P. – 201305</p> <p>1.3 In case tender enquiry is floated through the e-procurement system, offer / bid has to be submitted through the e-procurement system ONLY as per instructions given in the e-procurement portal (https://bheleps.buyjunction.in).</p> <p>1.4 The bids shall be opened at 14-30 Hrs. IST on the due date of opening, in the presence of participating bidders who may like to be present, unless otherwise specified in the NIT. Bids received late are liable for rejection. Bidders sending bids by courier or post will have to ensure that it is timely delivered at the above address.</p> <p>1.5 Bids are to be submitted duly signed with seal in two parts :-</p> <p style="padding-left: 40px;">a) Techno-commercial Bid (Part-I) – To be submitted in 2 sets (original + copy). A copy of Price Bid (Part-II) clearly mentioning all the necessary information as per format without prices “Un-Priced Bid” is also to be enclosed in Part-I Bid.</p> <p style="padding-left: 40px;">b) Price Bid (Part-II) – To be submitted only in one set in a separate sealed envelope. This should not contain any Technical and / or Commercial Terms and Conditions. The rates should be quoted both in figures and words.</p> <p>1.6 The Part-I and Part-II Bids are to be sealed in separate envelopes and</p>

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	<p>marked as “Techno-commercial Bid (Part-I)” and “Price Bid (Part-II)” respectively. Both the envelopes are to be kept in another common envelope and marked as “BID”. Each envelope should be sealed and superscribed with tender enquiry no., item / package name, project name and due date of opening. Bidder’s name and address shall also be mentioned on each envelope.</p> <p>1.7 For any technical clarification, please contact official mentioned in the tender enquiry / NIT.</p> <p>1.8 For any commercial clarification please contact official issuing tender enquiry / NIT.</p> <p>1.9 Price bid (Part-II) should not contain any additional information / description other than given in “Un-Priced Bid” submitted with “Techno-commercial Bid (Part-I)” except prices, otherwise bid is liable for rejection.</p> <p>1.10 Price Bid submitted along with the bid shall remain valid up to validity of offer. Any discount / revised offer submitted by the bidder on its own shall be accepted provided it is received before the due date and time of offer submission (i.e. Part-I Bid). The discount shall be applied on pro-rata basis to all items including optional items, if any, unless specified otherwise by the bidder. Discount offered shall be valid for full duration of validity of the offer including extension of validity, if any. Unsolicited Supplementary / Revised Price Bid submitted after the due date and time of offer submission (i.e. Part-I Bid), during validity period of offer, unless asked by BHEL, shall not be considered. Withdrawal of quotation by the bidder, at any stage after its opening, may entail suitable action against such bidder by BHEL.</p> <p>1.11 The consultants / firm (and any of its affiliates) shall not be eligible to participate against tender enquiry for the related goods or works or services for the same project, if they were engaged by BHEL-TBG for the consultancy services.</p> <p>1.12 In case any Foreign OEM / Foreign Principal insists on engaging the services of an agent, such agent shall not be allowed to represent more than one manufacturer / supplier in the same tender. Moreover, either the agent could bid on behalf of the manufacturer / supplier or the manufacturer / supplier could bid directly but not both. In case bids are received from the manufacturer / supplier and the agent, bid received from the agent shall be ignored.</p> <p>1.13 Non-conformities / errors / discrepancies in quoted prices in price bids shall be dealt as follows :-</p> <p>a) If, in the price structure quoted for the required goods / services / works, there is discrepancy between the unit price and the total price (which is obtained by multiplying the unit price by the quantity), the unit price shall prevail and the total price corrected accordingly, unless in the opinion of BHEL there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price corrected accordingly.</p> <p>b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected.</p>

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	<p>c) If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.</p> <p>d) If there is such discrepancy in an offer as mentioned in (a), (b) & (c) above, the same shall be conveyed to the bidder with target date upto which the bidder has to send his acceptance on the above lines and if the bidder does not agree to the decision of the BHEL, the bid is liable to be ignored.</p> <p>1.14 In case the scope of the successful bidder / supplier against this tender enquiry includes Erection, Testing and Commissioning (ETC) of the equipment / material at site in addition to Supply, Purchase Order shall be placed for Supply Portion and Contract shall be separately awarded for ETC at Site Portion. General Terms and Conditions for Tender Enquiry / Contract mentioned herein shall be applicable for both Supply & ETC at Site. Additional Terms and Conditions for Tender Enquiry / Contract for Erection, Testing and Commissioning at Site “BHEL/TBG/GTC-ETC/2016 REV01” shall be applicable for ETC at Site only which is to be read in conjunction with General Terms and Conditions for Tender Enquiry / Contract mentioned herein. However, any breach of either the Purchase Order or the Contract shall be deemed to be breach of the other.</p> <p>1.15 Taxes and Duties payable extra as per Clause No. 2.3 in NIT, if not specified/quoted clearly as extra shall be considered as included in Ex-works Price and therefore shall not be reimbursed. Taxes and duties not payable extra as per NIT shall be deemed to be included in Ex-works Price.</p> <p>1.16 If the rates for taxes and duties in respect of the quoted materials and / or services assumed by the Supplier are less than the tariff prevailing at the time of tendering, Supplier will be responsible for such under quotations. However if the rates assumed are higher than the correct rates prevailing at the time tendering, the difference will be to the credit of BHEL.</p> <p>Note : Representative / official deputed by the bidder to witness tender opening must produce authorization letter for the same.</p>
2.	<p>PRICES :</p> <p>2.1 Unless specifically indicated in the NIT, all prices shall be FIRM. No enhancement of rate for whatsoever reasons unless and until asked by BHEL shall be allowed.</p> <p>2.2 Unless specifically indicated in the NIT, the prices shall be on INR basis.</p> <p>2.3 Unless specifically indicated in the NIT, the prices are to be quoted on FOR (Site / Destination) basis excluding GST. The break-up of prices shall be as under :-</p> <p>a) Ex-works Price: Ex-works price including packing & forwarding charges.</p>

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	<p>b) Freight: Freight for door delivery up to destination / site / store are to be quoted separately.</p> <p>c) Insurance: Insurance for door delivery up to destination / site / store are to be quoted separately.</p> <p>d) Type Test Charges: If asked in the technical specification, it is to be quoted separately for each test.</p> <p>e) Charges for Supervision of Erection, Testing & Commissioning (ETC) at Site: To be quoted separately if specified in NIT/Price Schedule.</p> <p>f) Charges for Testing & Commissioning at Site: To be quoted separately if specified in NIT/Price Schedule.</p> <p>g) Charges for Erection, Testing & Commissioning at Site: To be quoted separately if specified in NIT/Price Schedule.</p> <p>h) Training Charges: To be quoted separately if specified in NIT/Price Schedule.</p> <p>2.4 GST rates along with HSN/SAC code as applicable on Sr No (a) to (h) above is to be mentioned separately in percentage in both un-priced bid and price bid.</p> <p>Note :</p> <p>i) Unless otherwise specified in the NIT, the purchase order shall be placed on Ex-works basis for Indian bidders.</p> <p>ii) Prices quoted by Indian bidders shall be in Indian Rupees only.</p> <p>iii) In case Supervision of Erection, Testing & Commissioning (ETC) at Site or Testing & Commissioning at Site or Erection, Testing & Commissioning at Site is also in scope of the bidder along with supply, bidder has to ensure that prices quoted for such services also are in line with special terms & conditions of the NIT, if any.</p> <p>iv) Unless otherwise specified in the NIT, Unloading at Site / Destination shall not be in the scope of the supplier.</p> <p>v) Prices in respect of Sr No (a) to Sr No (h) of Clause 2.3 above are to be quoted inclusive of all taxes & Duties, charges. Levies , royalty etc if any, excluding GST.</p>
3.	<p>TERMS OF PAYMENT :</p> <p>3.1 For Supply only in scope of the supplier</p> <p>100% of payment within 60 days from the date of receipt of complete invoice along with documents in 3 sets (original + 2 copies) as follows :</p> <ul style="list-style-type: none"> • LR / GR duly endorsed by BHEL Site Official. • Material Receipt Certificate issued by BHEL Site Official. • GST Compliant Tax Invoice • Packing List (Case-wise) • Copy of Transit Insurance Certificate from underwriters. • Material Inspection Clearance Certificate (MICC) issued by BHEL Quality Management • Guarantee Certificate • Copy of Performance Bank Guarantee (PBG) • Certificate of acceptance of Type Test Reports issued by BHEL Engineering Management wherever specifically mentioned in the Purchase Order.

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	<p>3.2 For Supply where Supervision of Erection, Testing & Commissioning (ETC) at Site is in scope of the supplier or Supply where Testing & Commissioning at Site is in scope of the supplier</p> <p>a) 95% of payment within 60 days from the date of receipt of complete invoice along with documents in 3 sets (original + 2 copies) as follows :</p> <ul style="list-style-type: none"> . LR / GR duly endorsed by BHEL Site Official. . Material Receipt Certificate issued by BHEL Site Official. . GST Compliant Tax Invoice . Packing List (Case-wise) . Copy of Transit Insurance Certificate from underwriters. . Material Inspection Clearance Certificate (MICC) issued by BHEL Quality Management . Guarantee Certificate . Copy of Performance Bank Guarantee (PBG) . Certificate of acceptance of Type Test Reports issued by BHEL Engineering Management wherever specifically mentioned in the Purchase Order. <p>b) 5% of payment within 60 days from the date of receipt of complete invoice along with documents in 3 sets (original + 2 copies) as follows :</p> <ul style="list-style-type: none"> . Certificate of successful completion of Supervision of Erection, Testing & Commissioning at Site if it is in the scope of the supplier or Certificate of successful completion of Testing & Commissioning at Site if it is in the scope of the supplier. . Certificate of completion of final documentation as per Purchase Order / Technical Specification issued by BHEL Engineering Management <p>3.3 For Supply where Erection, Testing & Commissioning (ETC) at Site is in scope of the supplier</p> <p>a) 90% of payment within 60 days from the date of receipt of complete invoice along with documents in 3 sets (original + 2 copies) as follows :</p> <ul style="list-style-type: none"> . LR / GR duly endorsed by BHEL Site Official. . Material Receipt Certificate issued by BHEL Site Official. . GST Compliant Tax Invoice . Packing List (Case-wise) . Copy of Transit Insurance Certificate from underwriters. . Material Inspection Clearance Certificate (MICC) issued by BHEL Quality Management . Guarantee Certificate . Copy of Performance Bank Guarantee (PBG) . Certificate of acceptance of Type Test Reports issued by BHEL Engineering Management wherever specifically mentioned in the Purchase Order <p>b) 10% of payment within 60 days from the date of receipt of complete invoice along with documents in 3 sets (original + 2 copies) as follows :</p> <ul style="list-style-type: none"> . Certificate of successful completion of Erection, Testing & Commissioning at Site issued by BHEL Site Official / Construction Management . Certificate of completion of final documentation as per Purchase Order / Technical Specification issued by BHEL Engineering Management <p>3.4 For Type Test Charges</p> <p>100% payment along with applicable GST within 60 days from the date of receipt</p>

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	<p>of complete GST compliant Tax invoice along with copy of Certificate of acceptance of Type Test Reports issued by BHEL Engineering Management in 3 sets (original + 2 copies) on completion of delivery (at site, if F&I is in scope of supplier) of main supplies (excluding spares) for which Type Tests are applicable. List of main supplies (excluding spares) for which Type Tests are applicable shall be certified by BHEL Engineering Management.</p> <p>3.5 For Charges for Supervision of Erection, Testing & Commissioning at Site</p> <p>100% payment along with applicable GST within 60 days from the date of receipt of complete GST compliant Tax invoice along with certificate of successful completion of Supervision of Erection, Testing & Commissioning at Site issued by BHEL Site Official / Construction Management in 3 sets (Original + 2 copies).</p> <p>3.6 For Charges for Testing & Commissioning at Site</p> <p>100% payment along with applicable GST within 60 days from the date of receipt of complete GST compliant Tax invoice along with certificate of successful completion of Testing & Commissioning at Site issued by BHEL Site Official / Construction Management in 3 sets (Original + 2 copies).</p> <p>3.7 For Training Charges</p> <p>100% payment along with applicable GST within 60 days from the date of receipt of complete GST compliant Tax invoice along with certificate of completion of training issued by BHEL Engineering Management in 3 sets (original + 2 copies).</p> <p>Note :</p> <ul style="list-style-type: none"> i) Supplier has to submit invoice(s) as per PO or approved billing break-up of prices (if applicable as per NIT). ii) In case of supplies for overseas project, Material Receipt Certificate issued by BHEL Authorized Representative shall also be acceptable. iii) In case of Transit Insurance under Open Insurance Policy, Intimation / Declaration of Transit Insurance as per terms of the relevant Open Insurance Policy along with copy of Open Insurance Policy from underwriters shall also be acceptable. iv) Supplier has to ensure commencement of transit insurance from the date not later than LR / GR date. v) Supplier has to submit Tax Invoice(s). Supplier should ensure that Tax Invoice should comply all statutory requirements under GST Law to enable BHEL to avail input credit vi) MSMED Act, 2006 and the rules made thereunder as amended from time to time shall be applicable for release of payment to suppliers qualified & registered as Micro & Small Enterprises based on documents mentioned in the NIT for MSME. vii) Supplier has to submit PBG (as per BHEL format) & Guarantee Certificate as per

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	<p>PO terms.</p> <p>viii) In case any shortages and / or damages in supplies, an amount calculated based on comments against Material Receipt Certificate issued by the BHEL Site Official shall be withheld from the supply payment against 3.1(a) or 3.2(a) above to be deemed fit by BHEL subject to a minimum of 10% of the total ex-works value of the invoice corresponding to the LR / GR against which any shortages and / or damages are reported. The withheld amount shall be released after the shortages and / or damages in supplies are supplied / replenished against Certification by BHEL Site Official.</p> <p>ix) Payment of GST component shall be made only if vendor has deposited the Tax and credit for the same is reflected in GSTN (GST Network). In case credit of the same is not reflected in GSTN , vendor may alternatively furnish BG of GST Amount for a period valid for not less than 1 month .In case of disallowance of credit /non reflection of credit in GSTN , amount will be recovered from supplier along with applicable Interest , penalty etc from any of his dues.</p> <p>x) If GST is payable by BHEL on reverse Charge Mechanism basis, vendor should ensure the submission of GST compliant Tax invoice immediately on dispatch/ performance of service. In case of non-compliance any additional charges towards interest , penalty etc , will be to vendors account.</p> <p>xi) TDS under GST Act, if applicable, shall be deducted unless Exemption Certificate If applicable, from the appropriate authority is furnished to BHEL along with Invoice.</p>
4.	<p>INTEREST LIABILITY :</p> <p>In case of any delay in payment due to any reason, BHEL shall not pay any interest on delayed payment. Also, no interest shall be payable by BHEL on the bank guarantee / deposit amount or balance payment or any other money which may become due owing to difference or misunderstanding or any dispute before any quasi judicial authority between BHEL and the Supplier / Contractor.</p>
5.	<p>GUARANTEE :</p> <p>The equipment / material supplied and services rendered (if applicable) shall be guaranteed to be free from all defects and faults in design & engineering, material, workmanship & manufacture and in full conformity with the Purchase Order / Contract, Technical Specifications & approved drawings / data sheets, if any, for 18 months from the date of last delivery or 12 months from the date of commissioning, whichever is earlier.</p> <p>Wherever Erection, Testing & Commissioning at Site are also in the scope of the Supplier, the guarantee period shall be 18 months from the date of last delivery or 12 months from the date of commissioning, whichever is later.</p> <p>The defective equipment / material / component shall be replaced free of cost at site. Freight & Insurance during transit shall also be in the scope of the supplier / contractor. Any expenditure for dismantling and re-erection of the replaced equipment / material / component shall be to supplier's / contractor's account. All replacements during the guarantee period shall be delivered at site promptly and satisfactorily within a period not more than 45 days from the date of reporting the defect / rejection etc.</p> <p>In the event of the supplier / contractor failing to replace the defective equipment / material / component within the time period mentioned above, BHEL may proceed to</p>

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	<p>undertake the replacement of such defective equipment / material / component at the risk and cost of the supplier / contractor without prejudice to any other rights under the contract and recover the same from PBG / other dues of this Purchase Order / Contract or any other Purchase Order / Contract executed by the supplier / contractor.</p> <p>Note :</p> <p>i) In case of Illumination System, items viz. Lamps, Tubes, Ballast, Starters, Capacitors & Fuses will not be under Guarantee after commissioning.</p> <p>ii) In addition to the above guarantee period, Extended Guarantee / Warranty, if any, shall be as per NIT / Technical Specifications.</p> <p>iii) In case offer of agent of Foreign OEM / Foreign Principal is considered, as per Clause No. 1.12 above, Guarantee as mentioned above has to be provided by the Foreign OEM / Foreign Principal also.</p>
6.	<p>LATENT DEFECT : Liability for latent defects shall be for defects inherently lying within material or arising out of design deficiency which does not manifest itself during guarantee period but later and shall be limited to five years from the expiry of the guarantee period.</p>
7.	<p>PERFORMANCE BANK GUARANTEE (PBG) : Supplier shall arrange to submit Performance BG / deposit on a non-judicial stamp paper of appropriate value along with first invoice or within 60 days from placement of Purchase Order (PO) whichever is earlier, in line with one of the applicable options as follows :-</p> <p><u>Option "A"</u> A single rolling PBG for Rs. 50 Lakhs initially valid for 18 months with claim period of 3 months extra over and above 18 months for all the Purchase Orders being executed for Transmission Business Group, BHEL. However, validity of the PBG shall be extended till 18 months from the date of last delivery with 3 months claim period extra over and above 18 months. Single Rolling PBG option shall not be applicable in case Ex-works value of the PO at the time of placement of PO exceeds Rs. One Crore.</p> <p><u>Option "B"</u> PBG for 10% of the total Ex-works PO value, valid for 18 months from the date of last delivery with claim period of 3 months extra over and above 18 months. Ex-works PO value at the time of placement of PO shall be considered for calculation of the PBG amount.</p> <p><u>Option "C"</u> In case the total Ex-works PO value at the time of placement of PO does not exceed Rs. Ten Lakhs, interest free Deposit of 10% of the total Ex-works PO value at the time of placement of PO in form of Demand Draft favouring "Bharat Heavy Electricals Limited" and payable at New Delhi / Delhi / Noida shall also be acceptable to BHEL in lieu of PBG, which shall be released after expiry of 21 months from the date of last delivery after deduction, if any, within 60 days from receipt of invoice in 3 sets (original + 2 copies) to be submitted by the supplier.</p> <p>Note :</p> <p>i) The Bank Guarantee shall be from any bank as per Annexure for List of Banks (32 Nos.). The original PBG should be sent by issuing Bank directly to AGM (Finance), TBG, BHEL, Noida.</p> <p>ii) Extension of validity of the PBG in original, as per above clause, should be sent by issuing Bank directly to AGM (Finance), TBG, BHEL, Noida at least 45 days</p>

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	<p>before expiry of validity of the PBG.</p> <p>iii) Unless otherwise specified in the NIT, deviation taken for non-submission of PBG / Deposit, as applicable, shall not be accepted.</p> <p>iv) Supplier has to confirm one of the applicable options for submission of PBG / Deposit before placement of PO.</p> <p>v) In case of non-submission PBG / Deposit, as applicable, BHEL reserve the right for Risk Purchase as per terms of the NIT and impose Suspension of Business Dealings with the Supplier / Contractor.</p> <p>vi) BHEL reserve the right to encash the Bank Guarantee and forfeit the amount in the event of any default, failure or neglect on part of the Supplier in fulfilment of performance of the Purchase Order.</p> <p>vii) Value of the Bank Guarantee (at the time of submission) shall remain unchanged for any subsequent variations in Purchase Order value up to $\pm 20\%$. Beyond this variation of $\pm 20\%$, the Supplier shall arrange to enhance or may reduce the value of the Bank Guarantee accordingly for the total variation promptly.</p> <p>viii) Vendor to ensure submission of Certificate of Final Documentation /Confirmation regarding Non applicability of Final Documentation, as the case may be, as referred in clause No 9 regarding Final Documentation. BG shall be released only after submission of the same to BHEL TBMM.</p>
8.	<p>SUBMISSION OF DRAWINGS / DOCUMENTS FOR APPROVAL :</p> <p>Supplier shall submit the master document list within 7 days from date of Purchase Order / Contract, unless otherwise specified in the NIT, with planned dates for submission which shall be in line with activity schedule as per Purchase Order / Contract and shall be finalized with BHEL Engineering Management. Date of first submission of drawings / documents shall be certified by BHEL Engineering Management after the receipt of applicable drawings / documents (e.g. project specific cover sheet, GTP, OGA drawings, schemes, type test reports etc.) by BHEL. During detailed engineering stage, necessary hard copies of the engineering drawings / documents shall also be submitted by the supplier as per the Purchase Order / Contract requirement. The supplier shall also submit the packing drawings as per technical specifications.</p> <p>In case item(s) offered require any interface details of other item (not in the scope of supplier & required for operating the equipment), the supplier has to submit interfaces schedule along with submission of engineering drawings / documents. It shall be responsibility of the supplier to get the details of the interfaced item from BHEL before manufacturing to avoid any mismatch at site.</p>
9.	<p>FINAL DOCUMENTATION :</p> <p>Final documentation as called in the Technical /contract specification is to be submitted within 3 months from the date of first delivery of respective equipment, item/material. After submission of Final Documentation, BHEL Engineering Management (TBEM) will issue a Certificate of Completion of Final Documentation. Wherever Final Documentation is not applicable, BHEL Engineering Management (TBEM) will issue confirmation regarding the same, Vendor to submit the Certificate of Final Documentation /Confirmation regarding Non applicability of Final Documentation, as the case may be, to BHEL TBMM. In case of Non Submission of Certificate of Final Documentation /Confirmation regarding Non applicability of Final Documentation, BG will be liable for encashment.</p>
10.	<p>INSPECTION :</p> <p>BHEL / customer / third party shall inspect equipment / material before despatch. Stage inspection during manufacturing may also be carried out. Material to be despatched only after getting Material Despatch Clearance Certificate (MDCC) / MICC issued by BHEL.</p> <p>Supplier shall send inspection call on prescribed format / web site only, with an</p>

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	<p>advance notice of 15 days.</p> <p>Supplier to ensure submission of all routine / acceptance test reports, inspection reports and all other documents related to inspection, immediately to BHEL.</p> <p>BHEL representative is authorised to carry out audits along with Third Party Inspection Agency at vendor's / supplier's works before clearing the items for despatch.</p>
11.	<p>DESPATCH DOCUMENTS :</p> <p>Despatch documents to be immediately sent to BHEL on despatch are as follows :-</p> <ul style="list-style-type: none"> • Copy of Invoice • Copy of LR / GR in case of Indian suppliers or BL / AWB in case of foreign suppliers • Copy of Packing List (Case-wise) • Copy of Transit Insurance Certificate from underwriters • Copy of Guarantee Certificate
12.	<p>DELIVERY PERIOD :</p> <p>Delivery / Completion requirement shall be mentioned in the NIT. Bidder to specify best delivery / completion period possible in weeks from the date of LOI / PO as per activity schedule for consideration by BHEL.</p> <p>Time required for type test, if applicable, is to be separately indicated.</p> <p>Note :</p> <p>LR / GR date or invoice date (whichever is later) for indigenous supplies and BL / AWB date for FOB / CIF (if applicable) contracts shall be considered as delivery date.</p>
13.	<p>LIQUIDATED DAMAGES FOR DELAYED DELIVERY:</p> <p>In case of delay in execution of Purchase Order beyond the contractual delivery time, an amount of 0.5% of the total Purchase Order value for supply (incl. taxes and duties, freight & insurance as applicable) per week of delay or part thereof subject to a maximum of 10% of the total Purchase Order value for supply (incl. taxes and duties, freight & insurance as applicable) shall be deducted as Liquidated Damages (LD) along with applicable GST (if any) on LD.</p> <p>However, in case of staggered (lot-wise) contractual delivery schedule, an amount of 0.5% of the total Purchase Order value for supply (incl. taxes, duties, freight & insurance as applicable) of delayed lot per week of delay or part thereof subject to maximum of 10% of the total Purchase Order value.(Incl taxes, duties, Freight & Insurance as applicable) shall be deducted as Liquidated Damages (LD) along with applicable GST (if any) on LD.</p> <p>Note :</p> <ol style="list-style-type: none"> i) In case of any amendment / revision in P.O./WO, the LD shall be linked to the amended / revised Purchase Order / Contract value and delivery / completion time / schedule, if applicable. ii) LR / GR date or invoice date (whichever is later) for indigenous supplies and BL / AWB date for FOB / CIF (if applicable) for imported supplies shall be treated as the date of dispatch for levying LD as above. iii) However, for indigenous supply, if time period between date of receipt of material at site / destination by Site Official & the date of LR / GR or invoice (whichever is later) is more than 30 days, where distance from place of despatch as per LR / GR is upto 1000 Kms or if time period between date of receipt of material at site / destination by Site Official & the date of LR / GR or invoice (whichever is later) is more than 45 days, where distance from place of despatch as per LR / GR is more than 1000 Kms, such excess period shall also be considered for LD

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	<p>purpose.</p> <p>iv) If, as per supplier, delay is not attributable to the supplier, delay analysis with documentary evidence may be submitted by the supplier at the earliest but not later than six months from the end of the financial year in which the payment is withheld. Based on the above details / documents submitted by the supplier, BHEL shall take final decision and if considered appropriate by BHEL, withheld amount (full or part as the case may be) shall be released, otherwise, full or balance withheld amount shall be treated as deduction of Liquidated Damages (LD) towards delayed delivery.</p>
14.	<p>VALIDITY OF OFFER : The offer shall be valid for 120 days from the due date of opening of tender (i.e. techno-commercial bid unless otherwise specified in the NIT). Prices of Spares, wherever they optional items, shall be valid till two years from the date of placement of PO.</p>
15.	<p>ACCEPTANCE / REJECTION OF TENDER : BHEL reserve the right to reject in full or part, any or all tender without assigning any reason thereof. BHEL also reserve right to vary the quantities as mentioned in the NIT. Acceptance of offer is subject to vendor approval by customer before opening of price bid.</p> <p>BHEL shall not be bound by any power of attorney granted by tenderer or by changes in composition of the firm made subsequent to award of order / contract. BHEL may however recognize such power of attorney and changes after obtaining proper legal advice, cost of which will be chargeable to the seller / contractor concerned. If the tenderer deliberately gives wrong information, BHEL reserves the right to reject such an offer at any stage or cancel the order / contract, if awarded, and forfeit the security deposit and bank guarantee.</p>
16.	<p>DEVIATION : The bids having deviation(s) w.r.t. tender are liable for rejection. However, BHEL, at its discretion, may load the prices for evaluation of offer with prior intimation to bidder.</p>
17.	<p>TENDER EVALUATION : Comparative statement shall be prepared and evaluated on total cost basis at destination/site (as per terms of NIT) considering overall quantity indicated in NIT unless contrary to same is specifically mentioned in the tender enquiry / NIT. Total cost for this purpose shall include cost of scope of work as mentioned in NIT along with applicable taxes & duties, and other services etc. (if applicable). GST input credit available to BHEL shall be reduced from prices while determining L1 status.</p> <p>In case all bidders are foreign & Port of Import (destination port) is same for all the bidders, evaluation of offers shall be done on CIF (Port of Import) basis. Otherwise, evaluation of offers shall be done on the basis of delivered cost at site /destination to BHEL. Further, in case of foreign bidders, marine freight & insurance are to be quoted separately & the purchase order may be placed on FOB basis with an option for delivery on CIF / CFR basis, if required, later.</p> <p>In case of foreign bidders, Exchange Rate (TT selling rate of State Bank of India) as on date of tender opening (Part-I Bid in case of two part bid) shall be considered. If the relevant day happens to be a bank holiday, then the forex rate as on the previous bank (SBI) working day shall be taken for tender evaluation.</p>
18.	<p>LOADING CRITERIA : List of permissible deviations & loading criteria thereof are as follows :-</p> <p>a) Payment Terms Base rate of SBI (as applicable on the date of bid opening / techno-commercial bid opening in case of two part bids) + 6% shall be considered for loading for the</p>

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	<p>period of relaxation sought by bidder(s) against terms of payment in the NIT.</p> <p>b) Liquidated Damages (LD) for Delayed Delivery Loading on LD clause shall be to the extent to which it is not agreed to by the bidder (at offered value).</p> <p>c) In case of foreign bidders, if the quoted prices is on CIF basis only, it shall be loaded to arrive at total FOR (Site / Destination) price, as applicable, by factors as follows :-</p> <ul style="list-style-type: none"> i) Port handling / clearing charges: @ 1% of CIF value to arrive at Customs Assessable Value. ii) Custom Duty (including CVD & SAD) as per NIT prevailing on date of price bid opening. iii) Inland Freight & Transit Insurance: @ 5% of CIF value where distance between site / destination and Port of Discharge is upto 1000 Kms or @ 7% of CIF value where distance between site / destination and Port of Discharge is more than 1000 Kms. <p>Note : Additional deviations (if considered acceptable by BHEL) & the loading criteria shall be communicated to all the qualified bidders before price bid opening.</p>
19.	<p>ARBITRATION : In the event of any dispute emanating from and relating to this contract, the matter shall be referred to the sole arbitration of the person appointed by the competent authority of BHEL. Subject to aforesaid, the provisions of “The Arbitration and Conciliation Act, 1996” and the rules made thereunder as amended from time to time in India shall apply to the arbitration proceedings. The venue of arbitration shall be in New Delhi. Further there shall be no claim for any pre-reference or pendente-lite interest on the claims and any claim for such interest made shall be void. However, in case of contract with Public Sector Enterprise / Undertaking (PSE/PSU) or Govt. Dept., the extant guidelines of Govt. of India shall be followed.</p>
20.	<p>LEGAL SETTLEMENT : Indian Courts at New Delhi / Delhi shall have exclusive jurisdiction to decide the dispute, if any, arising out of or in respect of the contract(s) to which these conditions are applicable. Contract, including all matters connected with contract, shall be governed by the Indian Law, both substantive and procedural, for the time being in force including modification thereto.</p>
21.	<p>SUB-CONTRACTING : In case further subcontracting of BHEL Purchase Order / Contract or part thereof is envisaged by supplier, the same can be done after written permission is obtained from BHEL. However it shall not absolve the Supplier / Contractor of the responsibility of fulfilling BHEL Purchase Order / Contract requirements. In case of subcontracting of Purchase Order / Contract awarded by BHEL or part thereof without such permission, BHEL reserve the right to cancel the Purchase Order / Contract and source such material / component / equipment / system from any other agency at the risk and cost of the Supplier / Contractor.</p> <p>If Supplier / Contractor is an individual or proprietary concern and the individual or the proprietor dies or the partnership is dissolved or substantially affected, then unless BHEL is satisfied that legal representative of individual Supplier / Contractor or proprietor of proprietary concern and surviving partners of partnership firm are capable of carrying out and completing the Purchase Order / Contract, BHEL shall be entitled to cancel the Purchase Order / Contract as to its incomplete portion and without being in any way liable to payment of any compensation to legal</p>

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	<p>representative of Supplier / Contractor and / or to surviving partners of Supplier's / Contractor's firm on account of cancellation of the Purchase Order / Contract. Decision of BHEL that legal representatives of deceased Supplier / Contractor or surviving partners of the Supplier's / Contractor's firm cannot carry out and complete the Purchase Order / Contract shall be final and binding on the parties hereto.</p> <p>Terms and Conditions shall not get affected in case of de-merger / amalgamation / taking-over / re-constitution etc.</p>
22.	<p>RISK PURCHASE : In case the Supplier / Contractor fails to supply or fails to comply with terms & conditions of the Purchase Order / Contract or delivers equipment / material not of the contracted quality or fails to adhere to the contract specifications or fails to perform as per the activity schedule and there are sufficient reasons even before expiry of the delivery / completion period to justify that supplies shall be inordinately delayed beyond contractual delivery / completion period, BHEL reserve the right to cancel the Purchase Order / Contract either in whole or in part thereof without compensation to Supplier / Contractor and if BHEL so desires, may procure such equipment / material / items not delivered or others of similar description where equipment / material / items exactly complying with particulars are not readily procurable in the opinion of BHEL which is final and in such manner as deemed appropriate, at the risk and cost of the Supplier / Contractor and the Supplier / Contractor shall be liable to BHEL for any excess cost to BHEL. However, the Supplier / Contractor shall continue execution of the Purchase Order / Contract to the extent not cancelled under the provisions of this clause.</p> <p>Recovery amount on account of purchases made by BHEL at the risk and cost of Supplier / Contractor shall be the difference of total value of new Purchase Order (PO) value and total value of old Purchase Order for applicable items, where the total value of new PO is more than total value of old PO for applicable items, plus additional 15% of the total ex-works value of new PO as overheads.</p> <p>The Supplier / Contractor shall on no account be entitled to any gain on such risk & cost purchase. In case the purchase order (PO) value of the new PO is less than the PO value of the old PO, 15% of the total ex-works value of the new PO shall be recovered as overheads and the difference between the PO value of the old PO and the new PO shall not be considered for calculation of the recovery amount.</p>
23.	<p>ADJUSTMENT OF RECOVERY : Any amount payable by the Supplier / Contractor under any of the condition of this contract shall be liable to be adjusted against any amount payable to the Supplier / Contractor under any other Purchase Order / Contract awarded to him by any BHEL unit. This is without prejudice to any other action, as may be deemed fit, by BHEL.</p>
24.	<p>FORCE MAJEURE CONDITION : If by reason of war, civil commotion, act of god, Government restrictions, strike, lockout which are not in control of Supplier / Contractor the deliveries / services are delayed, Supplier / Contractor shall not be held responsible.</p> <p>If at any time during the continuance of the Purchase Order / Contract, the performance in whole or in part by either party of any obligations under the Purchase Order / Contract is prevented or delayed by reason of any war hostilities, acts of the public enemy, restrictions by Govt. of India, civil commotion, sabotage, fires, floods, explosion, epidemics, quarantine restrictions, strike, lock-outs or acts of God (hereinafter referred to as "event"), which are not in control of Supplier / Contractor or BHEL, then provided notice of the happening of such event is given by either party to the other within fifteen (15) days from the date of occurrence thereof, neither party shall by reason of such event be entitled to terminate the Purchase Order /</p>

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	<p>Contract nor shall have any claim for damages against each other in respect of such non-performance and delay in performance. Performance under the Purchase Order / Contract shall be resumed immediately after such event has come to an end or ceased to exist and decision of BHEL as to whether the deliveries have to be resumed or not shall be final, conclusive and binding on the parties hereto.</p> <p>In the event of the parties hereto not able to agree that a force majeure event has occurred, the parties shall submit the disputes for resolution pursuant to the provisions hereunder, provided that the burden of proof as to whether a force majeure event has occurred shall be upon the party claiming such an event.</p> <p>Notwithstanding above provisions, BHEL shall reserve the right to cancel the Purchase Order / Contract, wholly or partly, in order to meet the overall project schedule and make alternative arrangements for completion of delivery and other schedules.</p>
25.	<p>MANUFACTURING QUALITY PLAN (MQP) : Supplier to submit approved MQP in line with requirement of BHEL/customer.</p>
26.	<p>SUPPLIER PERFORMANCE MONITORING AND RATING SYSTEM : BHEL reserve the right for evaluation of Supplier Performance Rating as per Supplier Performance Monitoring and Rating System of BHEL for necessary action. Details are available at BHEL Website www.bhel.com for reference.</p>
27.	<p>DEALING WITH BANNED SUPPLIERS / CONTRACTORS IN BHEL : Offers of the bidders, who are on the banned list, as also the offers of the bidders who engage the services of the banned firms, shall be rejected. The list of banned firms is available on BHEL website www.bhel.com for reference.</p>
28.	<p>ORDER OF PRECEDENCE : The order of precedence shall be as follows :-</p> <ol style="list-style-type: none"> Special Terms & Conditions (STC) for Tender Enquiry / Contract, if any General Terms & Conditions (GTC) for Tender Enquiry / Contract & Additional General Terms & Conditions (GTC) for Tender Enquiry / Contract for Erection Testing & Commissioning (ETC) at Site, if applicable <p>Provisions in (a) above shall prevail over (b). In case of conflict, between Technical Specifications and STC / GTC, bidder to seek necessary clarifications from BHEL concerned official as specified in NIT.</p>
29.	<p>PACKING : Packing shall be in conformity with specifications and shall be such as to ensure prevention of damages, corrosion, deterioration, shortages, pilferage and loss in transit or storage.</p> <p>In case of shipment by sea or air, the packing shall be sea-worthy or air-worthy respectively and of international standards.</p> <p>Different types of spares i.e. start-up / commissioning spares and initial spares (mandatory spares and recommended O&M spares) are to be packed separately.</p> <p>Packing List shall be submitted as per standard format along with advance set of documents for claiming payment which shall also indicate :-</p> <ol style="list-style-type: none"> Case / Packing size (as applicable). Gross weight and net weight of each package. Detailed contents of the package with quantity of each item separately. <p>Project, Item / Package Description, BHEL's PO No. with date & Case / Packing Mark should also be clearly mentioned on the Case / Packing and Packing List for identification. Also, Packing List must be duly signed & should include respective Invoice No. & LR No.</p> <p>Note :</p> <p>Foreign suppliers to furnish details to arrange inland transportation by BHEL, if applicable, as follows :-</p>

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	<ul style="list-style-type: none"> i) No. of Packages ii) Size with Weight (Gross & Net) of each Package iii) No. of Containers with type & size required for inland transportation iv) Type of Cargo (Break Bulk / LCL / FCL) v) Customs Tariff No.
30.	<p>COLOUR CODING : Aluminium stickers are required to be attached to large components but plastic sheet tags should be tied with small components, giving details like purchase order, description of the component, quantity etc. Tags should be of the colour as follows :-</p> <ul style="list-style-type: none"> a) Main equipment : Yellow or White tag b) Start-up / Commissioning spares : Blue tag c) Mandatory spares : Pink or Red tag d) Recommended / O&M spares : Green tag
31.	<p>MICRO, SMALL & MEDIUM ENTERPRISES (MSME) : MSMED Act 2006 as amended from time to time & extant regulations of Govt. of India for MSME will be applicable. Micro & Small Enterprises (MSE) can avail the intended benefits only if they submit along with the offer / bid, attested copies of either Acknowledgement of Entrepreneur Memorandum Part-II (EM-II certificate) having deemed validity (five years from the date of issue of acknowledgement in EM-II) or valid NSIC certificate or EM-II certificate along with attested copy of a CA certificate (As per BHEL format where deemed validity of EM-II certificate of five years have expired) applicable for the relevant financial year (latest audited). Date to be reckoned for determining the deemed validity will be the date of opening (for Techno-commercial Bid : Part-I in case of two part bid). Non-submission of such documents will lead to consideration of their bid at par with other bidders. No benefit shall be applicable for this enquiry if any deficiency in the above required documents are not submitted before price bid opening. If the tender is to be submitted through e-procurement portal, then the above required documents are to be uploaded on the portal. Documents should be notarized or arrested (in original) by a Gazetted officer. Copy of Udyog Aadhaar Memorandum with Acknowledgement of Ministry of Micro, Small & Medium Enterprises should also be furnished.</p>
32.	<p>BUSINESS ETHICS / SUSPENSION OF BUSINESS DEALINGS WITH SUPPLIERS / CONTRACTORS : If any bidder / supplier / contractor during pre-tendering / tendering / post tendering / award / execution / post-execution, indulges in malpractices cheating, bribery, fraud or other misconduct or formation of cartel so as to influence the bidding process or influences the price or fails to perform or is in default without any reasonable cause etc or performs any act considered objectionable as per extant guidelines, action may be taken against such bidders/supplier/contractor as per extant "Guidelines for Suspension of Business Dealings with Suppliers/Contractors". Abridged version of same is available at BHEL website (www.bhel.com) on "Supplier Registration" Page.</p>
33.	<p>REVERSE AUCTION : BHEL reserve the right to go for Reverse Auction (RA) instead of opening the sealed envelope price bid, submitted by the bidder or price bid submitted by the bidder through e-procurement system. This will be decided after techno-commercial evaluation. All bidders to give their acceptance for participation in RA. Non-acceptance to participate in RA may result in non-consideration of their bids, in case BHEL decides to go for RA. In case BHEL decides to go for Reverse Auction, only those bidders who have given their unconditional acceptance to participate in RA will be allowed to participate in the Reverse Auction. Those bidders who have given their acceptance to participate in Reverse Auction will have to necessarily submit "online sealed bid" in the Reverse Auction. Non-submission of "online sealed bid" by the bidder will be</p>

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	<p>considered as tampering of the tender process and will invite action by BHEL as per extant guidelines in vogue.</p> <p>General Terms and Conditions of RA are available at Annexure. Business Rules for RA shall be sent to the bidders before conducting RA.</p> <p>Abridged Version of “Common Guidelines for Conducting Reverse Auction” may also be seen at BHEL website (www.bhel.com) on “Supplier Registration” Page & “Tender Notifications” Page.</p>
34.	<p>INTEGRITY PACT :</p> <p>Bidders shall have to enter into Integrity Pact with BHEL, duly signed with seal in original, if specified in NIT / RFQ failing which bidder's offer shall be liable for rejection.</p>
35.	<p>TERMINATION OF CONTRACT :</p> <p>BHEL shall have the right to cancel the Purchase Order / Contract without any financial implication to BHEL if vendor approval by end user / customer is withdrawn or in case of Suspension of Business Dealings with the Suppliers / Contractors by BHEL.</p> <p>BHEL shall have the right to cancel Purchase Order / Contract, wholly or in part, in case they are obliged to do so on account of any decline, diminution, curtailment or stoppage of their business and in that event, the Supplier's / Contractor' compensation claim shall be settled mutually.</p> <p>In case of cancellation of Purchase Order / Contract for main supply, all other associated Purchase Orders / Contracts like those for Mandatory Spares / Recommended Spares / Erection, Testing & Commissioning (ETC) / Supervision of ETC, if any, would also get cancelled.</p>
36.	<p>SHELF LIFE :</p> <p>Supplier has to inform the list of the items / sub-items which have limited shelf life like consumables or those required for the first fill and shall indicate the corresponding shelf life period in the offer. Such items / sub-items shall be manufactured / despatched only after getting formal clearance from BHEL.</p>
37.	<p>LIMITATION OF LIABILITY :</p> <p>Notwithstanding any other provisions, except in cases of wilful misconduct and / or criminal negligence / acts,</p> <p>a) Neither the Supplier / Contractor nor BHEL shall be liable to the other, whether in Purchase Order / Contract, tort, or otherwise, for any consequential loss or damage, loss of use, loss of production or loss of profits or interest costs, provided however that this exclusion shall not apply to any obligation of the Supplier / Contractor to pay Liquidated Damages to the BHEL and</p> <p>b) Notwithstanding any other provisions incorporated elsewhere in the contract, the aggregate liability of the Contractor in respect of this contract, whether under the Contract, in tort or otherwise, shall not exceed total Contract Price, provided however that this limitation shall not apply to any obligation of the Vendor to indemnify BHEL with respect to Patent Infringement or Intellectual Property Rights.</p>
38.	<p>SHORTAGES / DAMAGES :</p> <p>a) Against Supply only or Supply where Supervision of Erection, Testing & Commissioning (ETC) at Site or Supply where Testing & Commissioning at Site is in scope of the supplier :</p> <p>Any shortages and / or damages in supplies shall be supplied / replenished free of cost by the supplier as early as possible but not later than 30 days from the date of intimation by BHEL to the supplier.</p>

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	<p>b) Against Supply where Erection, Testing & Commissioning (ETC) at Site is in scope of the supplier :</p> <p>Any shortages and / or damages in supplies and during handling / storage, erection, testing and commissioning at site shall be supplied / replenished free of cost by the Supplier / Contractor, as early as possible, to meet the contractual completion time / schedule.</p> <p>Note: There shall not be any extension in the contractual delivery time / schedule due to any shortages and / or damages in supplies.</p>
39.	<p>VARIATION OF CONTRACT VALUE / QUANTITY VARIATION : BHEL shall have the right to variation in quantities of items within $\pm 30\%$ of the total Purchase Order / Contract value at the time of placement of PO or award of Contract on overall basis for all amendments together within two years from the date of original Purchase Order / Contract or completion of execution of the Purchase Order / Contract whichever is earlier but quantities of individual items may vary to any extent or may get deleted unless otherwise specified in the technical specifications. No compensation is payable due to variation in the quantities and the Supplier / Contractor shall be bound to accept the same the contracted prices / rates without any escalation. However, if the Purchase Order / Contract is on "Lumpsum" basis, no variation of Purchase Order / Contract value shall be admissible to the Supplier / Contractor within the scope of Purchase Order / Contract, as long as the inputs remain unchanged.</p>
40.	<p>STATUTORY VARIATION : GST rates prevailing at the time of dispatch of goods/ completion of services shall be payable by BHEL. All other taxes, duties, charges, royalty, cess, other levies shall be deemed to be included in the Ex Works Prices /Charges quoted by bidders and no variations shall be payable in respect thereof . No other variations such as on customs duty, exchange rate, minimum wages, prices of controlled commodities, any other input etc. shall be payable by the BHEL.</p> <p>Notwithstanding anything above, where the actual completion of the supply / services occurs beyond the period stipulated in the Purchase Order / Contract or any extension thereof, variations referred to above, will be limited to the rates prevailing on the dates of such agreed completion periods only. For variations after the agreed completion periods, the Supplier / Contractor alone shall bear the impact for the upward revisions and for downward revisions BHEL shall be given the benefit of reduction in applicable taxes /GST. This will be without prejudice to the levy of liquidated damages for delay in delivery / completion.</p> <p>If new tax is introduced by Central/ State Govt/ Municipality becomes directly applicable on items specified in Bill of Quantities/Purchase Order/Contract, full reimbursements shall be made provided it becomes applicable on items specified in Bill of Quantities.</p> <p>However, any additional tax implication due to delay in delivery, beyond the Contractual Delivery, attributable to supplier shall be borne by supplier.</p>
41.	<p>MODE OF PAYMENT : Payment shall be made directly to the Supplier / Contractor by BHEL through NEFT / RTGS.</p>
42.	<p>CONFIDENTIALITY : Supplier / Contractor shall, at all times, undertake to maintain complete confidentiality of all data, information, software, drawings & documents etc. belonging to BHEL and also of systems, procedures, reports, input documents, manuals, results and any other BHEL documents discussed and / or finalized during the course of execution of Purchase Order / Contract.</p>

Sr. No.	
43.	INDEMNIFICATION : The Supplier / Contractor shall indemnify and keep indemnified and hold harmless BHEL and its employees and officers from and against any and all claims, suits, actions or administrative proceedings, demands, losses, damages, costs and expenses and any other claim of whatsoever nature in respect of the death or injury of any person or loss of or damage to any property arising during the course and out of the execution of the Purchase Order / Contract.
44.	TITLE OF GOODS : a) Ownership of the equipment / material procured in India, shall be transferred to BHEL upon loading on to the mode of transport to be used for transportation of the said equipment / material from the works to the site / destination and upon endorsement of the dispatch documents in favour of BHEL. b) Ownership of the equipment / material to be imported into the country where the site is located, if not procured in India, shall be transferred to BHEL upon loading on the mode of transport to be used for transportation of the equipment / material from the country of origin to that country / destination and upon endorsement of despatch document in favour of BHEL. c) Notwithstanding the transfer of ownership of the equipment / material, the responsibility for care and safe custody thereof together with the risk of loss or damage thereto for whatsoever reason shall remain with the Supplier.
45.	COMPLIANCE OF STATUTORY REQUIREMENTS : The vendor shall comply with all State and Central Laws / Acts, Statutory Rules, Regulations etc., as may be enacted by the Government during the tenure of the Purchase Order / Contract and having in force and applicable to the Purchase Order / Contract and nothing shall be done by the Supplier / Contractor in contravention of any Law / Act and / or Rules / Regulations, thereunder or any amendment thereof. The Supplier / Contractor shall pay all taxes, fees, licence charges / deposits, duties, tolls, royalty, commissions or other charges which may be levied on account of any of his operations connected with the Purchase Order / Contract. In case BHEL is constrained to make any of such payments, BHEL shall recover the same from the Supplier / Contractor either from moneys due to him or otherwise as deemed fit.
46.	ACCEPTANCE OF ORDER : Supplier should acknowledge and accept the Letter of Award / Purchase Order issued by BHEL within 7 days of the issue of Letter of Award / Purchase Order. In case of any discrepancy / typographical error in issue of Purchase Order / Contract, the agreed terms & conditions, scope of work, rates / prices for placement of PO / award of contract shall be applicable and BHEL reserves the right to issue amendment(s) to PO / Contract for correction of discrepancies / typographical errors in the PO / Contract at a later date.
47.	FRAUD PREVENTION POLICY : The Bidder along with its associate / collaborators / sub-contractors / sub-vendors / 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 any fraud or suspected fraud as soon as it comes to their notice.

Signature of Bidder (Authorized Signatory) with Date & Seal

Eng No. _____ dated xx/xx/2022. Project- TANTRANSCO ARIYALUR

SL.NO.	ACTIVITY	ACTIVITY TIME IN Days	Remarks
	(A)	(B)	(I)
1	Order Acknowledgement by Supplier	1	
1	Submission of Documents necessary for getting manufacturing clearance like Drawings, Data sheet, MQP etc.	NA	NA
2	Manufacturing Clearance & CAT-A approval to Vendor after drawing submission	4	NA
3	Manufacturing time after CAT-A approval & Manufacturing Clearance. Including time of raising Inspection Call		Vendor to Fill
4	BHEL/Customer Inspection & Dispatch Clearance	7	
5	Dispatch	7	
*Delay/Preponement if any, shall be adjusted in delivery time.			

Check List for Supply bills

Name Of the Project							
Package Description							
Invoice No. & Date							
PO No. & date							
Sr. No	Documents Required	Copies	Check Points	Page no.	Vendor Remarks (Y/N/NA)	Verification by MM (Y/N/NA)	Verification by Fin (Y/N/NA)
1	Original for Buyer Invoice - GST compliant invoice	1 Original+2 Copy	1. Please ensure GST complaint invoice in original 2. Consignee address : BHEL C/o followed by site address 3. Item description and unit of quantity are matched with PO 4. Buyer address and GSTN No as required (TBG Noida or Nodal 5. PO No and date, LR No and date, Vehicle No and Project name 6. Invoiced quantity are not more than th PO quantity and MICC 7. Ex works unit rate , Taxes and F&I rates are same as per PO 8. Signed and stamped by vendor				
2	Received LR (signed & stamped)/ confirmation from site regarding receipt of packages/ Boxes	1Original+2 Copy	1. Consignee address : BHEL C/o followed by Site address 2. In case of material purchased from sub vendor , Consignee address Vendor's name C/o BHEL C/o Site address 3. Vendor's Invoice no and Vehicle No are mentioned 4. No of boxes/No of packages are same as per Packing list 5. In case of and adverse remark on LR (Like shortages/damages/broken etc) , clarification from site/TBMM/TBCM is nedded 6. LR is readable 7. In case of photo copy, LR is verified by TBMM 8. LR date is after the date of MICC/(MDCC if issued) or same date				
3	Packing List - showing number of packages, and gross weight/net Weight (if applicable)	1Original+2 Copy	1. PO No and date, LR No and date, Invoice No and date, Site Name and address, Consignor and consignee address are mentioned 2. Item description and quantity are matched with Invoice and PO 3. Signed and stamped by vendor 4. No of packages/ Item descriptions are matched with MRC and LR				
4	MICC from BHEL	1Original+2C opy	1. BHEL MICC has been issued prior to the date of dispatch or on same date 2. In case where MICC date is after the date of dispatch then MDCC date is same or prior to the date of dispatch 3. Project Name, PO,Po Date, Vendor's name and address is correct 4. Item description, Quantity and unit of quantity are same as per PO 5. All hold point in MICC , if any, have been resolved before submission of bill 6. Signed and stamped by BHEL Executive 7. MICC and MDCC quantity are not less than Invoice quantity and cover all invoiced items.				
5	Guarantee Certificate	1 Original+2 Copy	1. Project Name, PO No., Invoice No , LR No and date are mentioned 2. Guarantee Certificate is strictly matched with PO T&C 3. Signed and stamped by vendor				
6	Bank Guarantee	1 Copy	1. Ensure submission of BG directly from Bank before supply of material so that BG confirmation may be arranged before processing 2. Bill can be processed only after receipt of BG confirmation directly from bank 3. It should be in the name of BHEL , TBG Noida with registered office address Siri Fort, New Delhi 4. It should be in prescribed format. 5. BG value and valdity plus claim period should be minimum as specified in PO / RC. Please check before supply , If BG extension is required please arrange the same 6. Vendor's name address should be same as per PO 7. Po No / RC No and date should be correct				
7	Insurance Certfcate	1 Original+2 Copy	1. Invoice No and date, Vendor's Name,Place from Consignor to Consignee are mentioned 2. It has not been issued later than the LR date 3. Insured value is not less than the Invoice value 4. Signed and stamped by Insurance Company 5. In case of Open Insurance Policy, declaration has been submitted to Insurance Company as per declaration clause of Open policy and 6. In case of any discrepancy , consent of TBCM is required for processing the bill and amount will be deducted for invalid Insurance				
8	PVC (If applicable) Invoice is submitted along with the Despatch Invoice	1Original+2C opy	PVC (If applicable) Invoice is submitted along with the Despatch Invoice 1. PVC invoice is attached along with supply Invoice 2. Calculation sheet and applicable PVC indices are also enclosed 3. If delay in delivery, then PVC indices are as per PO conditions.				
9			1. LR No and date, Invoice No and date, Vehicle No and date , Site Name an address are mentioned 2. Date of receipt of material				

Check List for Freight(Exclusive as per Transportation contract)

Check List for Freight(Exclusive as per Transportation contract)							
Name Of the Project							
Package Description							
Invoice No. & Date							
PO No. & date							
Sr. No	Documents Required	Copies	Check Points	Page no.	Vendor Remarks (Y/N/NA)	Verification by MM (Y/N/NA)	Verification by Fin (Y/N/NA)
1	Invoice	1 Original	Freight Invoice Invoice for the Main Supply submitted				
2	Receipted LR (signed & stamped)/ confirmation from site regarding receipt of packages/ Boxes	1 Copy	1. Consignee address : BHEL C/o followed by Site address 2. In case of material purchased from sub vendor , Consignee address Vendor's name C/o BHEL C/o Site address 3. Vendor's Invoice no and Vehicle No are mentioned 4. No of boxes/No of packages are same as per Packing list 5. In case of and adverse remark on LR (Like shortages/damages/broken etc) , clarification from site/TBMM/TBCM is needed 6. LR is readable 7. In case of photo copy, LR is verified by TBMM 8. LR date is after the date of MICC/(MDCC if issued) or same date				
3	Transporter's document indicating the freight amount. Original money receipt to be submitted if required as per SCC	1 Original	As per Rate Contract (if any)/ WO.				
4	PVC (If applicable) Invoice is submitted along with the Despatch Invoice		1. PVC invoice is attached along with supply Invoice 2. Calculation sheet and applicable PVC indices are also enclosed 3. If delay in delivery, then PVC indices are as per PO conditions.				
5	LD Calculation, if applicable		Calculation Sheet of LD due to delay in delivery is attached				
6	MRC		1. LR No and date, Invoice No and date, Vehicle No and date , Site Name an address are mentioned 2. Date of receipt of material 3. Item description and quantity are same as per Invoice / Packing List of supply 4. It is signed and stamped by Site executive 5. In case of any shortages / damages / adverse remark , clarification is needed				
	Invoice control No				Vendor Signature	MM Signature	Finance Signature
					Date:	Date:	Date:

Applicable check list for MRC Bills:							
Name Of the Project							
Package Description							
Invoice No. & Date							
PO No. & date							
Sr. No	Documents Required	Copies	Check Points	Page no.	Vendor Remarks (Y/N/NA)	Verification by MM (Y/N/NA)	Verification by Fin (Y/N/NA)
1	Invoice	1 Original	MRC Bill enclosed				
2	Material Receipt Certificate	1 Copy	1. LR No and date, Invoice No and date, Vehicle No and date , Site Name an address are mentioned 2. Date of receipt of material 3. Item description and quantity are same as per Invoice / Packing List of supply 4. It is signed and stamped by Site executive 5. In case of any shortages / damages / adverse remark , clarification from site/MM/CM is needed				
3	Submission of all final documents for the packages as detailed in Anx-10 of GCC rev 00, duly certified by Engg. Deptt. of purchaser or As per PO	1 Copy	Certificate as per PO requirement is attached				
Note*	Every Field to be ticked. If some documents is not applicable, same should be mentioned, All Pages to be numbered starting from the Last Page.						
	Invoice control No				Vendor Signature	MM Signature	Finance Signature
					Date:	Date:	Date:

(A) CONCILIATION (MODEL CONCILIATION CLAUSE FOR CONDUCTING CONCILIATION PROCEEDINGS UNDER THE BHEL CONCILIATION SCHEME, 2018)

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 agreement, contract or the Memorandum of Understanding (whichever is inapplicable), 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-A to this GCC (Enclosed)**.

The Annexure-A 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 GCC.”

(B) ARBITRATION (WITH SOLE ARBITRATOR)

- 1.1. Except as provided elsewhere in this Contract, in case amicable settlement is not reached between the Parties, in respect of any dispute or difference; arising out of the formation, breach, termination, validity or execution of the Contract; or, the respective rights and liabilities of the Parties; or, in relation to interpretation of any provision of the Contract; or, in any manner touching upon the Contract, then, either Party may, by a notice in writing to the other Party refer such dispute or difference to the Sole Arbitrator and such Arbitrator appointed by Head of the BHEL Unit/Region/Division issuing the Contract.
- 1.2. The Arbitrator shall pass a reasoned award and the award of the Arbitrator shall be final and binding upon the Parties.
- 1.3. Subject as aforesaid, the provisions of Arbitration and Conciliation Act 1996 (India) and amended in 2015 and further amendment passed in 2019 or statutory modifications or re-enactments thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause. The seat of arbitration shall

be New Delhi. The language of arbitration shall be English and the documents shall be submitted in English.

- 1.4. The cost of arbitration shall initially be borne equally by the Parties subject to the final apportionment of the cost of the arbitration in the award of the Arbitrator.
- 1.5. Notwithstanding the existence or any dispute or differences and/or reference for the arbitration, the Contractor shall proceed with and continue without hindrance the performance of its obligations under this Contract with due diligence and expedition in a professional manner except where the Contract has been terminated by either Party in terms of this Contract.

1.6. **SETTLEMENT OF COMMERCIAL DISPUTES BETWEEN CPSES INTER SE AND CPSE(S) AND GOVERNMENT DEPARTMENT(S)/ ORGANISATION(S) – ADMINISTRATIVE MECHANISM FOR RESOLUTION OF CPSES DISPUTES (AMRCD) – REGARDING**

Vide Dept. of Public Enterprises OM No. F. No. 4(1)/2013-DPE(GM)/FTS-1835 dated 22.05.2018 it has been conveyed that *"To make the mechanism more effective and binding on the disputing parties, a new mechanism namely Administrative Mechanism for resolution of CPSEs Disputes (AMRCD) having two level (tier) structure has been evolved in consultation with various stakeholders to replace the existing PMA mechanism which stands wound up from the date of issue of this OM."* Accordingly, the existing Permanent Machinery of Arbitration (PMA) stands wound up with effect from 22.05.2018 and cases relating to disputes or differences relating to the interpretation and application of the provisions of commercial contract(s) between CPSEs / Port Trust / Central or State Government Department / Organisations (excluding disputes concerning Railways, Income Tax, Customs and Excise Departments) shall be taken up by either party for its resolution through Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD).

(C) JURISDICTION AND GOVERNING LAWS

The Courts at New Delhi shall have exclusive jurisdiction over any matter arising out of or in connection with this Contract. This Contract shall be construed as per and be governed by the Laws of India.

ANNEXURE TO MODEL CONCILIATION CLAUSE FOR CONDUCT OF CONCILIATION UNDER THE BHEL CONCILIATION SCHEME, 2018

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
		<p>In cases involving claim and/or counter-claim of exceeding Rs 5 crores but less than Rs 10 crores. Rs 75,000 (per Conciliator)</p> <p>In cases involving claim and/or counter-claim of more than Rs 10 crores. Rs 1,00,000/- (per Conciliator)</p> <p>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.</p>
3	Secretarial expenses	<p>Rs 10,000/- (one time) for the whole case for Conciliation by a Sole Member IEC.</p> <p>Where Conciliation is by multi member Conciliators –Rs 30,000/- (one time)- to be paid to the IEC</p>
4	<p>Travel and transportation and stay at outstation</p> <p>i) Retired Senior Officials of other Public Sector Undertakings (pay scale wise equivalent to or more than E-8 level of BHEL)</p>	<p>As per entitlement of the equivalent officer (pay scale wise) in BHEL.</p>
	Others	<p>As per the extant entitlement of whole time Functional Directors in BHEL.</p>

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 2 to BHEL Conciliation Scheme, 2018

**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 3 to BHEL Conciliation Scheme, 2018
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

Format 5 to BHEL Conciliation Scheme, 2018
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 Clam(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.*

Item/Package Name :	
Enquiry No.:	
Project:	
Type of project	
Percentage of Local Content	<i>(Bidder to enter the applicable % of local content)</i>

Self-certification to be submitted in INR 100/- non judicial stamp paper

Format of Self certification regarding Local Content in line with PPP-MII order, 2017 & its revision dated 04.06.2020.

Date:.....

I _____ S/o, D/o, W/o, _____ Resident of _____ hereby solemnly affirm and declare as under:

That I will agree to abide by the terms and conditions of the Public Procurement (Preference to Make in India) Order, 2017 (*hereinafter PPP-MII order*) of Government of India issued vide Notification No: P-45021/2/2017-BE-II dated 15/06/2017, its revision dated 04/06/2020 and any subsequent modifications/ Amendments, if any.

That the information furnished hereinafter is correct to the best of my knowledge and belief and I undertake to produce relevant records before the procuring entity/ BHEL or any other Government authority for the purpose of assessing the local content of goods/services/works supplied by me for *(Enter the name of the Equipment/Item for Project)*.

That the local content for all inputs which constitute the said goods/services/works has been verified by me and I am responsible for the correctness of the claims made therein.

That the goods/services/works supplied by me for *(Enter the name of the Equipment/Item for Project)* **contains.....%** *(mention the Local content in %age)* Local Content.

That the value addition for the purpose of meeting the 'Minimum Local Content' has been made by me at *(Enter the details of the location(s) at which value addition is made)*.

That in the event of the local content of the goods/services/works mentioned herein is found to be incorrect and not meeting the prescribed supplier class categorization criteria as per said order, based on the assessment of procuring agency (ies)/ BHEL/ Government Authorities for the purpose of assessing the local content, action shall be taken against me in line with the PPP-MII order and provisions of the Integrity pact/ Bidding Documents.

I agree to maintain the following information in the Company's record for a period of 8 years and shall make this available for verification to any statutory authority.

i Name and details of the Local Supplier
(Registered Office, Manufacturing unit location, nature of legal entity)

ii. Date on which this certificate is issued

Item/Package Name :	
Enquiry No.:	
Project:	
Type of project	
Percentage of Local Content	<i>(Bidder to enter the applicable % of local content)</i>

Self-certification to be submitted in INR 100/- non judicial stamp paper

- iii. Goods/services/works for which the certificate is produced
- iv. Procuring entity to whom the certificate is furnished
- v. Percentage of local content claimed and whether it meets the Minimum Local Content prescribed
- vi. Name and contact details of the unit of the Local Supplier (s)
- vii. Sale Price of the product
- viii. Ex-Factory Price of the product
- ix. Freight, insurance and handling
- x. Total Bill of Material
- xi. List and total cost value of input used to manufacture the Goods/to provide services/in construction of works
- xii. List and total cost of input which are domestically sourced. Value addition certificates from suppliers, if the input is not in-house to be attached
- xiii. List and cost of inputs which are imported, directly or indirectly

For and on behalf of..... (Name of firm/entity)

Authorized signatory (To be duly authorized by the Board of Directors)

<Insert Name, Designation and Contact No.>

Clause regarding regarding restrictions under Rule 144 (XI) of the General Financial Rules (GFRs), 2017 as per Government of India order OM No.6/18/2019-PPD dated 23.07.2020

- I. Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority.
- II. "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any person or firm or company including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not failing in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.
- III. "Bidder from a country which shares a land border with India" for the purpose of this Order means:
 - a. An entity Incorporated, established or registered in such a country; or
 - b. A subsidiary of an entity Incorporated, established or registered in such a country; or
 - c. An entity substantially controlled through entitles incorporated, established or registered in such a country; or
 - d. An entity whose *beneficial owner* is situated in such a country, or
 - e. An Indian (or other) agent of such an entity; or
 - f. A natural person who is a citizen of such a country; or
 - g. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above
- IV. The *beneficial owner* for the purpose of (iii) above will be as under:
 1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.
Explanation-
 - a. "Controlling ownership interest" means ownership of or entitlement to more than twenty-five per cent. of shares or capital or profits of the company;
 - b. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholder's agreements or voting agreements;
 2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
 3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of Individuals;
 4. Where no natural person is Identified under (1) or (2) or (3) above the beneficial owner is the relevant natural person who holds the position of senior managing official;
 5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.
- V. An Agent is a person employed to do any act for another or to represent another in dealings with third person.

Clause regarding regarding restrictions under Rule 144 (XI) of the General Financial Rules (GFRs), 2017 as per Government of India order OM No.6/18/2019-PPD dated 23.07.2020

VI. The successful bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority.

** The above clause is not applicable to the bidders from those countries (even if sharing a land border with India) to which the GoI has extended lines of credit or in which the GoI is engaged in development projects.*

* List of countries to which lines of credit have been extended or in which development projects are undertaken are available on the Ministry of External affairs website (<https://www.mea.gov.in/>)

Compliance to be submitted in INR 100/- non judicial stamp paper

Sub: Compliance to Government of India order OM No.6/18/2019-PPD dated 23.07.2020 regarding restrictions under Rule 144 (XI) of the General Financial Rules (GFRs), 2017

Sl No.	Description	Bidder's confirmation
1	<i>We, M/s _____ have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; We hereby certify that we are not from such a country.</i>	<i>Agreed</i>

(Note: Non-compliance of above said Gol Order and its subsequent amendment, (if any), by any bidder(s) shall lead for commercial rejection of their bids by BHEL)

Bidder's authorized signatory with stamp & seal

Compliance to be submitted in INR 100/- non judicial stamp paper

Sub: Compliance to Government of India order OM No.6/18/2019-PPD dated 23.07.2020 regarding restrictions under Rule 144 (XI) of the General Financial Rules (GFRs), 2017

SI No.	Description	Bidder's confirmation
1	<p><i>We, M/s_____ have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India. We are from such a country which shares a land border with India & have been registered with the Competent Authority as specified in above said order. We hereby certify that we fulfil all requirements in this regard and are eligible to be considered.</i></p> <p><i>Evidence of valid registration by the Competent Authority is attached.</i></p>	<p align="center"><i>Agreed</i></p>

(Note: Non-compliance of above said GoI Order and its subsequent amendment, (if any), by any bidder(s) shall lead for commercial rejection of their bids by BHEL)

Bidder's authorized signatory with stamp & seal

No.25-111612018-PG
Government of India
Ministry of Power
Shram Shakti Bhawan, Rafi Marg, New Delhi • — 110001
Tele Fax: 011-23730264

Dated 02/07/2020

ORDER

Power Supply System is a sensitive and critical infrastructure that supports not only our national defence, vital emergency services including health, disaster response, critical national infrastructure including classified data & communication services, defence installations and manufacturing establishments, logistics services but also the entire economy and the day-to-day life of the citizens of the country. Any danger or threat to Power Supply System can have catastrophic effects and has the potential to cripple the entire country. Therefore, the Power Sector is a strategic and critical sector.

The vulnerabilities in the Power Supply System & Network mainly arise out of the possibilities of cyber attacks through malware / Trojans etc. embedded in imported equipment. Hence, to protect the security, integrity and reliability of the strategically important and critical Power Supply System & Network in the country, the following directions are hereby issued:-

1. All equipment, components, and parts imported for use in the Power Supply System and Network shall be tested in the country to check for any kind of embedded malware/trojans/cyber threat and for adherence to Indian Standards.
2. All such testings shall be done in certified laboratories that will be designated by the Ministry of Power (MOP).
3. Any import of equipment/components/parts from "prior reference" countries as specified or by persons owned by, controlled by, or subject to the jurisdiction or the directions of these "prior reference" countries will require prior permission of the Government of India
4. Where the equipment/components/parts are imported from "prior reference" countries, with special permission, the protocol for testing in certified and designated laboratories shall be approved by the Ministry of Power (MOP).

This order shall apply to any item imported for end use or to be used as a component, or as a part in manufacturing, assembling of any equipment or to be used in power supply system or any activity directly or indirectly related to power supply system.

This issues with the approval of Hon'ble Minister of State for Power and New & Renewable Energy (Independent Charge).



(Goutam Ghosh)

Director Tel: 011-23716674 To:

1. All Ministries/Departments of Government of India (As per list)
2. Secretary (Coordination), Cabinet Secretariat
3. Vice Chairman, NITI Aayog

सेवा भवन, आर. के. पुरम-I, नई दिल्ली-110066 टेली: 011-26732257 ईमेल: ce-rndcea@nic.in वेबसाइट:
www.cea.nic.in

Sewa Bhawan, R.K Puram-I, New Delhi-110066 Tele: 011-26732257 Email: ce-rndcea@nic.in Website: www.cea.nic.in

Vendor Compliance for Material Tender Letter Head

In view of by order No. 25-111612018-PG, Dated 02.07.2020 of Ministry of Power, GOI

Enq r No
Project
Na e of te /Pac age

S No	e cr t on	dder conf r at on
1	The vendor should supply all items in strict compliance to directions issued by Ministry of Power, Govt. of India vide order No. 25-111612018-PG dated 02.07.2020.	Agreed / Disagreed / Not Applicable
2	Vendor shall be responsible for conducting all necessary testing in accordance with testing protocol in line with MoP order.	Agreed / Disagreed / Not Applicable
3	All necessary permissions and approvals from Govt of India for import of equipment/ parts/ components shall be submitted, if equipment/ parts/ components are sourced from prior reference countries.	Agreed / Disagreed / Not Applicable

Note Non-co ance of oP Order and t eq ent a end ent, f an , an
dder a ead for co erc a reject on of t e r d EL

Bidder's authorized signatory

t ta ea

Annexure-XI

INTEGRITY PACT:

Bidders shall have to enter into Integrity Pact with BHEL, duly signed with seal in original, if specified in NIT / RFQ failing which bidder's offer shall be liable for rejection.

(a) 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 Monitor (IEMs) on the present panel have been appointed by BHEL with the approval of CVC to oversee implementation of IP in BHEL.

Details of IEM for this tender is furnished below

Name: Shri Arun Chandra Verma, IPS (Retd.)

Email: acverma1@gmail.com

Name: Shri Virendra Bahadur Singh, IPS (Retd.)

E-mail: ybsinghips@gmail.com

(b) The IP as enclosed with the tender is to be submitted (duly signed by authorized signatory) along with techno-commercial bid (Part-1, 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.

(c) Please refer section -8 of the 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 IEM shall be done through e-mail only.

Note: No routine correspondence shall be addressed to the IEM (Phone/post/email) regarding the clarification, 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 as mentioned on Point 2 & 3.

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 Indian Penal Code (IPC) and Prevention of Corruption 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 Foreign Bidder(s)/ Contractor(s) shall disclose the name and address of agents and representatives in India and Indian Bidder(s)/ Contractor(s) to disclose their foreign principals or associates. 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.
- 2.3 The Bidder(s)/ Contractor(s) shall not approach the Courts while representing the matters to IEMs and will await their decision in the matter.

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 Bidder(s)/ Contractor(s) from the tender process or take action as per the separate "Guidelines on Banning of Business dealings with Suppliers/ Contractors", framed by the Principal.

Section 4 - Compensation for Damages

- 4.1 If the Principal has disqualified the Bidder from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover the damages equivalent 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 Principal will enter into agreements with identical conditions as this one with all Bidders and Contractors. In case of sub-contracting, the Principal contractor shall be responsible for the adoption of IP by his sub-contractors and shall continue to remain responsible for any default by his sub-contractors:
- 6.2 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 /Subcontractors

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 in line with Non- disclosure agreement.
- 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 The role of IEMs is advisory, would not be legally binding and it is restricted to resolving issues raised by an intending bidder regarding any aspect of the tender which allegedly restricts competition or bias towards some bidders. At the same time, it must be understood that IEMs are not consultants to the Management. Their role is independent in nature and the advice once tendered would not be subject to review at the request of the organization.
- 8.6 For ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process, the matter should be examined by the full panel of IEMs jointly as far as possible, who would look into the records, conduct an investigation, and submit their joint recommendations to the Management.
- 8.7 The IEMs would examine all complaints received by them and give their recommendations/ views to CMD, BHEL, at the earliest. They may also send their report directly to the CVO and the Commission, in case of suspicion of serious irregularities requiring legal/ administrative action. IEMs will tender their advice on the complaints within 10 days as far as possible.
- 8.8 The CMD, BHEL shall decide the compensation to be paid to the Monitor and its terms and conditions.
- 8.9 IEM should examine the process integrity, they are not expected to concern themselves with fixing of responsibility of officers. Complaints alleging mala fide on the part of any officer of the organization should be looked into by the CVO of the concerned organisation.
- 8.10 If the Monitor has reported to the CMD, BHEL, a substantiated suspicion of an offence under relevant Indian Penal Code/ Prevention of Corruption 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.
- 8.11 The number of Independent External Monitor(s) shall be decided by the CMD, BHEL.
- 8.12 The word 'Monitor' would include both singular and plural.

Section 9 - Pact Duration

- 9.1 This Pact shall be operative from the date IP is signed by both the parties till the final completion of contract for successful bidder and for all other bidders 6 months after the contract has been awarded. Issues like warranty / guarantee etc. should be outside the purview of IEMs.
- 9.2 If any claim is made/ lodged during currency of IP, the same shall be binding and continue to be valid despite the lapse of this pact as specified 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.

For & On behalf of the Principal

(Office Seal)

Place-----

Date-----

Witness:_____

(Name & Address) _____

For & On behalf of the Bidder/
Contractor

(Office Seal)

Witness:_____

(Name & Address) _____

RIS PURC ASE

- 1.1. In case the Supplier / Contractor fails to supply or fails to comply with terms & conditions of the Purchase Order / Contract or delivers equipment / material not of the contracted quality or fails to adhere to the contract specifications or fails to perform as per the activity schedule and there are sufficient reasons even before expiry of the delivery / completion period to justify that supplies shall be inordinately delayed beyond contractual delivery / completion period, BHEL reserve the right to cancel the Purchase Order / Contract either in whole or in part thereof without compensation to Supplier / Contractor and if BHEL so desires, may procure such equipment / material / items not delivered or others of similar description where equipment / material / items exactly complying with particulars are not readily procurable in the opinion of BHEL which is final and in such manner as deemed appropriate, at the risk and cost of the Supplier / Contractor and the Supplier / Contractor shall be liable to BHEL for any excess cost to BHEL. However, the Supplier / Contractor shall continue execution of the Purchase Order / Contract to the extent not cancelled under the provisions of this clause.
- 1.2. Risk & Cost Clause, in line with Conditions of Contract may be invoked in any of the following cases:
- i) Contractor/ supplier's poor progress of the work vis-à-vis execution timeline as stipulated in the Contract, backlog attributable to contractor/ supplier including unexecuted portion of work/ supply does not appear to be executable within balance available period considering its performance of execution.
 - ii) Withdrawal from or abandonment of the work by contractor/supplier before completion as per contract.
 - iii) Non completion of work/ Non-supply by the Contractor/ supplier within scheduled completion/delivery period as per Contract or as extended from time to time, for the reasons attributable to the contractor/ supplier.
 - iv) Termination of Contract on account of any other reason(s) attributable to Contractor/ Supplier.
 - v) Assignment, transfer, subletting of Contract without BHEL's written permission resulting in termination of Contract or part thereof by BHEL.
 - vi) Non-compliance to any contractual condition or any other default attributable to Contractor/ Supplier.
- 1.3. **R and Co t a o n t a g a n t a n c e o r :**
In case Risk & Cost is invoked, the amount of Risk & Cost against balance work shall be calculated as under:

$$R \text{ Co t A o n t A- A x } /100$$

Where,

A= Value of Balance scope of Work/ Supply (*) as per rates of new contract

= Value of Balance scope of Works/ Supply (*) as per rates of old contract being paid to the contractor/ supplier at the time of termination of contract i.e. inclusive of PVC & ORC, if any.

= Overhead Factor to be taken as 5 (five)

In case A- executed work, value of A- value taken as 0.

Balance scope of work /

Difference of Contract Quantities and Executed Quantities as on the date of issue of Letter for 'Termination of Contract', shall be taken as balance scope of Work / Supply for calculating risk & cost amount.

Contract quantities are the quantities as per original contract. If, Contract has been amended, quantities as per amended Contract shall be considered as Contract Quantities.

Items for which total quantities to be executed have exceeded the Contract Quantities based on drawings issued to contractor from time to time till issue of Termination letter, then for these items total Quantities as per issued drawings would be deemed to be contract quantities.

Substitute/ extra items whose rates have already been approved would form part of contract quantities for this purpose. Substitute/ extra items which have been executed but rates have not been approved, would also form part of contract quantities for this purpose and rates of such items shall be determined in line with contractual provisions.

However, increase in quantities on account of additional scope in new tender shall not be considered for this purpose.

NOTE In case of work or engineering drawing, contract quantities of work/ supply withdrawn shall be considered as 'Balance scope of work/supply' for calculating Risk & Cost amount.

1. . L a g a n t d e a n e x e c u t e d o r / n c a e o f T e r n a t o n o f C o n t r a c t

LD against delay in executed Work /Supply shall be calculated in line with LD clause of the contract for the delay attributable to contractor/ supplier. For this purpose, contract value shall be taken as Executed Value of work/supply for the purpose of limiting maximum LD value.

Method for calculation of “LD against delay in executed Work/ supply” is given below:

- i) Let the time period from scheduled date of start of work till termination of contract excluding the period of Hold (if any) not attributable to contractor/ supplier= T1
- ii) Let the value of executed work/ supply till the time of termination of contract= X
- iii) Let the Total Executable Value of work/ supply for which inputs/fronts were made available to contractor/ supplier and were planned for execution till termination of contract = Y
- iv) Delay in executed work/ supply attributable to contractor/supplier i.e. $T2 = (1 - \frac{X}{Y}) \times T1$
- v) LD shall be calculated in line with LD clause of the Contract for the delay attributable to contractor/ supplier taking “X” as Contract Value and “T2” as delay attributable to contractor/ supplier.

**Note In ca e o r t o n o f e r c e / t d r a n , n o L a e a c a e
f o r o r t o n o f e r c e / t d r a n .**

1. . R e c o e r f r o S e r

Recoveries from contractor/ supplier on whom risk & cost has been invoked shall be as per Clause No. 23 of GTC.

BANK GUARANTEE FOR PERFORMANCE SECURITY

Bank Guarantee No:

Date:

To

NAME

& ADDRESSES OF THE BENEFICIARY

Dear Sirs,

In consideration of the Bharat Heavy Electricals Limited ¹ (hereinafter referred to as the 'Employer' which expression shall unless repugnant to the context or meaning thereof, include its successors and permitted assigns) incorporated under the Companies Act, 1956 and having its registered office at _____ through its Unit at.....(name of the Unit) having awarded to (Name of the Vendor / Contractor / Supplier) having its registered office at _____ ² hereinafter referred to as the 'Contractor/Supplier', which expression shall unless repugnant to the context or meaning thereof, include its successors and permitted assigns), a contract Ref No.....dated ³ valued at Rs.....⁴ (Rupees -----)/FC.....(in words.....) for⁵ (hereinafter called the 'Contract') and the Contractor having agreed to provide a Contract Performance Guarantee, equivalent to% (.... Percent) of the said value of the Contract to the Employer for the faithful performance of the Contract,

we,, (hereinafter referred to as the Bank), having registered/Head office at and inter alia a branch at being the Guarantor under this Guarantee, hereby, irrevocably and unconditionally undertake to forthwith and immediately pay to the Employer a maximum amount Rs ----- (Rupees -----) without any demur, immediately on a demand from the Employer, .

Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. _____.

We undertake to pay to the Employer any money so demanded notwithstanding any dispute or disputes raised by the Contractor/ Supplier in any suit or proceeding pending before any Court or Tribunal relating thereto our liability under this present being absolute and unequivocal.

The payment so made by us under this Guarantee shall be a valid discharge of our liability for payment thereunder and the contractors/supplier shall have no claim against us for making such payment.

We thebank further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Contract and that it shall continue to be enforceable till all the dues of the Employer under or by virtue of the said Contract have been fully paid and its claims satisfied or discharged.

We BANK further agree with the Employer that the Employer shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Contract or to extend time of performance by the said Contractor/Supplier from time to time or to postpone for any time or from time to time any of the powers exercisable by the Employer against the said Contractor/Supplier and to forbear or enforce any of the terms and conditions relating to the said Agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Contractor/Supplier or for any forbearance, act or omission on the part of the Employer or any indulgence by the Employer to the said Contractor/Supplier or by any such matter or thing whatsoever which under the law relating to sureties would but for this provision have effect of so relieving us.

The Bank also agrees that the Employer at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Contractor and notwithstanding any security or other guarantee that the Employer may have in relation to the Contractor's liabilities.

This Guarantee shall remain in force upto and including.....⁶ and shall be extended from time to time for such period as may be desired by Employer.

This Guarantee shall not be determined or affected by liquidation or winding up, dissolution or change of constitution or insolvency of the Contractor/Supplier but shall in all respects and for all purposes be binding and operative until payment of all money payable to the Employer in terms thereof.

Unless a demand or claim under this guarantee is made on us in writing on or before the⁷we shall be discharged from all liabilities under this guarantee thereafter.

We, BANK lastly undertake not to revoke this guarantee during its currency except with the previous consent of the Employer in writing.

Notwithstanding anything to the contrary contained hereinabove:

- a) The liability of the Bank under this Guarantee shall not exceed.....⁸
- b) This Guarantee shall be valid up to⁹
- c) Unless the Bank is served a written claim or demand on or before _____¹⁰ all rights under this guarantee shall be forfeited and the Bank shall be relieved and discharged from all liabilities under this guarantee irrespective of whether or not the original bank guarantee is returned to the Bank.

We, _____ Bank, have power to issue this Guarantee under law and the undersigned as a duly authorized person has full powers to sign this Guarantee on behalf of the Bank.

For and on behalf of
(Name of the Bank)

Dated.....

Place of Issue.....

¹ NAME AND ADDRESS OF EMPLOYER I.e Bharat Heavy Electricals Limited

² NAME AND ADDRESS OF THE VENDOR /CONTRACTOR / SUPPLIER.

³ DETAILS ABOUT THE NOTICE OF AWARD/CONTRACT REFERENCE

⁴ PROJECT/SUPPLY DETAILS

⁵ BG AMOUNT IN FIGURES AND WORDS

⁶ VALIDITY DATE

⁷ DATE OF EXPIRY OF CLAIM PERIOD

⁸ BG AMOUNT IN FIGURES AND WORDS.

⁹ VALIDITY DATE

¹⁰ DATE OF EXPIRY OF CLAIM PERIOD

Note:

1. Units are advised that expiry of claim period may be kept 2/3 months after validity date.

2. In Case of Bank Guarantees submitted by Foreign Vendors-

- a. **From Nationalized/Public Sector / Private Sector/ Foreign Banks (BG issued by Branches in India)** can be accepted subject to the condition that the Bank Guarantee should be enforceable in the town/city or at nearest branch where the Unit is located i.e. Demand can be presented at the Branch located in the town/city or at nearest branch where the Unit is located.
- b. **From Foreign Banks (wherein Foreign Vendors intend to provide BG from local branch of the Vendor country's Bank)**
 - b.1 In such cases, in the Tender Enquiry/ Contract itself, it may be clearly specified that Bank Guarantee issued by **any of the Consortium Banks only** will be accepted by BHEL. As such, Foreign Vendor needs to make necessary arrangements for issuance of Counter- Guarantee by Foreign Bank in favour of the Indian Bank (BHEL's Consortium Bank). It is advisable that all charges for issuance of Bank Guarantee/ counter- Guarantee should be borne by the Foreign Vendor. The tender stipulation should clearly specify these requirements.
 - b.2 **In case, Foreign Vendors intend to provide BG from Overseas Branch of our Consortium Bank** (e.g. if a BG is to be issued by SBI Frankfurt), the same is acceptable. However, the procedure at **sl.no. b.1** will required to be followed.
 - b.3 The BG issued may preferably be subject to Uniform Rules for Demand Guarantees (URDG) 758 (as amended from time to time). In case, of Foreign Vendors, the BG Format provided to them should clearly specify the same.
 - b.4 The BG should clearly specify that the demand or other document can be presented in electronic form.

No. P-45021/2/2017-PP (BE-II)
Government of India
Ministry of Commerce and Industry
Department for Promotion of Industry and Internal Trade
(Public Procurement Section)

Udyog Bhawan, New Delhi
Dated: 16th September, 2020

To

All Central Ministries/Departments/CPSUs/All concerned

ORDER

Subject: Public Procurement (Preference to Make in India), Order 2017– Revision; regarding.

Department for Promotion of Industry and Internal Trade, in partial modification [Paras 2, 3, 5, 10 & 13] of Order No.P-45021/2/2017-B.E.-II dated 15.6.2017 as amended by Order No.P-45021/2/2017-B.E.-II dated 28.05.2018, Order No.P-45021/2/2017-B.E.-II dated 29.05.2019 and Order No.P-45021/2/2017-B.E.-II dated 04.06.2020, hereby issues the revised 'Public Procurement (Preference to Make in India), Order 2017' dated 16.09.2020 effective with immediate effect.

Whereas it is the policy of the Government of India to encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment, and

Whereas procurement by the Government is substantial in amount and can contribute towards this policy objective, and

Whereas local content can be increased through partnerships, cooperation with local companies, establishing production units in India or Joint Ventures (JV) with Indian suppliers, increasing the participation of local employees in services and training them,

Now therefore the following Order is issued:

1. This Order is issued pursuant to Rule 153 (iii) of the General Financial Rules 2017.
2. **Definitions:** For the purposes of this Order:

'Local content' means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.

'Class-I local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-I local supplier' under this Order.

.....Contd. p/2

'Class-II local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-II local supplier' but less than that prescribed for 'Class-I local supplier' under this Order.

'Non - Local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than that prescribed for 'Class-II local supplier' under this Order.

'L1' means the lowest tender or lowest bid or the lowest quotation received in a tender, bidding process or other procurement solicitation as adjudged in the evaluation process as per the tender or other procurement solicitation.

'Margin of purchase preference' means the maximum extent to which the price quoted by a "Class-I local supplier" may be above the L1 for the purpose of purchase preference.

'Nodal Ministry' means the Ministry or Department identified pursuant to this order in respect of a particular item of goods or services or works.

'Procuring entity' means a Ministry or department or attached or subordinate office of, or autonomous body controlled by, the Government of India and includes Government companies as defined in the Companies Act.

'Works' means all works as per Rule 130 of GFR- 2017, and will also include 'turnkey works'.

3. Eligibility of 'Class-I local supplier'/ 'Class-II local supplier'/ 'Non-local suppliers' for different types of procurement

(a) In procurement of all goods, services or works in respect of which the Nodal Ministry / Department has communicated that there is sufficient local capacity and local competition, only 'Class-I local supplier', as defined under the Order, shall be eligible to bid irrespective of purchase value.

(b) Only 'Class-I local supplier' and 'Class-II local supplier', as defined under the Order, shall be eligible to bid in procurements undertaken by procuring entities, except when Global tender enquiry has been issued. In global tender enquiries, 'Non-local suppliers' shall also be eligible to bid along with 'Class-I local suppliers' and 'Class-II local suppliers'. In procurement of all goods, services or works, not covered by sub-para 3(a) above, and with estimated value of purchases less than Rs. 200 Crore, in accordance with Rule 161(iv) of GFR, 2017, Global tender enquiry shall not be issued except with the approval of competent authority as designated by Department of Expenditure.

(c) For the purpose of this Order, works includes Engineering, Procurement and Construction (EPC) contracts and services include System Integrator (SI) contracts.

3A. Purchase Preference

(a) Subject to the provisions of this Order and to any specific instructions issued by the Nodal Ministry or in pursuance of this Order, purchase preference shall be given to 'Class-I local supplier' in procurements undertaken by procuring entities in the manner specified here under.

(b) In the procurements of goods or works, which are covered by para 3(b) above and which are divisible in nature, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

- i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract for full quantity will be awarded to L1.
- ii. If L1 bid is not a 'Class-I local supplier', 50% of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the 'Class-I local supplier' will be invited to match the L1 price for the remaining 50% quantity subject to the Class-I local supplier's quoted price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such 'Class-I local supplier' subject to matching the L1 price. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price or accepts less than the offered quantity, the next higher 'Class-I local supplier' within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and so on, and contract shall be awarded accordingly. In case some quantity is still left uncovered on Class-I local suppliers, then such balance quantity may also be ordered on the L1 bidder.

(c) In the procurements of goods or works, which are covered by para 3(b) above and which are not divisible in nature, and in procurement of services where the bid is evaluated on price alone, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

- i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract will be awarded to L1.
- ii. If L1 is not 'Class-I local supplier', the lowest bidder among the 'Class-I local supplier', will be invited to match the L1 price subject to Class-I local supplier's quoted price falling within the margin of purchase preference, and the contract shall be awarded to such 'Class-I local supplier' subject to matching the L1 price.
- iii. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price, the 'Class-I local supplier' with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly. In case none of the 'Class-I local supplier' within the margin of purchase preference matches the L1 price, the contract may be awarded to the L1 bidder.

(d) "Class-II local supplier" will not get purchase preference in any procurement, undertaken by procuring entities.

3B. Applicability in tenders where contract is to be awarded to multiple bidders -

In tenders where contract is awarded to multiple bidders subject to matching of L1 rates or otherwise, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

a) In case there is sufficient local capacity and competition for the item to be procured, as notified by the nodal Ministry, only Class I local suppliers shall be eligible to bid. As such, the multiple suppliers, who would be awarded the contract, should be all and only 'Class I Local suppliers'.

b) In other cases, 'Class II local suppliers' and 'Non local suppliers' may also participate in the bidding process along with 'Class I Local suppliers' as per provisions of this Order.

c) If 'Class I Local suppliers' qualify for award of contract for at least 50% of the tendered quantity in any tender, the contract may be awarded to all the qualified bidders as per award criteria stipulated in the bid documents. However, in case 'Class I Local suppliers' do not qualify for award of contract for at least 50% of the tendered quantity, purchase preference should be given to the 'Class I local supplier' over 'Class II local suppliers' / 'Non local suppliers' provided that their quoted rate falls within 20% margin of purchase preference of the highest quoted bidder considered for award of contract so as to ensure that the 'Class I Local suppliers' taken in totality are considered for award of contract for at least 50% of the tendered quantity.

d) First purchase preference has to be given to the lowest quoting 'Class-I local supplier', whose quoted rates fall within 20% margin of purchase preference, subject to its meeting the prescribed criteria for award of contract as also the constraint of maximum quantity that can be sourced from any single supplier. If the lowest quoting 'Class-I local supplier', does not qualify for purchase preference because of aforesaid constraints or does not accept the offered quantity, an opportunity may be given to next higher 'Class-I local supplier', falling within 20% margin of purchase preference, and so on.

e) To avoid any ambiguity during bid evaluation process, the procuring entities may stipulate its own tender specific criteria for award of contract amongst different bidders including the procedure for purchase preference to 'Class-I local supplier' within the broad policy guidelines stipulated in sub-paras above.

4. **Exemption of small purchases:** Notwithstanding anything contained in paragraph 3, procurements where the estimated value to be procured is less than Rs. 5 lakhs shall be exempt from this Order. However, it shall be ensured by procuring entities that procurement is not split for the purpose of avoiding the provisions of this Order.

5. **Minimum local content:** The 'local content' requirement to categorize a supplier as 'Class-I local supplier' is minimum 50%. For 'Class-II local supplier', the 'local content' requirement is minimum 20%. Nodal Ministry/ Department may prescribe only a higher

percentage of minimum local content requirement to categorize a supplier as 'Class-I local supplier'/ 'Class-II local supplier'. For the items, for which Nodal Ministry/ Department has not prescribed higher minimum local content notification under the Order, it shall be 50% and 20% for 'Class-I local supplier'/ 'Class-II local supplier' respectively.

6. **Margin of Purchase Preference:** The margin of purchase preference shall be 20%.
7. **Requirement for specification in advance:** The minimum local content, the margin of purchase preference and the procedure for preference to Make in India shall be specified in the notice inviting tenders or other form of procurement solicitation and shall not be varied during a particular procurement transaction.
8. **Government E-marketplace:** In respect of procurement through the Government E-marketplace (GeM) shall, as far as possible, specifically mark the items which meet the minimum local content while registering the item for display, and shall, wherever feasible, make provision for automated comparison with purchase preference and without purchase preference and for obtaining consent of the local supplier in those cases where purchase preference is to be exercised.

9. Verification of local content:

- a. The 'Class-I local supplier'/ 'Class-II local supplier' at the time of tender, bidding or solicitation shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I local supplier'/ 'Class-II local supplier', as the case may be. They shall also give details of the location(s) at which the local value addition is made.
- b. In cases of procurement for a value in excess of Rs. 10 crores, the 'Class-I local supplier'/ 'Class-II local supplier' shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.
- c. Decisions on complaints relating to implementation of this Order shall be taken by the competent authority which is empowered to look into procurement-related complaints relating to the procuring entity.
- d. Nodal Ministries may constitute committees with internal and external experts for independent verification of self-declarations and auditor's/ accountant's certificates on random basis and in the case of complaints.
- e. Nodal Ministries and procuring entities may prescribe fees for such complaints.
- f. False declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law.

- g. A supplier who has been debarred by any procuring entity for violation of this Order shall not be eligible for preference under this Order for procurement by any other procuring entity for the duration of the debarment. The debarment for such other procuring entities shall take effect prospectively from the date on which it comes to the notice of other procurement entities, in the manner prescribed under paragraph 9h below.
- h. The Department of Expenditure shall issue suitable instructions for the effective and smooth operation of this process, so that:
 - i. The fact and duration of debarment for violation of this Order by any procuring entity are promptly brought to the notice of the Member-Convenor of the Standing Committee and the Department of Expenditure through the concerned Ministry /Department or in some other manner;
 - ii. on a periodical basis such cases are consolidated and a centralized list or decentralized lists of such suppliers with the period of debarment is maintained and displayed on website(s);
 - iii. in respect of procuring entities other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in the such a manner that ongoing procurements are not disrupted.

10. Specifications in Tenders and other procurement solicitations:

- a. Every procuring entity shall ensure that the eligibility conditions in respect of previous experience fixed in any tender or solicitation do not require proof of supply in other countries or proof of exports.
- b. Procuring entities shall endeavour to see that eligibility conditions, including on matters like turnover, production capability and financial strength do not result in unreasonable exclusion of 'Class-I local supplier'/ 'Class-II local supplier' who would otherwise be eligible, beyond what is essential for ensuring quality or creditworthiness of the supplier.
- c. Procuring entities shall, within 2 months of the issue of this Order review all existing eligibility norms and conditions with reference to sub-paragraphs 'a' and 'b' above.

d. Reciprocity Clause

- i. When a Nodal Ministry/Department identifies that Indian suppliers of an item are not allowed to participate and/ or compete in procurement by any foreign government, due to restrictive tender conditions which have direct or indirect effect of barring Indian companies such as registration in the procuring country, execution of projects of specific value in the procuring country etc., it shall provide such details to all its procuring entities including CMDs/CEOs of PSEs/PSUs, State Governments and other procurement agencies under their administrative control and GeM for appropriate reciprocal action.

- ii. Entities of countries which have been identified by the nodal Ministry/Department as not allowing Indian companies to participate in their Government procurement for any item related to that nodal Ministry shall not be allowed to participate in Government procurement in India for all items related to that nodal Ministry/ Department, except for the list of items published by the Ministry/ Department permitting their participation.
 - iii. The stipulation in (ii) above shall be part of all tenders invited by the Central Government procuring entities stated in (i) above. All purchases on GeM shall also necessarily have the above provisions for items identified by nodal Ministry/ Department.
 - iv. State Governments should be encouraged to incorporate similar provisions in their respective tenders.
 - v. The term 'entity' of a country shall have the same meaning as under the FDI Policy of DPIIT as amended from time to time.
- e. **Specifying foreign certifications/ unreasonable technical specifications/ brands/ models in the bid document is restrictive and discriminatory practice against local suppliers.** If foreign certification is required to be stipulated because of non-availability of Indian Standards and/or for any other reason, the same shall be done only after written approval of Secretary of the Department concerned or any other Authority having been designated such power by the Secretary of the Department concerned.
- f. "All administrative Ministries/Departments whose procurement exceeds Rs. 1000 Crore per annum shall notify/ update their procurement projections every year, including those of the PSEs/PSUs, for the next 5 years on their respective website."

10A. Action for non-compliance of the Provisions of the Order: In case restrictive or discriminatory conditions against domestic suppliers are included in bid documents, an **inquiry shall be conducted by the Administrative Department undertaking the procurement** (including procurement by any entity under its administrative control) to fix responsibility for the same. Thereafter, **appropriate action**, administrative or otherwise, shall be taken against erring officials of procurement entities under relevant provisions. **Intimation on all such actions shall be sent to the Standing Committee.**

11. Assessment of supply base by Nodal Ministries: The Nodal Ministry shall keep in view the domestic manufacturing / supply base and assess the available capacity and the extent of local competition while identifying items and prescribing the higher minimum local content or the manner of its calculation, with a view to avoiding cost increase from the operation of this Order.

12. Increase in minimum local content: The Nodal Ministry may annually review the local content requirements with a view to increasing them, subject to availability of sufficient local competition with adequate quality.

13. **Manufacture under license/ technology collaboration agreements with phased indigenization:** While notifying the minimum local content, Nodal Ministries may make special provisions for exempting suppliers from meeting the stipulated local content if the product is being manufactured in India under a license from a foreign manufacturer who holds intellectual property rights and where there is a technology collaboration agreement / transfer of technology agreement for indigenous manufacture of a product developed abroad with clear phasing of increase in local content.
- 13A. In procurement of all goods, services or works in respect of which there is substantial quantity of public procurement and for which the nodal ministry has not notified that there is sufficient local capacity and local competition, the concerned nodal ministry shall notify an upper threshold value of procurement beyond which foreign companies shall enter into a joint venture with an Indian company to participate in the tender. Procuring entities, while procuring such items beyond the notified threshold value, shall prescribe in their respective tenders that foreign companies may enter into a joint venture with an Indian company to participate in the tender. The procuring Ministries/Departments shall also make special provisions for exempting such joint ventures from meeting the stipulated minimum local content requirement, which shall be increased in a phased manner.
14. **Powers to grant exemption and to reduce minimum local content:** The administrative Department undertaking the procurement (including procurement by any entity under its administrative control), with the approval of their Minister-in-charge, may by written order, for reasons to be recorded in writing,
- a. reduce the minimum local content below the prescribed level; or
 - b. reduce the margin of purchase preference below 20%; or
 - c. exempt any particular item or supplying entities from the operation of this Order or any part of the Order.

A copy of every such order shall be provided to the Standing Committee and concerned Nodal Ministry / Department. The Nodal Ministry / Department concerned will continue to have the power to vary its notification on Minimum Local Content.

15. **Directions to Government companies:** In respect of Government companies and other procuring entities not governed by the General Financial Rules, the administrative Ministry or Department shall issue policy directions requiring compliance with this Order.
16. **Standing Committee:** A standing committee is hereby constituted with the following membership:
- Secretary, Department for Promotion of Industry and Internal Trade—Chairman
 - Secretary, Commerce—Member
 - Secretary, Ministry of Electronics and Information Technology—Member
 - Joint Secretary (Public Procurement), Department of Expenditure—Member
 - Joint Secretary (DPIIT)—Member-Convenor

The Secretary of the Department concerned with a particular item shall be a member in respect of issues relating to such item. The Chairman of the Committee may co-opt technical experts as relevant to any issue or class of issues under its consideration.

17. Functions of the Standing Committee: The Standing Committee shall meet as often as necessary, but not less than once in six months. The Committee

- a. shall oversee the implementation of this order and issues arising therefrom, and make recommendations to Nodal Ministries and procuring entities.
- b. shall annually assess and periodically monitor compliance with this Order
- c. shall identify Nodal Ministries and the allocation of items among them for issue of notifications on minimum local content
- d. may require furnishing of details or returns regarding compliance with this Order and related matters
- e. may, during the annual review or otherwise, assess issues, if any, where it is felt that the manner of implementation of the order results in any restrictive practices, cartelization or increase in public expenditure and suggest remedial measures
- f. may examine cases covered by paragraph 13 above relating to manufacture under license/ technology transfer agreements with a view to satisfying itself that adequate mechanisms exist for enforcement of such agreements and for attaining the underlying objective of progressive indigenization
- g. may consider any other issue relating to this Order which may arise.

18. Removal of difficulties: Ministries /Departments and the Boards of Directors of Government companies may issue such clarifications and instructions as may be necessary for the removal of any difficulties arising in the implementation of this Order.

19. Ministries having existing policies: Where any Ministry or Department has its own policy for preference to local content approved by the Cabinet after 1st January 2015, such policies will prevail over the provisions of this Order. All other existing orders on preference to local content shall be reviewed by the Nodal Ministries and revised as needed to conform to this Order, within two months of the issue of this Order.

20. Transitional provision: This Order shall not apply to any tender or procurement for which notice inviting tender or other form of procurement solicitation has been issued before the issue of this Order.



(Rajesh Gupta)
Director

Tel: 23063211

rajesh.gupta66@gov.in