



भारत हेवी इलेक्ट्रिकल्स लिमिटेड
Bharat Heavy Electricals Limited

ENQ. REF:	PE-LPE/615-01
REF. DATE:	05.08.2023
DUE DATE	08.08.2023

Dear Madam/Sir,

Subject: Outsourcing of Civil and Architectural Engineering consultancy in Karkhiyaon, Varanasi

BHEL, PS-PEM Office invites offers in two part from your esteemed organization for outsourcing of Civil and Architectural Engineering consultancy in Karkhiyaon, Varanasi. The services to be provided shall be as per Technical Specification No. PE-TS-600-C001 R7.

1	Tender No.	PE-LPE/615
2	Description	Outsourcing of Civil and Architectural Engineering consultancy in Karkhiyaon, Varanasi
3	Earnest Money Deposit (EMD)	NIL
4	Due date & time of bid submission	08.08.2023 & 16:00 Hours (IST).
5	Bid Opening date & time	08.08.2023 & 17:00 Hours (IST)
6	Bid Validity	180 days

Please submit your best offer for the above subject work as per the tender terms & conditions. All corrigenda, addenda, amendments, time extension, clarifications, etc. to the tender will be hosted on website <https://bhelpem.com/>, <http://www.bhel.com> and <https://eprocurebhel.co.in/nicgep/app> only. Regularly visit website to keep yourself updated. Any clarification regarding NIT, if required, should be sought from the undersigned before the tender due date & time.

Bids shall be submitted in two parts within due date and time through E proc Mode only. Bidders shall have to visit BHEL e-Procurement website and have to upload their quotation on BHEL e-bid portal <https://eprocurebhel.co.in/nicgep/app> in line with NIT requirement by due date and time. For uploading bids, bidders have to use their Organisation's authorized digital signature (DSC class-III/ applicable class for bidding) registered with PEM. In case the same is not registered with PEM or not available with the bidder then such bidders have to purchase the same and get it registered with PEM as the same is required to be upload the bid on BHEL e-bid portal. Bidders to note that hard copy of the bid **is not** required to be submitted and bid is to be uploaded on BHEL e-bid portal only. In case paper bids are received from any of the bidder against e-bid, same shall be ignored.

Thanking you,

Enclosure: Commercial Terms and Conditions, Technical Specification No. PE-TS-600-C001 R7,
Technical PQR, BOQ

Thanking You,
Yours faithfully, For and on behalf of BHEL

Akash Verma
Dy. Manager/ CMM
BHEL PS-PEM, Noida

Commercial Terms and condition - Outsourcing of Civil
and Architectural Engineering consultancy in Karkhiyaon,
Varanasi

1	Taxes and Duties
	<p>1. All taxes/ duties/ Cess other than GST shall be deemed to be included in the Ex-Works prices. No variation for such taxes and levies shall be paid in any circumstance unless specifically agreed upon even if the same are mentioned anywhere in the bids by the bidders.</p> <p>2. Seller is required to update himself on its own and comply with provisions of Indian Income Tax Act as notified from time to time. Purchaser shall not be liable towards liability of income tax accruing to the Seller of whatever nature including variations thereof, arising out of this Order/ Contract, as well as tax liability of the Seller/ Contractor and his personnel.</p> <p>3. Deductions of Tax at source at the prevailing rates shall be affected by the Purchaser before release of payment, as a statutory obligation, if applicable. TDS certificate will be issued by the Purchaser as per statutory provisions. The Seller/Contractor has to mention their Permanent Account Number (PAN) and GSTIN in all invoices.</p> <p>4) Vendor/Supplier will share the Tax invoice along with LR/RR (as applicable) to BHEL immediately on removal of goods from vendor/supplier works.</p> <p>5) All payments against Tax Invoice to vendors/contractors shall be released only after:</p> <p>i) Vendor/ contractor declaring such invoice in GSTR-1/GST-ANX-1 as per the relevant GST Act</p> <p>ii) The tax component charged by the vendor in the invoice should match with the details uploaded by vendor in GSTR-1/GST-ANX-2.</p> <p>iii) Confirmation of payment of GST thereon by vendor on GSTN portal. In case, any GST credit is delayed/denied to BHEL due to non/delayed receipt of goods and/or tax invoice or expiry to timeline prescribed in the relevant GST Act for availing such ITC, or any other reasons not attributable to BHEL, tax amount shall be recoverable from the vendor/contractor along with interest levied/ leviable on BHEL.</p> <p>NOTE: - In case of payment from TReDS, payment to vendors can be released even if above conditions are not fulfilled subject to following: -</p> <p>a) GST amount shall be withheld from the payment.</p> <p>b) Due date of filling GST returns has not passed.</p> <p>6) Wherein GST liability arises on BHEL under reverse charge, any interest levied/leviable due to any reasons not attributable to BHEL shall be recovered from the vendor/contractor.</p> <p>7) The applicable TDS under GST/ Goods and Services (Compensation to States) Act will be deducted from the payments.</p>

2	Documents to be submitted along with the offer-
	<p>Bidder shall submit the signed & stamped copy of below mentioned documents along with their techno-commercial offer:</p> <p>a) Compliance to technical specification and BOQ document. d) Duly filled in signed & stamped Integrity pact, if applicable. c) Supporting documents for Technical PQR as applicable. d) Make in India certificate as per enclosed format. e) Land border Certificate as per enclosed format.</p>
3	PQR Documents verification
	<p>Bidders to ensure that Third party / customer issued certificates being submitted as proof of PQR qualification should have verifiable details of document / certificate issuing authority such as name & designation of Issuing Authority and its organisation contact number and e-mail Id etc. In case the same found not available, Purchaser has right to reject such document from evaluation.</p>
4	Default/ Breach of Contract, Insolvency and Risk Purchase
	<p>In case of delays (beyond the maximum late delivery period as per LD clause) in supplies, or if there be defective supplies or non-fulfilment of any other terms and conditions of the Contract as enumerated subsequently in this clause, then, without prejudice to its right to recover any expenses, losses or damages to which the Buyer may be put to incur or sustain by reason of the Seller/Contractor's default or breach of Order/Contract or to suspend business dealings with the Seller/Contractor in terms of the Buyers' Guidelines for Suspension of Business Dealings as applicable from time to time, the Buyer shall also be entitled to cancel the Order/ Contract either in whole or portion thereof without compensation to Seller. On the occurrence of any of the acts/omissions mentioned below, the Buyer may if it so desires, procure upon such terms and in such manner as deemed appropriate, plant/ equipment/ stores not so delivered or others of similar description where plant/ equipment/ stores exactly complying with particulars are not, in the opinion of the Buyer (which shall be final), readily procurable, at the risk and cost of the Seller.</p> <p>The Seller shall be liable to the Buyer for any excess costs incurred thereof and the Seller shall continue the performance of the Order/Contract to the extent not cancelled under the provisions of this clause. The Seller shall on no account be entitled to any gain on such repurchases. If the Bidder does not agree to this Risk Purchase clause, BHEL reserves the right to reject the bid/offer of the Bidder.</p> <p>The order/contract may be cancelled in whole or part thereof and Risk & Cost Clause in line with terms and conditions of PO/Contract may be invoked by the Buyer in any of the following cases:</p> <ol style="list-style-type: none"> If the Seller/Contractor fails to deliver the goods or materials or any instalment thereof within the period(s) fixed for such delivery or the Seller's poor progress of the supply/services vis-à-vis delivery/execution timeline as stipulated in the contract, backlog attributable to the Seller including unexecuted portion of supply does not appear to be executable within balance period available; delivers goods or materials not of the contracted quality and failing to adhere to the contract specifications/execution methodology; withdrawal from or repudiation/abandonment of the supply/services by the Seller before completion as per contract or if the Seller refuses or is unable to supply goods or materials covered by the order/Contract either in whole or in part or otherwise fails to perform the Order/Contract. Non supply by the Seller within scheduled completion/delivery period as per contract or as extended from time to time for reasons attributable to the Seller; Termination of Contract on account of any other reason(s) attributable to the Seller.

	<p>vi. Assignment, transfer, sub-letting of Contract without BHEL's written permission resulting in termination of Contract or part thereof by BHEL.</p> <p>vii. If the Seller be an individual or a Sole Proprietorship, in the event of death or insanity of the Seller.</p> <p>iii. If the Seller/Contractor being an individual or if a partnership firm thereof, shall at any time be adjudged insolvent or shall have a receiving order for administration of his estate made against him or shall take any proceeding for composition under any Insolvency Act for the time being in force or make any assignment of the order/Contract or enter into any arrangement or composition with his creditors or suspend payment or if the firm dissolved under the Partnership Act;</p> <p>ix. If the Seller/Contractor being a Company is wound up voluntarily or by order of a Court or a Receiver, Liquidator or Manager on behalf of the debenture holders and creditors is appointed or circumstances have arisen which entitles the Court of debenture holder and creditors to appoint a receiver, liquidator or manager</p> <p>x. Non- Compliance to any contractual condition or any other default attributable to the Seller.</p> <p>Such defaulting vendor/Seller shall not be eligible to participate in re-tendering conducted on account of risk purchase made due to fault of such vendor/Seller.</p>
5	<p>RISK AND COST CLAUSE-</p> <p>1. BHEL reserves the right to terminate the contract or withdraw portion of work and get it done through other agency, at the risk and cost of the contractor <i>after due notice of a period of 14 days' by BHEL</i> in any of the cases as mentioned in clause no 4 above.</p> <p>1.1 <u>Risk & Cost Amount against Balance Work:</u></p> <p>Risk & Cost amount against balance work shall be calculated as follows:</p> <p>Risk & Cost Amount= [(A-B) + (A x H/100)]</p> <p>Where,</p> <p>A= Value of Balance scope of Work (*) as per rates of new contract</p> <p>B= Value of Balance scope of Work (*) as per rates of old contract being paid to the contractor at the time of termination of contract i.e. inclusive of PVC & ORC, if any.</p> <p>H = Overhead Factor to be taken as 5</p> <p>In case (A-B) is less than 0 (zero), value of (A-B) shall be taken as 0 (zero).</p> <p>1.2 <u>* Balance scope of work (in case of termination of contract):</u></p> <p>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 for calculating risk & cost amount.</p> <p>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.</p> <p>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.</p> <p>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</p>

	<p>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.</p> <p>However, increase in quantities on account of additional scope in new tender shall not be considered for this purpose.</p> <p>NOTE: In case portion of work is being withdrawn at risk & cost of contractor instead of termination of contract, contract quantities pertaining to portion of work withdrawn shall be considered as 'Balance scope of work' for calculating Risk & Cost amount.</p> <p>1.3 <u>LD against delay in executed work in case of Termination of Contract:</u></p> <p>LD against delay in executed work shall be calculated in line with LD clause no 09 of Technical Specifications NO. PE-TS-600-C001 R7, for the delay attributable to contractor. For limiting the maximum value of LD, contract value shall be taken as Executed Value of work till termination of contract.</p> <p>Method for calculation of LD against delay in executed work in case of termination of contract" is given below.</p> <ol style="list-style-type: none"> 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 = T1 Let the value of executed work till the time of termination of contract = X Let the Total Executable Value of work for which inputs/fronts were made available to contractor and were planned for execution till termination of contract = Y Delay in executed work attributable to contractor i.e. $T2 = [1 - (X/Y)] \times T1$ LD shall be calculated in line with LD clause (clause no 09 of Technical Specifications NO. PE-TS-600-C001 R7) of the Contract for the delay attributable to contractor taking "X" as Contract Value and "T2" as period of delay attributable to contractor. <p>2. <u>Recoveries arising out of Risk & Cost and LD or any other recoveries due from Contractor</u></p> <p>Without prejudice to the other means of recovery of such dues from the Seller recoveries from the Seller on whom risk & cost has been invoked shall be made from the following:</p> <ol style="list-style-type: none"> Dues available in the form of bills payable to Seller, Security Deposit (SD), BGs against the same contract, Dues payable to Seller against other contracts including SDs, BGs in the PEM. Dues payable to Seller against other contracts including SDs, BGs in the different Region/Unit/Division of BHEL. Any other mode as deemed fit by the Purchaser at its sole discretion. <p><i>In-case recoveries are not possible with any of the above available options, Legal action shall be initiated for recovery against contractor.</i></p>
6	<p><u>Engineering Drg/Doc Submission</u></p> <p>All engineering document submission by vendors after award of contract shall be online, using BHELPEM's Document Management System (DMS). Comments would also be conveyed to vendors through DMS. This would ensure enhanced engineering coordination and speedy approval of documents. For facilitating submission of documents online, vendors shall submit details as per format available on line (select Vendor Login Creation form link available at https://pem.bhel.com/Bhel_vendor_section.aspx) to concerned Dealing Engineer in Purchase Dept. of BHEL-PEM for creation of login account in PEM's DMS. i. Chrome/Edge ii. Internet speed – 2</p>

	mbps iii. Pop up from https://pem.bhel.com/ should not be blocked iv. Vendor's internal proxy setting should not block DMS application's link https://pem.bhel.com/wrenchweb Procedure for uploading comments, viewing comments etc. is available at https://pem.bhel.com/Dms_Manuals.html
7	Confidentiality
	Seller/ Contractor shall, at all times, undertake to maintain complete confidentiality of all data, information, software, drawings & documents, etc. belonging to the Purchaser and also of systems, procedures, reports, input documents, manuals, results and any other company documents discussed and/ or finalized during the course of execution of order/ contract. i.e. Seller/Contractor shall in no way
8	Dealing with Bidders under Suspension
	The offers of the bidders who are under suspension 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 web site https://www.bhel.com/
9	Fraud Prevention Clause
	The Bidder declares that they will not enter into any illegal or undisclosed agreement or understanding, whether formal or informal with other Bidder(s). This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process. In case, the bidder is found having indulged in above activities, suitable action shall be taken by BHEL as per extant policies/guideline.
10	BHEL 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://https://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. BHEL Fraud prevention policy is also uploaded on https://pem.bhel.com/ , https://www.bhel.com/
11	RXIL (TReDS) Platform
	PEM is registered with RXIL (TReDS) platform. MSME Bidders are requested to get registered with RXIL (TReDS) platform to avail the facility as per the GOI guidelines.
12	Conflict of Interest
	A bidder shall not have conflict of interest with other bidders. Such conflict of interest can lead to anti-competitive practices to the detriment of Procuring Entity's interests. The bidder found to have a conflict of interest shall be disqualified. A bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if: <ul style="list-style-type: none"> a) they have controlling partner (s) in common; · or b) they receive or have received any direct or indirect subsidy/ financial stake from any of them; or c) they have the same legal representative/agent for purposes of this bid; or d) they have relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder, · or e) Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all bids in which the parties are involved. However, this does not limit the inclusion of the components/ sub-assembly/ Assemblies from. one bidding manufacturer in more than one bid; or f) In cases of agents quoting in offshore procurements, on behalf of their principal manufacturers, one agent cannot represent two manufacturers or quote on their behalf in a particular tender enquiry. One manufacturer can also authorise only one agent/dealer. There can be only one bid from the following: <ol style="list-style-type: none"> 1. The principal manufacturer directly or through one Indian agent on his behalf; and

	<p>2. Indian/foreign agent on behalf of only one principal, ·</p> <p style="text-align: center;">or</p> <p>g) A Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the contract that is the subject of the Bid, ·</p> <p style="text-align: center;">or</p> <p>h) In case of a holding company having more than one independently manufacturing units, or more than one unit having common business ownership/management, only one unit should quote. Similar restrictions would apply to closely related sister companies. Bidders must proactively declare such sister/ common business/ management units in same/ similar line of business. "</p>
13	Formats for Make in India and Land border certificate: Bidders to submit the Certificate in the format as attached along with NIT.
14	BHEL'S Bankers
	Please refer "Information Section" of PEM website www.bhelpem.com for details.
15	Mode of Payment/ Non-Payment of Interest
	<p>Payments shall be made directly to the Seller/ Contractor by E-transfer. Seller/ Contractor to provide necessary information for the same as per Annexure – IV.</p> <p>Note: Option of payment through TReDS is also available to MSME vendors.</p>
16	Recovery of Outstanding Amount
	<p>In event of any amount of money being outstanding at any point of time against the Seller/ Contractor due to excess payment imposition of liquidated damages, invocation of risk and cost clause or any other reason whatsoever, in the present order/ contract or any other order/ contract from any BHEL Unit, the outstanding amount shall be recovered from the payments due to the Seller/ Contractor from the following: -</p> <p>i. Dues available in the form of bills payable to Seller, Security Deposit, BGs against the same contract,</p> <p>ii. Dues payable to Seller against other contracts in the same Region/Unit/Division of BHEL.</p> <p>iii. Dues payable to Seller against other contracts in the different Region/Unit/Division of BHEL.</p> <p>iv. any other mode as deemed fit by the Purchaser at its sole discretion.</p>
17	Settlement of Disputes
	<p>1. Except as otherwise specifically provided in the Order/ Contract, all disputes concerning questions of the facts arising under the Order/ Contract, shall be decided by Purchaser, subject to written appeal by the Seller/ Contractor to the Purchaser, whose decision shall be final.</p> <p>2. Any dispute or difference shall be, to the extent possible, settled amicably between the parties hereto, failing which the disputed issues shall be settled through arbitration.</p> <p>3. Seller/ Contractor shall continue to perform the order/ contract, pending settlement of dispute(s).</p>
18	Arbitration & Conciliation
	<p>1. Conciliation</p> <p>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), 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 (IEC) to be appointed by competent authority of BHEL from the BHEL Panel of Conciliators under BHEL Conciliation Scheme.</p>

Notes:

- i. No serving or a retired employee of BHEL/Administrative Ministry of BHEL shall be included in the BHEL Panel of Conciliators.
- ii. 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.
- iii. 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 Procedure (Annexure-VII) to this NIT. The Procedure (Annexure-VII) together with its Formats will be treated as if the same is part and parcel hereof and shall be as effectual as if set out herein in this NIT.
- iv. The Contractor/ supplier hereby agrees that BHEL may make any amendments or modifications to the provisions stipulated in the Procedure (Annexure-VII) to this NIT from time to time and confirms that it shall be bound by such amended or modified provisions of the Procedure (Annexure-VII) with effect from the date as intimated by BHEL to it.
- v. The venue of conciliation shall be Delhi/ New Delhi/ PO issuing agency city where PO is issued by BHEL Power Sector Regional HQ

2.Arbitration

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 of 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 terms of Section 21 of Arbitration & Conciliation Act in writing to the other Party commence arbitration. The notice shall as far as possible contain the particulars of all claims to be referred to arbitration.

The arbitration shall be conducted by Sole Arbitrator to be appointed mutually by the Competent Authority of BHEL (purchaser) & Seller within the statutory period as applicable. As far as practicable, names of 2 or more persons shall be forwarded to the Seller for seeking consent of the Seller to one of the names proposed for appointment as arbitrator in the case. If the parties fail to agree on the name of Sole Arbitrator, then appointment shall be made as per the provisions of section 11 of the Arbitration & Conciliation Act.

The Arbitrator shall pass a reasoned award and the award of the Arbitrator shall be final and binding upon the Parties. The language of Arbitration shall be English.

Subject as aforesaid, the provisions of Arbitration of Conciliation Act 1996 (India) or statutory modification/ Amendments 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 and venue of arbitration shall be Delhi/ New Delhi/ PO issuing agency city where PO is issued by BHEL Power Sector Regional HQ

The cost of arbitration shall be borne equally by the parties' subject to the final apportionment of the cost of the arbitration as per the award/order of the arbitrator.

Subject to the arbitration in terms of Clause above, the Courts at Delhi-NCR/ (PO issuing agency city- where PO has been issued by BHEL Power Sector Regional HQ) shall have exclusive jurisdiction over any matter arising out of or in connection with this contract.

Notwithstanding the existence or any dispute or difference and/or reference for the arbitration, the 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

19	In Case of Contract with Public Sector Enterprise (PSE) Or A Government Department & Institutes.
	In the event of any dispute or difference relating to the interpretation and application of the provisions of the commercial contract between Central Public Sector Enterprises(CPSEs)/Port Trusts inter se and also between CPSEs and Government Departments/Organizations (excluding disputes concerning railways, Income Tax, Customs and Excise Departments) such dispute or difference shall be taken up by either party for resolution through Administrative Mechanism for Resolution of CPSEs Disputes(AMRCD) as mentioned in Department of Public Enterprises(DPE) office Memorandum No. 4 (1)/2013-DPE(GM)/FTS-1835 dated 22.05.2018 as amended from time to time. A copy of the extant Department of Public Enterprises (DPE) Office Memorandum is available on Govt. of India website and the same shall apply with any amendments as made from time to time.
20	Jurisdiction of Court
	Courts at Delhi-NCR/ (PO issuing agency city- where PO has been issued by BHEL Power Sector Regional HQ) 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
21	Performance Bank Guarantee
	<p>1. Performance Bank Guarantee shall be 5% of Total Contract value. Format for PBG is as per Annexure-III of NIT .</p> <p>2. Bidder may submit Performance Security in the form of Account Payee Demand Draft, online payment in an acceptable form, Bank Guarantee (including e-Bank Guarantee) from Consortium Bank as per list and directives on https://pem.bhel.com, Cash (as permissible under the extant Income Tax Act) , Local cheques of Scheduled Banks (subject to realization)/ Pay Order, Fixed Deposit Receipt issued by Scheduled Banks/ Public Financial Institutions as defined in the Companies Act (FDR should be in the name of the Contractor, a/c BHEL) and Securities available from Indian Post offices such as National Savings Certificates, Kisan Vikas Patras etc. (held in the name of Contractor furnishing the security and duly endorsed/ hypothecated/ pledged, as applicable, in favour of BHEL).</p> <p>Note:</p> <p>a) Initial validity of BG shall be 38 months from the date of PO. Extension if any shall be for the duration of 2 months beyond the date of completion of all contractual obligations including warrantee obligations.</p> <p>b) Purchaser reserves the right to encash the bank guarantee and forfeit the amount in the event of any default, failure or neglect on part of the Seller / Contractor in fulfillment of performance of the Order/ Contract or in the event GST credit is delayed / denied to BHEL due to non/delayed receipt of goods and / or tax invoice or expiry to timeline prescribed in the relevant act for availing such Input Tax Credit or any other reasons not attributable to BHEL.</p> <p>c) Equivalent amount shall be recovered from payment due to the Seller/ Contractor, before releasing any payment, in absence of a valid performance guarantee.</p> <p>d) The expiry of claim period should be kept min. of twelve months after BG validity.</p> <p>e) Value of the Bank Guarantee (at the time of submission) shall remain unchanged for any subsequent variations in order/ contract value up to 20%. Beyond this, the Seller/ Contractor shall arrange to enhance or reduce the value of the Bank Guarantee accordingly.</p>

	<p>f) In case of private sector banks, a clause to be incorporated in the text of bank guarantee that it can be enforced by being presented at any branch of the bank located in the Delhi-NCR.</p> <p>g) BHEL will not be liable or responsible in any manner for the collection of interest or renewal of the documents or in any other matter connected therewith.</p>
22	Non-Waiver of Defaults
	<p>If any individual provision of the Contract is held by a Court or any other Responsible Authority to be unlawful, invalid, void or unenforceable, that provision shall be deemed to be deleted from the Contract and shall be of no force or effect and this Contract shall remain in full force and effect as if such provision had not originally been contained in this Contract and the other provisions shall not be affected. In the event of any such deletion the Parties shall negotiate in good faith in order to agree to terms of a mutually acceptable and satisfactory alternative provision in place of the provision so deleted.</p> <p>No waiver shall be effective unless it is communicated in writing to the other party. A waiver accorded on one occasion shall not constitute a continuing waiver in respect of such such/similar breach/event in future and separate waiver shall be necessary for each event/breach.</p> <p>The failure of BHEL to exercise any contractual right or remedy or to enforce any of the terms and conditions of this Order/Contract or to exercise any right or privilege granted to BHEL under this Contract or under law shall not constitute a waiver thereof or constitute a waiver of any right or remedy arising from any other breach of the Contract nor shall it release the seller from any of the warranties or obligations of the Order/Contract and the same shall continue in full force and effect.</p>
23	All Orders placed through Bid/RA are deemed accepted as Seller has participated in the Bid/RA and agreed to the Terms and conditions.
24	<p>TRANSFER, SUB-LETTING/ ASSIGNMENT/ SUB-CONTRACTING: Seller/ Contractor shall not sublet, transfer or assign order/ contract or any part thereof or interest therein or benefit or advantage thereof save with the prior consent in writing of Purchaser. In the event of Seller/ Contractor sub-letting, transferring or assigning order/ contract or any part thereof or interest therein or benefit or advantage thereof without such permission, the Purchaser shall be entitled to cancel the Order/ Contract and to purchase the plant/ equipment/ stores from elsewhere at risk and costs of Seller/ Contractor and the Seller/ Contractor shall be liable for any loss or damage which Purchaser may sustain in consequence of or arising out of such risk purchase.</p> <ol style="list-style-type: none"> 1. If Seller/ Contractor is an individual or proprietary concern and the individual or the proprietor dies or the partnership is dissolved or substantially affected, then unless the Purchaser is satisfied that legal representative of individual seller/ contractor or proprietor of proprietary concern and surviving partners of partnership firm are capable of carrying out and completing the order/ contract, the Purchaser shall be entitled to cancel the order/ contract as to its incomplete portion and without being in any way liable to payment of any compensation to estate of seller/ contractor and/ or to surviving partners of seller's/ contractor's firm on account of cancellation of the order/ contract. 2. Decision of Purchaser that legal representatives of deceased seller/ contractor or surviving partners of the seller's/ contractor's firm cannot carry out and complete the order/ contract shall be final and binding on the parties hereto.

	Terms and Conditions shall not get affected in case of merger/ amalgamation/ takeover/ re-arrangement etc.
25	<p>Force Majeure Conditions: If at any time during the continuance of the Contract, the performance in whole or in part by either party of any obligation under this Contract shall be prevented or delayed by the reasons of any war, hostility, acts of the public enemy, epidemics, civil commotion, sabotage, fires, floods, explosion, quarantine restrictions, strikes, lockouts or act of God (but not including negligence or wrongdoing, predictable/seasonal rain) provided notice of happening of such event duly evidenced with documents is given by one party to the other within 10 days from the date of occurrence thereof, neither party shall be by reasons of such event, be entitled to terminate the Contract nor shall either party have any claim for damages against the other in respect of such non-performance or the delay in performance, and deliveries under the contract shall be resumed as soon as practicable after such event has come to an end or ceased to exist, and the decision of the Buyer as to whether the deliveries have been so resumed or not, shall be final and conclusive, Provided further that if the performance in whole or part of any obligation under this contract is prevented or delayed by reason of any such event for a period exceeding 90 days, either party may at its option terminate the contract provided also that the Buyer shall be at liberty to take over from the Seller at a price to be fixed by Buyer, which shall be final, all unused, undamaged and accepted material, bought out components and Goods in course of manufacture in the possession of the Seller at the time of such termination or such portion thereof as the Buyer may deem fit excepting such materials, bought out components and Goods as the Seller may with the concurrence of the Buyer elect to retain.</p>
26	<p>Statutory Variation:</p> <p>I. In general, Statutory variation for GST is payable to the Seller during currency of the contract between Buyer and Seller. Further, for period beyond the currency of the contract, BHEL will reimburse the actual applicable tax even if the same is higher than the amount applicable within the contractual period in case BHEL is able to take the input tax credit. However, the decision of BHEL in this regard will be final and binding on the seller/contractor otherwise vendor/contractor has to bear the differential upward increase in tax and ex-works price is to be adjusted accordingly</p> <p>II. No other variations such as on Custom Duty, exchange rate, minimum wages, prices of controlled commodities, any other input etc. shall be payable by the purchaser unless specifically agreed upon</p>
27	<p>Payment Term: 100% payments will be paid on issue of Engineering certification of successful completion of work for item I to III of Table -1 of Technical specification.</p> <p>For Item No. I of Table -1 of Technical specification, Payment shall be done on pro-rata basis as defined in Table 3 of technical specification. Building-wise (Drawing-wise) BBU shall be finalized during the execution of the contract and before the start of the billing process for the same. The weightage of each drawing in a particular part work of Table 3 will be equal. The bills shall be raised on monthly basis.</p> <p>For item no IV & V of Table -1 of Technical specification, 60% of the amount shall be payable after receipt of the initial physical model. Balance amount shall be after receipt of the modified/updated model.</p> <p>E-Invoice to be submitted as per the extant Rules and Regulations. Payment will be released within 90 days after submission of complete invoice with all the documents (60 days for vendors</p>

	qualified and registered as Medium and 45 days for vendors qualified and registered as Micro or Small as per MSMED Act).
28	<p>This is a conditional tender enquiry. Financial bid opening (Part-II) of a bidder shall be subjected to the following:</p> <p>i) Qualification of Technical as applicable</p> <p>ii) Techno commercial compliance to the NIT (bid).</p> <p>iii) Offered item should mandatorily conform to PPP-MII and GFR order provisions</p>
29	<p>For this procurement, the local content to categorize a supplier as a Class I Local Supplier / Class II Local Supplier / Non Local supplier and Purchase preference to Class I local supplier, is as defined in Public Procurement (Preference to Make in India), (PPP-MII) Order 2017 dt. 16/09/2020 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>Regarding verification of local content, the local supplier at the time of tender, bidding or solicitation shall be required to provide certification as per para 9 of PP-MII order revision dated 16.09.2020.</p>
30	The Evaluation shall be done on total cost to BHEL basis i.e inclusive of taxes and duties.
31	Minimum Local Content required for qualifying a bidder as Class 1 Local Supplier/Class 2 Local Supplier : More than 20 % local content
32	Nature of Package : Non-Divisible
33	Technical PQR is applicable. Bidder has to provide the details as per TECHNICAL PQR in its offer and has to note that bids of only those bidders shall be evaluated who meet the Pre-Qualifying requirements.
34	The bid shall remain valid for a period of 180 days from the date of opening of offers. No revision of prices shall be entertained after bids have been opened. Bidder shall not be entitled during this period to revoke or vary the content of bid or any terms thereof. In case of any unsolicited variation subsequent to bid opening, the bid shall be treated as “Rejected”.
35	<p>Integrity Pact: Integrity pact is applicable for subject package.</p> <p>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 Monitors (IEMs) on the present panel have been appointed by BHEL with the approval of CVC to oversee implementation of IP in BHEL.</p> <p>I. IEM-2 details (Shri Otem Dai, IAS (Retd.), iem1@bhel.in).</p> <p>II. IEM-2 details (Shri Bishwamitra Pandey, IRAS (Retd.) , iem2@bhel.in).</p> <p>iii. IEM-3 details (Shri Mukesh Mittal, IRS (Retd.) , iem3@bhel.in)</p> <p>. (b) The IP as enclosed with the tender is to be submitted (duly signed by authorized signatory) along with techno-commercial bid (Part-I, in case of two/ three-part bid). Only those bidders who have entered into such an IP with BHEL would be competent to participate in the bidding. In other words, entering into this Pact would be a preliminary qualification.</p> <p>(c) Please refer Section-8 of IP for Role and Responsibilities of IEMs. In case of any complaint arising out of the tendering process, the matter may be referred to any of the above IEM(s). All correspondence with the IEMs shall be done through email only.” No routine correspondence shall be addressed to the IEM (phone/ post/ email) regarding the clarifications, time extensions or any other administrative queries, etc. on the tender issued. All such clarification/ issues shall be addressed directly to the tender issuing (procurement) department officials.”</p>

S.No.	Annexures	Description	Applicable
1	Annexure –I	Declaration regarding land border	APPLICABLE
2	Annexure – II	MII Certificate Less than 10 Crore	APPLICABLE
3	Annexure – III	Bank Guarantee for performance security	APPLICABLE
4	Annexure – IV	Integrity Pact	APPLICABLE
5	Annexure – V	Acceptance Letter / Deviation Certificate	APPLICABLE
6	Annexure – VI	Declaration	APPLICABLE
5	Annexure-VII	Brief procedure for conduct of conciliation proceedings	APPLICABLE

Annexure-I

Letter head of Company

Ref.....

Date.....

To,
Bharat Heavy Electricals Limited
PEM, PPEI Building, Plot No 25,
Sector -16A, Noida (U.P) -201301

Subject: - DECLARATION REGARDING LAND BORDER

Reference Bid No.: PE-LPE/615-01 dated 05.08.2023.

Name of Package: Outsourcing of Civil and Architectural Engineering consultancy in Karkhiyaon, Varanasi

Dear Sir,
This has reference to: -

- 1. Our Offer for Outsourcing of Civil and Architectural Engineering consultancy in Karkhiyaon, Varanasi against Bid No.: PE-LPE/615-01 Dated 05.08.2023**
- 2. Order (Public procurement no 04) dated 23.02.2023 reg. restriction under rule 144 (xi) of GFR issued by Ministry of Finance, Department of Expenditure Public Procurement Division.**

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India;

I certify that..... M/s..... is not from such a country

or,

I certify that..... M/s..... has been registered with the Competent Authority. I hereby certify that this fulfils all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

(strike off the non-applicable clause)

Model additional certificate by Bidders in the cases of specified ToT:

"I have read the clause regarding restrictions on procurement from a bidder having Transfer of Technology (ToT) arrangement. I certify that M/s..... does not have any ToT arrangement requiring registration with the competent authority."

OR

"I have read the clause regarding restrictions on procurement from a bidder having Transfer of Technology (ToT) arrangement. I certify that M/s..... has valid registration to participate in this procurement. "

Thanking you,

Yours truly

..... (firm name)

Annexure-II

Letter head of Company

Ref.....

Date.....

To,
Bharat Heavy Electricals Limited
PEM, PPEI Building, Plot No 25,
Sector -16A, Noida (U.P)-201301

Subject: - Certification regarding local content

Reference Bid No.: PE-LPE/615-01 dated 05.08.2023.

Name of Package: Outsourcing of Civil and Architectural Engineering consultancy in Karkhiyaon, Varanasi

Dear Sir,

We hereby certify that items offered by us of **(Package Name)** for **(Project Name)** meets the requirement in line with **NIT** and Public Procurement (Preference to Make in India), Order 2017 dated-15.06.2017, 28.05.2018 & 29.05.2019, 04.06.20 & 16.09.20 and subsequent orders if any.

Local Content: _____ %

We further confirm that details of location at which the local value addition will be done at our works located at
(complete address of the works)

Yours truly

..... (authorized signatory of company)

..... (firm name)

ANNEXURE-III

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 at1 through its Unit at..... (name of the Unit) having awarded to (Name of the Vendor / Contractor / Supplier) having its registered office at2 hereinafter referred to as the 'Vendor/Contractor/Supplier', which expression shall unless repugnant to the context or meaning thereof, include its successors and permitted assigns), a contract Ref No.....dated3 valued at Rs 4 (Rupees)/ FC (in words) for..... 5 (hereinafter called the 'Contract') and the Vendor/Contractor/Seller 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 6 (Rupees) without any demur, immediately on first demand from the Employer and without any reservation, protest, and recourse and without the Employer needing to prove or demonstrate reasons for its such demand.

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 Vendor/Contractor/ Supplier in any suit or proceeding pending before any Court or Tribunal, Arbitrator or any other authority, 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 Vendor/Contractors/Supplier shall have no claim against us for making such payment.

We the bank 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/satisfactory completion of the performance guarantee period as per the terms of the 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 Vendor/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 Vendor/Contractor/Supplier and to forbear or enforce any of the terms and conditions relating to the said Contract and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Vendor/Contractor/Supplier or for any forbearance, act or omission on the part of the Employer or any indulgence by the Employer to the said Vendor/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 Vendor/Contractor/Supplier and notwithstanding any security or other guarantee that the Employer may have in relation to the Vendor/Contractor/Supplier 's liabilities.

This Guarantee shall remain in force up to and including..... 7 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 Vendor/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 the8 we 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 exceed6
- b. This Guarantee shall be valid up to7
- c. Unless the Bank is served a written claim or demand on or before..... 8 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.

Dated..... ..
behalf of

For and on

Place of Issue..... .
Bank)

(Name of the

- 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 CONTRACT VALUE
- 5 PROJECT/SUPPLY DETAILS

6 BG AMOUNT IN FIGURES AND WORDS

7 VALIDITY DATE

8 DATE OF EXPIRY OF CLAIM PERIOD

Note:

1. The BG should be on Non-Judicial Stamp paper/e-stamp paper of appropriate value as per Stamp Act prevailing in the State(s) where the BG is submitted or is to be acted upon or the rate prevailing in the State where the BG was executed, whichever is higher. The Stamp Paper/e-stamp paper shall be purchased in the name of Vendor/Contractor/Supplier/Bank issuing the guarantee.
- c) This bank guarantee can be enforced by being presented at any branch of the bank located in the Delhi-NCR (For private sector banks).

for & On behalf of Guarantee issuing bank

(Office Seal)

Name:

E-mail ID:

Contact number:

ANNEXURE– IV

INTEGRITY PACT

Between

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

and

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

Preamble

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

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

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

Section 1 – Commitments of the Principal

1.1 The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles: -

1.1.1 No employee of the Principal, personally or through family members, will in connection with the tender for, or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.

1.1.2 The Principal will, during the tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidder(s) the same

information and will not provide to any Bidder(s) confidential / additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.

1.1.3 The Principal will exclude from the process all known prejudiced persons.

1.2 If the Principal obtains information on the conduct of any of its employees which is a penal offence under the Indian Penal Code 1860 and Prevention of Corruption Act 1988 or any other statutory penal enactment, or if there be a substantive suspicion in this regard, the Principal will inform its Vigilance Office and in addition can initiate disciplinary actions.

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

2.1 The Bidder(s)/ Contractor(s) commit himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.

2.1.1 The Bidder(s)/ Contractor(s) will not, directly or through any other person or firm, offer, promise or give to the Principal or to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material, immaterial or any other benefit which he / she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.

2.1.2 The Bidder(s)/ Contractor(s) will not enter with other Bidder(s) into any illegal or undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.

2.1.3 The Bidder(s)/ Contractor(s) will not commit any penal offence under the relevant IPC/ PC Act; further the Bidder(s)/ Contractor(s) will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

2.1.4 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 & 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 / Sub-contractors

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

Section 8 –Independent External Monitor(s)

8.1 The Principal appoints competent and credible Independent External Monitor for this Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.

8.2 The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He reports to the CMD, BHEL.

8.3The 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.

8.4The 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 organization.

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 this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified as above, unless it is discharged/ determined by the CMD, BHEL.

Section 10 – Other Provisions

10.1 This agreement is subject to Indian Laws and jurisdiction shall be registered office of the Principal, i.e. New Delhi.

10.2 Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.

10.3 If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.

10.4 Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

10.5 Only those bidders/ contractors who have entered into this agreement with the Principal would be competent to participate in the bidding. In other words, entering into this agreement would be a preliminary qualification.

-

For & On behalf of the Principal

For & On behalf of the Bidder/ Contractor

(Office Seal)

(Office Seal)

Place-----

Date-----

Witness: _____

Witness:

(Name & Address) _____

(Name _____ &

Address)_____

ACCEPTANCE LETTER / DEVIATION CERTIFICATE

Notwithstanding anything mentioned in our bid, we hereby accept all terms and conditions of the above tender.

Or

We hereby accept all terms and conditions of the above tender except the followings:
(Give reference to Clause Nos. of Terms & Conditions which are not acceptable)

- 1.
- 2.
- 3.

Note:

Deviations may or may not be accepted by BHEL PS-PEM.

“I _____ hereby certify that except the deviations mentioned above, we do not have any other deviations to the tender no. _____ dated _____. Deviations if any, mentioned elsewhere in our bid may be treated as null and void by BHEL PS-PEM.

Signature

With name, Designation & seal of the firm

DECLARATION

I / We hereby declare that I / We have not been banned and de-listed by any PSU /Government Department / Financial Institution / Court.

SIGNATURE OF FIRM WITH SEAL

ANNEXURE VII

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. If BHEL is to initiate Conciliation, then, the invitation to Conciliate shall be extended to the concerned Stakeholder in **Format 7** hereto. Where the stakeholder is to initiate the Conciliation, the notice for initiation of Conciliation shall be sent in **Format-8** hereto.
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. The appointment of Conciliator(s) shall be completed and communicated by the concerned Department/Group of BHEL Unit/Division/Region/Business Group to the other party and the Conciliator(s) within 30 days from the date of acceptance of the invitation to conciliate by the concerned party in the **Format-9**. The details of the Claim, and counter-claim, if any, shall be intimated to the Conciliator(s) simultaneously in **Format-5**.
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; or,
- 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) In cases involving claim and/or counter-claim of exceeding Rs 5 crores but less than Rs 10 crores.
Sl No	Particulars	Amount
		Rs 75,000 (per Conciliator) In cases involving claim and/or counter-claim of more than Rs 10 crores. Rs 1,00,000/- (per Conciliator) Note: The aforesaid fees for the drafting of the Settlement Agreement shall be paid on the, Signing of the Settlement Agreement after approval of the Competent Authority or Rejection of the proposed Settlement Agreement by the Competent Authority of BHEL.

3	Secretarial expenses	Rs 10,000/- (one time) for the whole case for Conciliation by a Sole Member IEC. Where Conciliation is by multi member Conciliators –Rs 30,000/- (one time)- to be paid to the IEC
4	Travel and transportation and stay at outstation Retired Senior Officials of other Public Sector Undertakings (pay scale wise equivalent to or more than E-8 level of BHEL)	As per entitlement of the equivalent officer (pay scale wise) in BHEL.
	Others	As per the extant entitlement of whole time Functional Directors in BHEL. 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
Sl No	Particulars	Amount
		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. 4 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 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 Claim(s)/Counter Claim(s):

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

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

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

FORMAT-7

FORMAT FOR NOTICE INVOKING CONCILIATION CLAUSE BY BHEL FOR REFERRING THE DISPUTES TO CONCILIATION THROUGH IEC

To,

M/s. (Stakeholder's name)

Subject: **NOTICE FOR INVOCATION OF THE CONCILIATION CLAUSE OF THE CONTRACT BY BHEL**

Ref: ContractNo/MoU/Agreement/LOI/LOA& date_____.

Dear Sir/Madam,

As you are aware, with reference to above referred Contract/MoU/Agreement/LOI/LOA, certain disputes have arisen, which, in spite of several rounds of mutual discussions and various correspondences have remained unresolved. The brief particulars of our claims which arise out of the above- referred Contract/MoU/Agreement/LOI/LOA are reproduced hereunder:

Sl. No.	Claim description	Amount involved

As you are aware, there is a provision in the captioned Contract/MoU/Agreement/LOI/ LOA for referring disputes to conciliation.

In terms of Clause -----of Procedure i.e., Annexure ----- to the Contract/MoU /Agreement / LOI / LOA, we hereby seek your consent to refer the matter to Conciliation by Independent Experts Committee to be appointed by BHEL. You are invited to provide your consent in writing to proceed with conciliation into the above-mentioned disputes within a period of 30 days from the date of this letter along with details of counter-claims, if any, which you might have with regard to the subject Contract/ MoU/ Agreement/ LOI/ LOA.

Please note that upon receipt of your consent in writing within 30 days of the date of receipt of this letter by you, BHEL shall appoint suitable person(s) from the BHEL Panel of Conciliators.

This letter is being issued without prejudice to our rights and contentions available under the contract and law.

Thanking you Yours faithfully

Representative of BHEL

Note: The Format may be suitably modified, as required, based on facts and circumstances of the case.

**FORMAT-8 FORMAT FOR NOTICE INVOKING CONCILIATION CLAUSE BY A
STAKEHOLDER FOR REFERRING THE DISPUTES TO CONCILIATION THROUGH
IEC**

To,

BHEL (Head of the Unit/Division/Region/Business Group)

Subject: **NOTICE FOR INVOCATION OF THE CONCILIATION CLAUSE OF THE CONTRACT
BY A STAKEHOLDER**

Ref: ContractNo/MoU/Agreement/LOI/LOA& date_____.

Dear Sir/Madam,

As you are aware, with reference to above referred Contract/MoU/Agreement/LOI/LOA, certain disputes have arisen, which, in spite of several rounds of mutual discussions and various correspondences have remained unresolved. The brief particulars of our claims which have arisen out of the above- referred Contract/MoU/Agreement/LOI/LOA are enumerated hereunder:

Sl.No.	Claim description	Amount involved

As you are aware, there is a provision in the captioned Contract/MoU/Agreement/LOI/ LOA for referring inter-se disputes of the Parties to conciliation.

We wish to refer the above-said disputes to Conciliation as per the said Clause of the captioned Contract/MoU/Agreement/LOI/ LOA. In terms of Clause -----of Procedure i.e., Annexure -- ---- to the Contract/MoU /Agreement / LOI / LOA, we hereby invite BHEL to provide its consent in writing to proceed with conciliation into the above mentioned disputes within a period of 30 days from the date of this letter along with details of counter-claims, if any, which it might have with regard to the subject Contract/ MoU/ Agreement/ LOI/ LOA and to appoint suitable person(s) as Conciliator(s) from the BHEL Panel of Conciliators.

This letter is being issued without prejudice to our rights and contentions available under the contract and law.

Thanking you Yours faithfully

Representative of the Stakeholder

Note: The Format may be suitably modified, as required, based on facts and circumstances of the case.

FORMAT-9

FORMAT FOR INTIMATION TO THE STAKEHOLDER ABOUT APPOINTMENT OF CONCILIATOR/IEC

To,

M/s. (Stakeholder's name)

Subject: **INTIMATION BY BHEL TO THE STAKEHOLDER AND CONCILIATOR(S) ABOUT APPOINTMENT OF CONCILIATOR/IEC**

Ref: ContractNo/MoU/Agreement/LOI/LOA& date_____. Sir,

This is with reference to letter dated ----- regarding reference of the disputes arising
in connection with the subject Contract
No.....

/MoU/Agreement/LOI/LOA to conciliation and appointment of Conciliator(s).

In pursuance of the said letter, the said disputes are assigned to conciliation and the following persons are nominated as Conciliator(s) for conciliating and assisting the Parties to amicably resolve the disputes in terms of the Arbitration & Conciliation Act, 1996 and the Procedure ---- to the subject Contract...../MoU/Agreement/LOI/LOA, if possible. Name and contact details of Conciliator(s)

a)

b)

c)

You are requested to submit the Statement of Claims or Counter-Claims (strike off whichever is inapplicable) before the Conciliator(s) in Format 5 (enclosed herewith) as per the time limit as prescribed by the Conciliator(s).

Yours faithfully,

Representative of BHEL

CC: To Conciliator(s)... for Kind Information please. Encl: As above

Note: The Format may be suitably modified, as required, based on facts and circumstances of the case.