

Enquiry No. _____, dated _____

BHARAT HEAVY ELECTRICALS LIMITED
(TRANSMISSION BUSINESS GROUP)

TECHNO-COMMERCIAL MEMORANDUM OF UNDERSTANDING (TC-MoU)

Subject: Techno-Commercial Memorandum of Understanding for the Supply and Supervision of Pre-commissioning Testing of 765kV Current Transformers under above mentioned Enquiry No.

Customer: Power Grid Corporation of India Limited (PGCIL) or its eligible subsidiary companies.

Between:

1. Bharat Heavy Electricals Limited (BHEL), Transmission Business Group, Noida, Uttar Pradesh, India, a Government of India Undertaking, having its registered office at BHEL House, Siri Fort, New Delhi – 110049

2. [Name of Seller/Vendor with Full Address]

Declaration

We hereby confirm and certify that we have reviewed and agree to comply with the following:

- **Technical Specifications [Ref: TB-TCMOU-CT-510-001, R-00]:** Agreed and accepted.
- **Terms and Conditions [Ref: BHEL/TBG/TC-MOU/PGCIL/CT]:** Agreed and accepted.

Signature of Bidder (Authorized Signatory) with Date & Seal

SPECIAL TERMS AND CONDITIONS FOR TECHNO-COMMERCIAL MOU**BHARAT HEAVY ELECTRICALS LIMITED
(TRANSMISSION BUSINESS GROUP)****SPECIAL TERMS AND CONDITIONS FOR TECHNO-COMMERCIAL MEMORANDUM
OF UNDERSTANDING**

In case any discrepancy between the requirements mentioned under special terms & conditions and general terms & conditions, special terms and conditions shall prevail.

This is to be submitted duly signed and stamped by bidder. clarifications, if any, mentioned elsewhere in the bid / offer, shall not be considered.

Scope of TC-MoU: This Techno-Commercial Memorandum of Understanding (TC-MoU) shall govern the agreed technical and commercial terms for the "Supply and Supervision of Pre-commissioning Testing of 765 kV Current Transformers" for PGCIL projects.

However, this TC-MoU shall exclude prices, delivery conditions, guarantee conditions, which shall be addressed separately at the time of floating individual tender enquiries.

All design, drawings and other technical aspects shall strictly conform to the applicable technical specifications provided for PGCIL projects.

Details of Understanding: The Vendor (OEM), after due consideration of various aspects have arrived at the following understanding in respect of the Supply and Supervision of Pre-commissioning Testing of 765 kV Current Transformers to BHEL-TBG as per special terms & conditions and general terms & conditions-

- The TC-MoU agreed will be used for finalization of Pre-Bid tie-ups/ Pre-Award tie-ups / Post Award tenders for Power grid projects.
- BHEL, as purchaser, will issue individual tender enquiries along with the delivery conditions, guarantee conditions, to Bidders with whom TC-MoU has been finalized.
- The technical and commercial conditions agreed under this TC-MoU shall govern all Pre-Bid tie-ups/ Pre-Award tie-ups / Post Award tenders and corresponding Purchase Orders issued subsequently.
- Equipment shall be supplied to BHEL-TBG project sites in accordance with the agreed specifications and delivery requirements mentioned in the respective enquiries.
- This TC-MoU shall remain valid for a period of two (2) years from the date of execution.
- BHEL reserves the right to terminate or short-close the TC-MoU prior to the expiry of its validity period at its discretion.

SPECIAL TERMS AND CONDITIONS FOR TECHNO-COMMERCIAL MOU

SL. NO.	SPECIAL TERMS AND CONDITIONS
1.	INSTRUCTION TO BIDDERS
	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. 1.2 Tender is invited through e-Procurement System only. The bidder shall submit their bid through e-Procurement platform only at (https://eprocurebhel.co.in/). Bidders 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. 1.3 Offer Submission Date & Time: _____, Offer Opening Date & Time: _____ The critical Dates of tendering activities shall be provided separately during tendering processes. Address of tender Issuing Authority: - BHARAT HEAVY ELECTRICALS LIMITED, Transmission Business Group, 5th Floor, BHEL Sadan, Plot No. 25, Sector-16A, Noida – 201301 (U.P.) 1.4 For any technical clarification, kindly contact: Mr. Puneet chawla (Sr. Manager /TBEM) Phone: +91 (0) 0120- 2218921, E-mail: puneet.chawla@bhel.in 1.5 For any commercial clarification, kindly contact: Mr. Deep Shekhar Dewangan, Manager (TBMM); Phone: +91 (0) 0120- 2218832, E-mail: dsdewangan@bhel.in
2.	PACKAGE
	Shall be as per Individual tender enquiry. Part-II (Price bid/offer) Evaluation shall be done as per clause no. 18 of STC.
3.	TECHNICAL SPECIFICATION
	Technical specification no. TB-TCMOU-CT-510-001, R-00 is applicable.
4.	PRE QUALIFYING CRITERIA FOR OPEN TENDER
	Technical Pre-Qualification criteria shall be as per ANNEXURE-I Note: (1). Bidder must submit all supporting documents along with their offer. No deviation against this enquiry is acceptable, else offer shall be rejected. (2). All documents (including third party documents/supporting documents) in language other than English, certified translated copy in English language should also be furnished.

SPECIAL TERMS AND CONDITIONS FOR TECHNO-COMMERCIAL MOU

	(3). Offers will be scrutinized based on the qualifying requirements and only those who are technically and financially capable to execute the job and who fulfil the prequalifying requirements (PQR) are eligible to quote against above NIT.
5.	PRE-BID MEETING
	Shall be informed at the time of floating of Individual tender enquiry.
6.	BID SECURITY / EARNEST MONEY DEPOSIT (EMD) / BID BOND
	Shall be informed at the time of floating of Individual tender enquiry.
7.	PRICES:
	(i) The prices as quoted in price schedule shall be on Firm basis. (ii) The prices shall be on INR basis. (iii) The prices are to be quoted on FOR (Site / Destination) basis excluding GST. The break-up of prices shall be as under: a) Ex-works Price: Ex-works price including packing & forwarding charges. b) Freight & Insurance: Freight and Transit Insurance for door delivery up to destination/store is in scope of bidder. Freight and insurance are to be quoted separately. c) Charges for Supervision of Pre-Commissioning Testing at Site: To be quoted separately if specified in NIT/Price Schedule (iv) GST rates along with HSN/SAC code as applicable on Sr No (a) to (c) above is to be mentioned separately in percentage in both un-priced bid and price bid. Note: i) The purchase order shall be placed on Ex-works basis. F&I (Freight & Insurance) up to site shall be in the scope of bidder. ii) Prices quoted shall be in Indian Rupees only. iii) Unloading at Site / Destination shall not be in the scope of the bidder. iv) Prices in respect of Sr No (a) to (c) of Clause 7.3 above are to be quoted inclusive of all taxes & Duties, charges. Levies, royalty etc. If any, excluding GST.
8.	PRICE BID FORMAT
	Bidder to quote their best prices strictly in BHEL's prescribed format of NIT, else their offer shall be liable to be rejected. Bidder has to mention "quoted" (in each applicable cell) in UN-PRICED BID. In case that cell is Not Applicable, "NA" must be mentioned in that particular cell. Prices shall be mentioned in Price bid schedule only. In case during detailed engineering stage, wherever, it is mentioned as NA (not applicable), is to be supplied, bidder shall supply the same without any cost and delivery implication to BHEL. Based on the project requirement, BHEL will float individual tender enquiries to the bidders who have entered into TC-MOU with BHEL. <i>Note- Price bid not to be submitted with TC-MOU offer.</i>

SPECIAL TERMS AND CONDITIONS FOR TECHNO-COMMERCIAL MOU

9.	TERMS OF PAYMENT
	<u>(A) Through Direct/normal payment mode</u> [9.a] Payment for Supply: i) 95% of payment along with 100% GST & F&I shall be made within 45 days for MSE (Micro & Small Enterprises) / within 60 days for Medium Enterprises & within 90 days for non MSME suppliers from the date of receipt of complete invoice along with documents in 3 sets (original + 2 copies) as follows: • LR / GR • Material Receipt Certificate issued by BHEL (to be arrange by BHEL-TBG**) • 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 • Performance Security ** MRC shall be issued by BHEL site within 7-10 working days from the date of receipt of last consignment of each lot of dispatch (as per Invoice) at site and submission of following undertaking by vendor- "Boxes shall be opened in the presence of vendor's representative and in case of any shortage/damage found inside the factory packed boxes during verification, then vendor shall supply the same without any financial implications to BHEL." ii) Balance 05% of payment shall be made within 45 days for MSE (Micro & Small Enterprises) / within 60 days for Medium Enterprises & within 90 days for non MSME suppliers from the date of receipt of complete invoice along with documents in 3 sets (original + 2 copies) as follows: • Claim Invoice • Certificate of successful completion of Pre-Commissioning testing 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 Note 01: In case Pre-Commissioning testing of Current Transformers gets delayed beyond 06 months from the date of last delivery of purchase order for the reasons not attributable to supplier, supplier may claim this 5% payment of supply portion by furnishing following documents: • Claim Invoice • Copy of certificate issued by BHEL site in charge, confirming that delay in testing is not attributable to supplier (to be arranged by BHEL TBG) • Copy of Bank Guarantee of equivalent value initially valid for 6 months from the date of submission of invoice with additional claim period of two months. In case Pre-Commissioning test is not successfully completed before expiry of Bank Guarantee,

SPECIAL TERMS AND CONDITIONS FOR TECHNO-COMMERCIAL MOU

BG shall be kept suitably extended till completion of all Pre-Commissioning tests or 36 months from the date last delivery, whichever is earlier.

[9.b] Payment for Supervision of Pre-Commissioning testing:

100% Payment for Supervision of Pre-Commissioning testing along with applicable GST shall be made on prorata basis within 45 days for MSE (Micro & Small Enterprises) / within 60 days for Medium Enterprises & within 90 days for non MSME suppliers against certificate of successful completion of supervision of Pre-Commissioning testing at Site issued by BHEL Site Official / Construction Management from the date of receipt of GST Compliant Tax invoice in 3 sets (original + 2 copies).

Payment Procedure-

Direct Payment from BHEL: Payment shall be made directly to the Supplier / Contractor by BHEL through NEFT /RTGS. Irrespective of the value of the invoice amount, the bidder / vendor should necessarily upload the despatch & invoice details on BHEL SUVIDHA portal at <https://suvidha.bhel.in/suvidha/> prior to despatch. All documents as per PO checklist, along with additional documents (if any), must be uploaded on the portal. It is mandatory that tax invoices with a net amount (including taxes) exceeding Rs five lakhs uploaded on the portal are digitally signed using a Class 3 Digital Signature Certificate (DSC) issued by a licensed Certifying Authority. Submission of invoice document in hard copy is allowed for invoices with a net amount (including taxes) equal to and up to Rs five lakhs, in case they were not digitally signed and uploaded on the portal. The material will not be accepted inside BHEL/destination in absence of the above.

LOADING CRITERIA

Loading Criteria in case of Direct Payment: For direct payment terms as mentioned at '9.C' above, in case of Bidder seeks reduction in payment period, 'Repo rate + 4%', shall be considered for loading on the bidder's quoted price, for the period of relaxation sought by the bidders. In any case, payment period less than 60 days from the date of receipt of Invoice will not be accepted.

S No.	Condition	Rate of loading on the bidder's quoted price
1	Direct payment within 90 days	No loading
2	Direct payment within 60 days (payment timeline less than 60 days will not be accepted)	Repo rate + 4% for the period of reduction

Note:

- i) Supplier has to submit invoice(s) as per PO along with billing checklist (Annexure-III).

SPECIAL TERMS AND CONDITIONS FOR TECHNO-COMMERCIAL MOU

	ii) 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. iii) Supplier has to ensure commencement of transit insurance from the date not later than LR / GR date. iv) 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 v) 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. vi) Supplier has to submit Performance Security & Guarantee Certificate as per PO terms. vii) 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 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. viii) 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. ix) 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. x) 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.
10.	GUARANTEE <i>[Guarantee condition shall be as per individual tender enquiry]</i>
	The contractor shall guarantee that the equipment being supplied under this contract shall be new and of first quality workmanship and 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 _____ months (<i>shall be as per individual tender enquiry</i>) from the date of Taking Over/Completion of Facilities*, whichever is later. <i>*Date of Taking over / Completion of facility: shall be as per individual tender enquiry</i> 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. Notification of

SPECIAL TERMS AND CONDITIONS FOR TECHNO-COMMERCIAL MOU

	any transit damage will be sent by BHEL to supplier within 15 days from date of receipt of material at site. 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 the reasonable period mutually agreed between BHEL and supplier. In the event of the supplier / contractor failing to replace the defective equipment / material / component within the time period mentioned above, the same shall be considered as breach of the contract and BHEL may proceed as per provision mentioned in this NIT without prejudice to any other rights under the contract. Upon correction of the defects in the equipment by repair / replacement, such repair/replacement shall have the Defect Liability Period extended by a period equal to the period during which the facilities or such part cannot be used by the customer because of any of the aforesaid reasons. However, such extensions shall be limited up to period of 7 years of operation from the date of Taking Over/Completion of Facilities.										
11.	PERFORMANCE SECURITY										
	Performance security of 10% of Total Ex-works value (excl. Supervision charges) shall be submitted by the vendor within 30 days from the date of award of PO. Ex-works PO value (excl. Supervision charges) at the time of placement of PO shall be considered for calculation of the performance security amount. "Bidder agrees to submit performance security required for execution of the contract within the time period mentioned. In case of delay in submission of performance security, enhanced performance security which would include interest (SBI rate + 4%) for the delayed period, shall be submitted by the bidder. Further, if performance security is not submitted till such time the first bill becomes due, the amount of performance security due shall be recovered as per terms and conditions defined in NIT / Contract, from the bills along with due interest." (A) Modes of deposit: Performance security may be furnished in the following forms: (i) Local cheques of Scheduled Banks (subject to realization)/ Pay Order/Demand Draft/ Electronic Fund Transfer in favor of BHEL -TBG, Noida. Bank Account details for EFT mode is mentioned in EMD clause. Bank Account details for submission of performance security through EFT mode. <table border="1"> <tr> <td>NAME OF THE COMPANY</td><td>BHARAT HEAVY ELECTRICALS LTD</td></tr> <tr> <td>ADDRESS OF THE COMPANY</td><td>TRANSMISSION BUSINESS GROUP, 5TH FLOOR, BHEL SADAN, PLOT NO. 25, SECTOR-16A, NOIDA – 201301 (U.P.)</td></tr> <tr> <td>NAME OF BANK</td><td>STATE BANK OF INDIA</td></tr> <tr> <td>NAME OF BANK BRANCH</td><td>CAG-II NEW DELHI (17313)</td></tr> <tr> <td>CITY</td><td>NEW DELHI</td></tr> </table>	NAME OF THE COMPANY	BHARAT HEAVY ELECTRICALS LTD	ADDRESS OF THE COMPANY	TRANSMISSION BUSINESS GROUP, 5TH FLOOR, BHEL SADAN, PLOT NO. 25, SECTOR-16A, NOIDA – 201301 (U.P.)	NAME OF BANK	STATE BANK OF INDIA	NAME OF BANK BRANCH	CAG-II NEW DELHI (17313)	CITY	NEW DELHI
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SPECIAL TERMS AND CONDITIONS FOR TECHNO-COMMERCIAL MOU

	ACCOUNT NUMBER	00000030206227732
	ACCOUNT TYPE	CASH CREDIT
	IFSC CODE	SBIN0017313

(ii) Bank Guarantee from Scheduled Banks / Public Financial Institutions as defined in the Companies Act. Bank Guarantee shall be submitted as per BHEL format.

(iii) Fixed Deposit Receipt issued by Scheduled Banks / Public Financial Institutions as defined in the Companies Act (FDR should be in the name of the vendor, a/c BHEL).

(iv) Securities available from Indian Post offices such as National Savings Certificates, Kisan Vikas Patras etc. (held in the name of vendor furnishing the security and duly endorsed/ hypothecated/pledged, as applicable, in favor of BHEL).

(v) Insurance Surety Bond.

(B) Forfeiture of performance security

The performance security will be forfeited and credited to BHEL's account in the event of a breach of contract by the vendor.

Important Notes:

- (1) The performance security should remain valid for a period of 60 days beyond the date of completion of all contractual obligations of the supplier including warranty/Guarantee obligations.
- (2) Performance security shall be refunded to the vendor without interest, after he duly performs and completes the contract in all respects but not later than 60(sixty) days of completion of all such obligations including the warranty under the contract.
- (3) 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.
- (4) The Performance Security shall not carry any interest.
- (5) Value of the Bank Guarantee shall remain unchanged for any subsequent variations in Purchase Order value up to $\pm 30\%$. Beyond this variation of $\pm 30\%$, the Supplier shall arrange to enhance or may reduce the value of the Bank Guarantee accordingly for the total variation promptly.
- (6) The Bank Guarantee shall be from any bank as per Annexure-XIV for List of Banks. The original BG should be sent by issuing Bank directly to AGM (Finance), TBG, BHEL, Noida.
- (7) Extension of validity of the BG in original, as per above clause, should be sent by issuing Bank directly to AGM (Finance), TBG, BHEL, Noida at least 45 days before expiry of validity of the BG.
- (8) Non-submission BG / Deposit, as applicable, shall be considered as breach of contract as per terms of the NIT and BHEL reserves the right to impose Suspension of Business Dealings with the Supplier / Contractor.
- (9) Vendor to ensure submission of Certificate of Final Documentation /Confirmation regarding Non-applicability of Final Documentation, as the case may be, as referred in

SPECIAL TERMS AND CONDITIONS FOR TECHNO-COMMERCIAL MOU

	clause No. 9 regarding Final Documentation. BG shall be released only after submission of the same to BHEL TBMM.							
12.	DELIVERY LOCATION							
	Delivery location(s) shall be informed at the time of individual tender enquiry.							
13.	DELIVERY PERIOD [Delivery schedule shall be as per individual tender enquiry]							
	Proposed delivery plan: <table border="1"> <thead> <tr> <th>Sl. No.</th><th>Project Name</th><th>Delivery By-</th></tr> </thead> <tbody> <tr> <td>1</td><td colspan="2">Delivery period/Schedule shall be informed at the time of individual tender enquiry.</td></tr> </tbody> </table> Vendor to dispatch the material as per delivery plan mentioned in ACTIVITY SCHEDULE (Annexure-II) to meet the project requirement. Vendor to ensure supply/delivery of goods in time. 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). The delivery conditions specified are for the contractual LD purpose. However, BHEL may ask for the early delivery without any compensation. Note: LR / GR date or invoice date (whichever is later) shall be considered as delivery date.		Sl. No.	Project Name	Delivery By-	1	Delivery period/Schedule shall be informed at the time of individual tender enquiry.	
Sl. No.	Project Name	Delivery By-						
1	Delivery period/Schedule shall be informed at the time of individual tender enquiry.							
14.	LIQUIDATED DAMAGES FOR DELAYED DELIVERY							
	Liquidated Damages, wherever referred under this Tender/Agreement, shall mean and refer to the damages, not in the nature of penalty, which the contractor agrees to pay in the event of delay in delivery of supplies, breach of contract etc. as the case may be. Liquidated Damages leviable upon the Supplier/Vendor is a sum which is agreed by the parties as a reasonable and genuine pre-estimate of damages which will be suffered by BHEL on account of delay/breach on the part of the Supplier/Vendor. If the Seller/Service Provider fails to deliver any or all of the Goods/Services within the original/re-fixed delivery period(s) specified in the contract, the Buyer will be entitled to deduct/recover the Liquidated Damages for the delay, unless covered under Force Majeure conditions aforesaid, @ 0.5% of the contract value of delayed quantity per week or part of the week of delayed period as pre-estimated damages not exceeding 05% of the contract value of delayed quantity without any controversy/dispute of any sort whatsoever.							
15.	VALIDITY OF OFFER/PRICES :							
	The quoted price against any individual tenders covered under TC-MoU shall be valid for 180 days from the date of opening of price bid and can be extended with mutual consent.							
16.	VENDOR APPROVAL/ ACCEPTANCE							
	<u>Techno-commercial (Stage-I)</u>							

SPECIAL TERMS AND CONDITIONS FOR TECHNO-COMMERCIAL MOU

	- The Bidder's offer shall be considered for evaluation based on the Technical Pre-Qualification Requirements (PQR), technical specifications, and other commercial documents submitted along with the bid. - Bidder's offer will be acceptable subject to final acceptance of bidder by ultimate customer as authorized/approved supplier.
17.	DEVIATION
	Technical Deviation: No Technical Deviation is envisaged. Commercial Deviation: No Commercial Deviation envisaged except defined in GTC. The bids having deviation(s) w.r.t. tender is liable for rejection. However, BHEL, at its discretion, may load the prices for evaluation of offer with prior intimation to bidder. Clause-wise deviations and / or additional conditions / clarifications, if any, are to be brought out clearly in "Schedule of Commercial Deviation" and "Schedule of Technical Deviation" If any. Deviations and / or additional conditions / clarifications, if any, mentioned elsewhere in the bid / offer, shall not be considered.
18.	PRICE BID EVALUATION
	- For Pre-Bid/ Pre-award tie-ups, Bids shall be opened in-camera. - Cost evaluation shall be done on total cost to BHEL basis. - Comparative statement shall be prepared and evaluated on the basis of total cost to BHEL, considering Ex-Works Price, F&I and GST. GST input credit available to BHEL shall be reduced from prices while determining L1 status. - Evaluation in case of more than one L-1 bidders. In the course of evaluation, if more than one bidder happens to occupy L-1 status, effective L-1 will be decided by soliciting discount from respective L-1. In case more than one bidder happens to occupy the L-1 status even after soliciting discounts, the L-1 bidder shall be decided by a toss/draw of lots, in the presence of the respective L-1 bidder(s) or their representative(s). - Ranking will be done accordingly. BHEL decision in such situations shall be final and binding.
19.	QUANTITY SPLITTING AND AWARDED:
	Shall be as per individual tender enquiry.
20.	VALIDITY OF PURCHASE ORDER:
	The purchase order(s) shall be valid for two years from date of PO.
21.	WORKS ADDRESS:
	Bidders to mention their works address in Annexure-XV (Contact details of bidder).
22.	Settlement of Dispute
	If any dispute or difference of any kind whatsoever shall arise between BHEL and the Supplier/Vendor, arising out of the contract for the performance of the work whether during the progress of contract termination, abandonment or breach of the contract, it shall in the first place referred to Designated Engineer for amicable resolution by the parties. Designated Engineer (to be nominated by BHEL for settlement of disputes arising out of the contract) who

SPECIAL TERMS AND CONDITIONS FOR TECHNO-COMMERCIAL MOU

within 60 days after being requested shall give written notice of his decision to the contractor. Save as hereinafter provided, such decision in respect of every matter so referred shall forthwith be given effect to by the Supplier/Vendor who shall proceed with the work with all due diligence, whether he or BHEL desires to resolve the dispute as hereinafter provided or not. If after the Designated Engineer has given written notice of this decision to the party and no intention to pursue the dispute has been communicated to him by the affected party within 30 days from the receipt of such notice, the said decision shall become final and binding on the parties. In the event the Supplier/Vendor being dissatisfied with any such decision or if amicable settlement cannot be reached then all such disputed issues shall be resolved through conciliation in terms of the BHEL Conciliation Scheme 2018 as per Clause 22.1.

22.1 Conciliation:

Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either party to other party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure as per BHEL Conciliation Scheme 2018. 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 for conduct of conciliation proceedings" (as available in www.bhel.com)).

22.2 Arbitration:

22.2.1 Except as provided elsewhere in this Contract, in case Parties are unable to reach amicable settlement (whether by Conciliation to be conducted as provided in Clause 22.1 herein above or otherwise) 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 (hereinafter referred to as the 'Dispute'), then, either Party may, refer the disputes to Arbitral Institution "IIAC" (India International Arbitration Centre) and such dispute to be adjudicated by Sole Arbitrator appointed in accordance with the Rules of said Arbitral Institution.

22.2.2 A party willing to commence arbitration proceeding shall invoke Arbitration Clause by giving notice to the other party in terms of section 21 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the 'Notice') before referring the matter to arbitral institution. The Notice shall be addressed to the Head of the Unit, BHEL, executing the Contract and shall contain the particulars of all claims to be referred to arbitration with sufficient detail and shall also indicate the monetary amount of such claim including interest, if any.

22.2.3 After expiry of 30 days from the date of receipt of aforesaid notice, the party invoking the Arbitration shall submit that dispute to the Arbitral Institutions and that dispute shall be adjudicated in accordance with their respective Arbitration Rules. The matter shall be adjudicated by a Sole Arbitrator who shall necessarily be a Retd. Judge having considerable experience in commercial matters to be appointed/nominated by the respective institution. The cost/expenses pertaining to the said Arbitration shall also be governed in accordance with the Rules of the respective Arbitral Institution. The decision of the party invoking the Arbitration for reference of dispute to a specific Arbitral institution for adjudication of that dispute shall be final and binding on both the parties and shall not be subject to any change thereafter. The institution once selected at the time of invocation of dispute shall remain unchanged.

SPECIAL TERMS AND CONDITIONS FOR TECHNO-COMMERCIAL MOU

	22.2.4 The fee and expenses shall be borne by the parties as per the Arbitral Institutional rules. 22.2.5 The Arbitration proceedings shall be in English language and the seat and venue of Arbitration shall be New Delhi. 22.2.6 Subject to the above, the provisions of Arbitration & Conciliation Act 1996 and any amendment thereof shall be applicable. All matters relating to this Contract and arising out of invocation of Arbitration clause are subject to the exclusive jurisdiction of the Court(s) situated at New Delhi. 22.2.7 Notwithstanding any reference to the Designated Engineer or Conciliation or Arbitration herein, a. the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree. Settlement of Dispute clause cannot be invoked by the Contractor, if the Contract has been mutually closed or 'No Demand Certificate' has been furnished by the Contractor or any Settlement Agreement has been signed between the Employer and the Contractor. 22.2.8 It is agreed that Mechanism of resolution of disputes through arbitration shall be available only in the cases where the value of the dispute is less than Rs. 10 Crores. 22.2.9 In case the disputed amount (Claim, Counter claim including interest is Rs. 10 crores and above, the parties shall be within their rights to take recourse to remedies other than Arbitration, as may be available to them under the applicable laws after prior intimation to the other party. Subject to the aforesaid conditions, provisions of the Arbitration and Conciliation Act, 1996 and any statutory modifications or re-enactment thereof as amended from time to time, shall apply to the arbitration proceedings under this clause. 22.2.10 In case, multiple arbitrations are invoked (whether sub-judice or arbitral award passed) by any party to under this contract, then the cumulative value of claims (including interest claimed or awarded) in all such arbitrations shall be taken in account while arriving at the total claim in dispute for the subject contract for the purpose of clause 22.2.9. Disputes having cumulative value of less than 10 crores shall be resolved through arbitration and any additional dispute shall be adjudicated by the court of competent jurisdiction. 22.3 In case of Contract with Public Sector Enterprise (PSE) or a Government Department, the following shall be applicable: In the event of any dispute or difference relating to the interpretation and application of the provisions of commercial contract(s) between Central Public Sector Enterprises (CPSEs)/ Port Trusts inter se and also between CPSEs and Government Departments/Organizations (excluding disputes concerning Railways, Income Tax, Customs & Excise Departments), such dispute or difference shall be taken up by either party for resolution through AMRCD (Administrative Mechanism for Resolution of CPSEs Disputes) as mentioned in DPE OM No. 05/0003/2019-FTS-10937 dated 14-12-2022 as amended from time to time.
23.	BREACH OF CONTRACT, REMEDIES AND TERMINATION
	23.1 Following conditions shall be considered as breach of contract: i) Non-supply of material/ non-completion of work by the vendor within scheduled delivery/ completion period as per contract or as extended from time to time. ii) The vendor 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.

SPECIAL TERMS AND CONDITIONS FOR TECHNO-COMMERCIAL MOU

	iii) The vendor delivers equipment/ material not of the contracted quality. iv) The vendor fails to replace the defective equipment/ material/ component as per guarantee clause. v) Withdrawal from or abandonment of the work by the vendor before completion as per contract. vi) Assignment, transfer, subletting of Contract without BHEL's written permission resulting in termination of Contract or part thereof by BHEL. vii) Non-compliance to any contractual condition or any other default attributable to Contractor/ Vendor. viii) Any other reason(s) attributable to Vendor towards failure of performance of contract. In case of breach of contract, BHEL shall have the right to terminate the Purchase Order/ Contract either in whole or in part thereof without any compensation to the Supplier/Vendor. ix) Any of the declarations furnished by the contractor at the time of bidding and/ or entering into the contract for supply are found untruthful and such declarations were of a nature that could have resulted in non-award of contract to the contractor or could expose BHEL and/ or Owner to adverse consequences, financial or otherwise. x) Supplier/Vendor is convicted of any offence involving corrupt business practices, antinational activities or any such offence that compromises the business ethics of BHEL, in violation of the Integrity Pact entered into with BHEL has the potential to harm the overall business of BHEL/ Owner. Note: Once BHEL considers that a breach of contract has occurred on the part of Supplier/Vendor, BHEL shall notify the Supplier/Vendor by way of notice in this regard. Contractor shall be given an opportunity to rectify the reasons causing the breach of contract within a period of 14 days. In case the contractor fails to remedy the breach, as mentioned in the notice, to the satisfaction of BHEL, BHEL shall have the right to take recourse to any of the remedial actions available to it under the relevant provisions of contract. 23.2 Remedies for breach of contract: a) Wherein the period as stipulated in the notice issued under clause 22.1 has expired and Supplier/Vendor has failed to remedy the breach, BHEL will have the right to terminate the contract on the ground of "Breach of Contract" without any further notice to contractor. b) Upon termination of contract, BHEL shall be entitled to recover an amount equivalent to 10% of the Contract Value for the damages on account of breach of contract committed by the Supplier/Vendor. This amount shall be recovered by way of encashing the security instruments like performance bank guarantee etc available with BHEL against the said contract. In case the value of the security instruments available is less than 10% of the contract value, the balance amount shall be recovered from other financial remedies (i.e.
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SPECIAL TERMS AND CONDITIONS FOR TECHNO-COMMERCIAL MOU

	available bills of the Supplier/Vendor, retention amount, from the money due to the Supplier/Vendor etc. with BHEL) or the other legal remedies shall be pursued. c) wherever the value of security instruments like performance bank guarantee available with BHEL against the said contract is 10% of the contract value or more, such security instruments to the extent of 10% contract value will be encashed. In case no security instruments are available or the value of the security instruments available is less than 10% of the contract value, the 10% of the contract value or the balance amount, as the case may be, will be recovered in all or any of the following manners: d) In case the amount recovered is not sufficient to fulfil the amount recoverable then; a demand notice to deposit the balance amount within 30 days shall be issued to Supplier/Vendor. e) If Supplier/Vendor fails to deposit the balance amount within the period as prescribed in demand notice, following action shall be taken for recovery of the balance amount: i) from dues available in the form of Bills payable to defaulted Supplier/Vendor against the same contract. ii) If it is not possible to recover the dues available from the same contract or dues are insufficient to meet the recoverable amount, balance amount shall be recovered from any money(s) payable to Supplier/Vendor under any contract with other Units of BHEL including recovery from security deposits or any other deposit available in the form of security instruments of any kind against Security deposit or EMD. f) In-case recoveries are not possible with any of the above available options, Legal action shall be initiated for recovery against defaulted supplier/Vendor. g) It is an agreed term of contract that this amount shall be a genuine pre-estimate of damages that BHEL would incur in completion of balance contractual obligation of the contract through any other agency and BHEL will not be required to furnish any other evidence to the Supplier/Vendor for the purpose of estimation of damages. h) In addition to the above, imposition of liquidated damages, debarment, termination, de-scoping, short-closure, etc., shall be applied as per provisions of the contract. Note: (1) The defaulting Supplier/Vendor shall not be eligible for participation in any of the future enquiries floated by BHEL to complete the balance work. The defaulting contractor shall mean and include: (a) In case defaulted Supplier/Vendor is the Sole Proprietorship Firm, any Sole Proprietorship Firm owned by same Sole Proprietor. (b) In case defaulted Supplier/Vendor is The Partnership Firm, any firm comprising of same partners/ some of the same partners; or sole proprietorship firm owned by any partner(s) as a sole proprietor.
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SPECIAL TERMS AND CONDITIONS FOR TECHNO-COMMERCIAL MOU

	<u>LD against delay in executed supply in case of Termination of Contract:</u> LD against delay in executed supply shall be calculated in line with LD clause no. 14.0, for the delay attributable to Supplier/Vendor. For limiting the maximum value of LD, contract value shall be taken as Executed Value of supply till termination of contract. Method for calculation of “LD against delay in executed supply in case of termination of contract” is given below. a) 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 b) Let the value of executed work/ supply till the time of termination of contract = X c) 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 d) Delay in executed work/ supply attributable to contractor/ supplier i.e. $T2 = [1-(X/Y)] \times T1$ e) LD shall be calculated in line with LD clause of the Contract for the delay attributable to supplier taking “X” as Contract Value and “T2” as delay attributable to contractor/ supplier. Note: In case portion of service/ supply is withdrawn, no LD shall be applicable for portion of service/ supply withdrawn.												
24.	MICRO & SMALL ENTERPRISES (MSE) Any bidder falling under MSE category shall submit Udyam Registration certificate along with their techno-commercial offer. <table><tr><td>Type under MSE</td><td>SC/ST owned</td><td>Women owned</td><td>Others (excluding SC/ST & Women Owned)</td></tr><tr><td>Micro</td><td></td><td></td><td></td></tr><tr><td>Small</td><td></td><td></td><td></td></tr></table> Note: a) If the bidder does not furnish the Udyam Registration certificate for MSE category, offer shall be processed construing that the bidder is not falling under MSE category. b) Documents submitted by the bidder shall be verified by BHEL for rendering the applicable benefits. c) MSE suppliers can avail the intended benefits in respect of the procurements related to the Goods and Services only (Definition of Goods and Services as enumerated by Govt. of India vide Office Memorandum F. No. 21(8)/2011-MA dtd. 09/11/2016 office of AS & DC, MSME) only if they submit Udyam Registration certificate along with the offer. d) Bidder to select purchase preference in GeM Portal to avail MSE purchase preference for this enquiry. No purchase preference shall be applicable for this enquiry if MSE purchase preference is not selected by the bidder in GeM Portal.	Type under MSE	SC/ST owned	Women owned	Others (excluding SC/ST & Women Owned)	Micro				Small			
Type under MSE	SC/ST owned	Women owned	Others (excluding SC/ST & Women Owned)										
Micro													
Small													
25.	REVERSE AUCTION Not applicable												

SPECIAL TERMS AND CONDITIONS FOR TECHNO-COMMERCIAL MOU

26.	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 Monitors (IEMs) on the present panel have been appointed by BHEL with the approval of CVC to oversee implementation of IP in BHEL. <table><tr><td>Sl.</td><td>IEM</td><td>Email</td></tr><tr><td>1</td><td>Dr. Sarat Kumar Acharya, Ex-CMD, NLC</td><td>iem1@bhel.in</td></tr><tr><td>2</td><td>Shri R. Mukundan, IRPS (Retd.)</td><td>iem2@bhel.in</td></tr><tr><td>3</td><td>Shri Madan Lal Meena, IAS (Retd.)</td><td>iem3@bhel.in</td></tr></table> (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. (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. Note: No routine correspondence shall be addressed to the IEM (phone/ post/ email) regarding the clarifications, time extensions or any other administrative queries, etc on the tender issued. All such clarification/ issues shall be addressed directly to the tender issuing (procurement) department's officials whose contact details are provided below: Details of contact person(s): <table><tr><td>(1) Name: Mr. Deep Shekhar Dewangan Deptt: TBMM Address: BHEL Noida Phone: 0120 2218832 Email: dsdewangan@bhel.in</td><td>(2) Name: Mr. Nandlal Verma Deptt: TBMM Address: BHEL Noida Phone: 0120 2218836 Email: nverma@bhel.in</td></tr></table>	Sl.	IEM	Email	1	Dr. Sarat Kumar Acharya, Ex-CMD, NLC	iem1@bhel.in	2	Shri R. Mukundan, IRPS (Retd.)	iem2@bhel.in	3	Shri Madan Lal Meena, IAS (Retd.)	iem3@bhel.in	(1) Name: Mr. Deep Shekhar Dewangan Deptt: TBMM Address: BHEL Noida Phone: 0120 2218832 Email: dsdewangan@bhel.in	(2) Name: Mr. Nandlal Verma Deptt: TBMM Address: BHEL Noida Phone: 0120 2218836 Email: nverma@bhel.in
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27.	VARIATION OF CONTRACT VALUE / QUANTITY VARIATION BHEL shall have the right to variation in quantities of items within -30% to +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"														

SPECIAL TERMS AND CONDITIONS FOR TECHNO-COMMERCIAL MOU

	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.
28.	GeM Seller ID
	GeM seller ID is mandatory for the bidders and must be mentioned in their offer. In case at the time of submission of offer GeM seller ID is not available with bidder, then successful tenderer should ensure to have GeM Seller ID prior to award of contract. Department of Expenditure (DOE) OM no. 6/9/2020-PPD dated 24.08.2020 may be referred in this regard.
29.	MODE OF PAYMENT
	Payment shall be made in the following modes: • For all vendors: Directly to the Supplier / Contractor by BHEL through NEFT / RTGS • For MSME vendors, in addition to above payment mode, the payment may be done through TReDS platform- (1) RXIL (2) M1 xchange and (3) Invoicemart TBG is registered with TReDS platform- (1) RXIL (2) M1 xchange and (3) Invoicemart. MSME bidders are requested to get registered with TReDS platform to avail the facility as per Gol guidelines.
30.	MAKE IN INDIA (PPP-MII)
	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. “Bidder to specify the percentage of local content as per the format of self-declaration for local content” as per Annexure-V.” “This tender is not a global tender and only Class-I 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.” The minimum local content to qualify as a Class-I local supplier is 60%. Procurement under this bid is reserved for purchase from Class-I local supplier as defined in public procurement (Preference to Make in India), Order 2017 as amended from time to time and its subsequent Orders/Notifications issued by concerned Nodal Ministry for specific Goods/Products. However, eligible micro and small enterprises will be allowed to participate. In case the bid value is more than Rs.10 Crore, the declaration relating to percentage of local content shall be certified by the statutory auditor or cost auditor, if the OEM is a company and by a practicing cost accountant or a chartered accountant for OEMs other than companies as per the Public Procurement (preference to Make-in -India) order 2017 dated 04.06.2020. Purchase preference to Micro and Small Enterprises clause will get precedence over this clause.
31.	COMPLIANCE TO GOI ORDER FOR RESTRICTIONS UNDER RULE 144 (XI) OF GENERAL FINANCIAL RULES (GFRS), 2017

SPECIAL TERMS AND CONDITIONS FOR TECHNO-COMMERCIAL MOU

	- Any bidder from a country which shares a land border with India will be eligible to bid in any procurement whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority. Further, any bidder (including bidder from India) having specified Transfer of Technology (ToT) arrangement with an entity from a country which shares a land border with India, shall also require to be registered with the same competent authority. "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 falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process. "Bidder (or entity) 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 entities 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. - The beneficial owner for the purpose of (iii) above will be as under: - 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- "Controlling ownership interest" means ownership of or entitlement to more than twenty-five per cent. of shares or capital or profits of the company; "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 shareholders agreements or voting agreements; - 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; - 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
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SPECIAL TERMS AND CONDITIONS FOR TECHNO-COMMERCIAL MOU

	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. • An Agent is a person employed to do any act for another, or to represent another in dealings with third person. 1. 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 2. The registration shall be valid at the time of submission of bid and at the time of acceptance of bid. If the bidder was validly registered at the time of acceptance/ placement of order, registration shall not be a relevant consideration during contract execution 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/).
32.	COMPLIANCE TO ORDER NO. 25-111612018-PG, DATED 02.07.2020 OF MINISTRY OF POWER, GOI:
	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, defense installations and manufacturing establishments, logistics services but also the entire economy and the day-today 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: -

SPECIAL TERMS AND CONDITIONS FOR TECHNO-COMMERCIAL MOU

	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 testing's 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.
33.	PREVENTION FOR CARTEL FORMATION
	The Bidder declares that they will not enter into any illegal or undisclosed agreement or understanding, whether formal or informal with other Bidder(s). This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process. In case, the Bidder is found having indulged in above activities, suitable action shall be taken by BHEL as per extant policies/ guidelines
34.	Force Majeure
	34.1 "Force Majeure" shall mean circumstance which is: a) beyond control of either of the parties to contract, b) either of the parties could not reasonably have provided against the event before entering into the contract, c) having arisen, either of the parties could not reasonably have avoided or overcome, and d) is not substantially attributable to either of the parties And Prevents the performance of the contract, Such circumstances include but shall not be limited to: • War, hostilities, invasion, act of foreign enemies. • Rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war. • Riot, commotion or disorder by persons other than the contractor's personnel and other employees of the contractor and sub-contractors. • Strike or lockout not solely involving the contractor's personnel and other employees of the contractor and sub-contractors. • Encountering munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to the contractor's use of such munitions, explosives, radiation or radio- activity. • Natural catastrophes such as earthquake, tsunami, volcanic activity, hurricane or typhoon, flood, fire, cyclones etc. • Epidemic, pandemic etc.

SPECIAL TERMS AND CONDITIONS FOR TECHNO-COMMERCIAL MOU

	34.2 The following events are explicitly excluded from Force Majeure and are solely the responsibilities of the non-performing party: any strike, work-to-rule action, go-slow or similar labour difficulty late delivery of equipment or material (unless caused by Force Majeure event) and economic hardship. 34.3 If either party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within 15 (fifteen) days after the occurrence of such event. 34.4 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered or delayed. The Time for Completion shall be extended by a period of time equal to period of delay caused due to such Force Majeure event. 34.5 Delay or non-performance by either party hereto caused by the occurrence of any event of Force Majeure shall not (i) Constitute a default or breach of the Contract. (ii) Give rise to any claim for damages or additional cost expense occasioned thereby, if and to the extent that such delay or non-performance is caused by the occurrence of an event of Force Majeure. 34.6 BHEL at its discretion may consider short closure of contract after 1 year of imposition of Force Majeure in line with extant guidelines. In any case, Supplier/Vendor cannot consider deemed short-closure after 1 year of imposition of Force Majeure.
35	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.
36.	Suspension of Business dealings with Suppliers
	BHEL reserves the right to take action against Contractors who either fail to perform or Tenderers/Contractor who indulge in malpractices, by suspending business dealings with them in line with BHEL guidelines issued from time to time. The offers of the bidders who are under suspension as also the offers of the bidders, who engage the services of the banned firms / principal / agents, shall be rejected. The list of banned firms is available on BHEL web site www.bhel.com. If any bidder / supplier / contractor during pre-tendering / tendering / post tendering / award / execution / post-execution stage indulges in any act, including but not limited to, mal-practices, cheating, bribery, fraud or and other misconduct or formation of cartel so as to influence the bidding process or influence the price or tampers the tendering process or acts or omits in any

SPECIAL TERMS AND CONDITIONS FOR TECHNO-COMMERCIAL MOU

	manner which tantamount to an offence punishable under any provision of the Indian Penal Code, 1860 or any other law in force in India, or does anything which is actionable under the Guidelines for Suspension of Business dealings, action may be taken against such bidder / supplier / contractor as per extant guidelines of the company available on www.bhel.com and / or under applicable legal provisions. Guidelines for suspension of business dealings is available in the webpage: http://www.bhel.com/vender_registration/vender.php
37	Confidentiality
	The Vendor shall maintain the confidentiality of all information shared under this MoU and use such information solely for the purposes of this agreement. The Vendor shall not disclose any confidential information to any third party without the prior written consent of BHEL. This obligation shall remain in effect throughout the term of the MoU. Any breach of this confidentiality clause by the Vendor shall be considered a material breach and may result in immediate termination of the MoU.
38	Limitation of liability
	Notwithstanding anything to the contrary in this Contract or LOA or Work Order or any other mutually agreed document between the parties, the maximum liability, for damages, of the contractor, its servants or agents, shall under no circumstances exceed an amount equal to the Price of the Contract or the Work Order. Neither party shall be liable to the other for any indirect or consequential loss or damage, including but not limited to loss of use, loss of profits, or loss of contracts, or special, punitive, exemplary losses whatsoever, arising out of or in connection with this contract. This shall not be applicable on the recoveries made by Customer from BHEL on account of Contractor, any other type of recoveries for workmanship, material, T&P etc. due from the contractor.
39	Consequential Loss
	Neither party shall be liable to the other for any indirect or consequential loss or damage, including but not limited to loss of use, loss of profits, or loss of contracts, or special, punitive, exemplary losses whatsoever arising out of or in connection with this contract.
40	Additional Loading Criteria
	If bidder takes deviation against NIT delivery schedule, the quoted price of corresponding project / package of the bidder shall be loaded @ 0.5% of quoted price (i.e., ex-works + F&I + Total Service charges, excluding GST) per week to the extent to which delivery schedule is not agreed to by the bidder. However, maximum permissible deviation in delivery schedule shall be 10 weeks from the delivery schedule mentioned in the NIT. In case, the delivery schedule quoted beyond 10 weeks from the NIT delivery schedule, then BHEL reserves the right not to consider the offer of such vendor(s). Note- Delivery period/Schedule shall be as per individual tender enquiry.
41	Validity of TC-MOU

SPECIAL TERMS AND CONDITIONS FOR TECHNO-COMMERCIAL MOU

	The Memorandum of Understanding (MoU) shall remain in force for an initial period of two (2) years. It may be extended thereafter on terms and conditions mutually agreed upon by the parties. BHEL reserves the right to terminate or short-close the TC-MoU prior to the expiry of its validity period at its discretion. This MoU shall come into effect from the date of execution by both parties.
42	Pre-Bid / Pre-Award Tie-ups
	BHEL, as purchaser, will issue individual tender enquiries to bidders with whom TC-MoU has been finalized. An Pre-Bid/ Pre-award tie-ups (as per BHEL's format, enclosed as Annexure-F) shall be signed within the offer validity with the pre-selected OEMs (techno-commercially Qualified, Lowest evaluated bidder, subject to establishment of Price Reasonability by BHEL) for the relevant scope for the mentioned package/ scope. This MOU shall, inter-alia, bind both BHEL and the pre-selected OEMs for associating and maintaining strict confidentiality by the pre-selected OEMs of the prices, terms and conditions. This Pre-Bid/ Pre-award tie-ups shall be the binding on the bidder and is not to be changed thereafter and shall be valid for 180 days from the date of opening of price bid and can be extended with mutual consent. The Pre-Bid/ Pre-award tie-ups Agreement shall be converted into definite contract agreement between BHEL & Bidder after award of job by POWERGRID. Bid Bond: Within 30 days of signing the Pre-Bid/ Pre-award tie-ups, 1% of the value of Pre-Bid/ Pre-award tie-ups shall be taken from the supplier as bid bond in the form of bank guarantee or security deposit etc, in order to ensure the supplier's continued commitment during the validity period of the Pre-Bid/ Pre-award tie-ups. BHEL and supplier should have an agreement for the extent of price reduction during RA/negotiation with end customer (if required). In the event of price reduction during negotiation by BHEL with the customer, the corresponding reduction will be passed on to the supplier as per above referred agreement.
43	Post-Award Tenders
	BHEL, as purchaser, will issue individual tender enquiries to bidders with whom TC-MoU has been finalized. The purchase order(s) will be placed to techno-commercially Qualified, Lowest evaluated bidder which is subjected to establishment of Price Reasonability by BHEL and shall be valid for two years from date of PO.

SPECIAL TERMS AND CONDITIONS FOR TECHNO-COMMERCIAL MOU**Enclosures:**

Sl. No.	
1.1	Special terms and conditions
1.2	General Terms and conditions
2.	Technical Specifications
3.	Price Bid format- <i>Price bid not to be submitted with TC-MOU offer.</i>
4.	Annexure-I -Technical Pre-Qualifying requirements
5.	Annexure-II- Activity Schedules – <i>Shall be as per Individual Tender enquiry</i>
6.	Annexure-III Check List-For Bill
7.	Annexure-IV- Deleted.
8.	Annexure-V- Self-Certification for Local Content
9.	Annexure-VI- Restrictions under Rule 144 (xi) of General Financial Rules (GFRs), 2017
10.	Annexure-VII-Bidders certification regarding compliance to Rule 144 (xi) of General Financial Rules (GFRs), 2017
11.	Annexure-VIII-Bidders certification regarding compliance to Rule 144 (xi) of General Financial Rules (GFRs), 2017
12.	Annexure-IX-Order No. 25-111612018-PG, Dated 02.07.2020-MOP
13.	Annexure-X-Bidder certification regarding compliance to MOP circular
14.	Annexure-XI-Implementation of Integrity Pact IP in BHEL
15.	Annexure-XII-Format for vendor approval
16.	Annexure-XIII-Format of Security cum Performance BG
17.	Annexure-XIV-List of Banks for the Submission of Security cum Performance Bank Guarantee
18.	Annexure-XV-Contact details of bidder
19.	Annexure-XVI-Sch of Technical Dev
20.	Annexure-XVII-Sch of Commercial Dev
21.	Annexure-XVIII- RA Guidelines- Not applicable
22.	PPP-MII-Order
23.	MRC-Format
24.	Inspection call format