



BHARAT HEPAVY ELECTRICALS LIMITED

(A Govt of India Undertaking)

High Pressure Boiler Plant, Tiruchirappalli – 620 014, Tamil Nadu
Ph. No. 0431-2578187, 1519, e-mail: umashankarm@bhel.in, website:
www.bhel.com

WORKS CONTRACTS MANAGEMENT DEPT.

NOTICE INVITING e-TENDER (Through GeM Portal)

Bidders to Note: This is a Single Tender to M/s IR Technology Services (P) Ltd. Hence other bidders need not to quote for this tender and if quoted their offer will be summarily rejected.

To,

M/s IR Technology Services (P) Ltd
208, Swiss Complex
33, Racecourse Road
Bangalore - 560001

Please submit your competitive bid for **ANNUAL MAINTANANCE CONTRACT FOR 6 NOS. OF OLYMPUS PORTABLE METAL ANALYZERS FOR TWO YEARS** as per the tender terms and conditions given in the tender document through GeM portal.

1	Location of work	BHEL Trichy.
2	Period of contract	Two (02) Years.
3	Instruments' Details	As per BOQ in tender document
4	CRITERIA FOR AWARD OF WORK	Single Tender To, M/s IR Technology Services (P) Ltd 208, Swiss Complex 33, Racecourse Road Bangalore - 560001 (Since it is single tender, M/s IR Technology Services (P) Ltd, offer will only be accepted for further processing, Others offer will be summarily rejected)
5	Documents to be submitted without fail for acceptance of bid.	1. This Tender Document all pages -with seal & sign in all pages or digital sign in first page
6	Total EMD & SD amount	Waived off
7	Price Bid	Vendor to Quote the " Lump Sum value " with GST *Quoted Lump Sum Value should be = Total Value x 1.18 (GST 18%)
8	For Obtaining MSE benefits in Payment terms and allocation of works / contract	MSE (Micro and Small Enterprises only) By submitting only Udyam Registration certificate or Medium Enterprises, graduated from its original category (Micro/Small) within the period of 3 years from the date of graduation. Important Note: Vendor has to select MSE purchase preference as "YES/applicable" while submitting the offer in GeM Portal to avail the MSE benefits along with submission of above mentioned documents.

Date :
Place:

Signature of the Bidder with seal
(Authorized Signatory)



9	Contact details for queries related to tender	Anjana Pachori, Dy. Manager/ WCM 0431 257 8187; e-mail: apachori@bhel.in M.Umashankar, Engineer/ WCM; 0431 257 1519; e-mail: umashankarm@bhel.in
10	Working Area Contact details	R Abhilash / Dy. Manager / Quality Control e-mail : abhilashr@bhel.in/ Ph: 0431 257 6746
11	Last date of receipt of filled-in Tender / Offer	02.00 P.M. on 06.06.2024 Online bid submission through GeM Portal https://gem.gov.in
12	Date & Time of opening of techno-commercial bid & Price Bid (Single Packet Bid System in GeM)	02.30 P.M. on 06.06.2024 Online bid opening through GeM Portal https://gem.gov.in Only the Bid of M/s IR Technology Services (P) Ltd will be opened by GeM. Both Techno Commercial bid and Price bid will be opened at the same time in GeM for evaluation.
Any change in applicable rates of Tax or any other statutory levies (Direct / Indirect) or any new introduction of any levy by means of statute and its corresponding liability for the deliveries <u>beyond the agreed delivery date</u> for reasons not attributable to BHEL will be to vendors account. BHEL will not reimburse the same and any subsequent claim in this respect will be summarily rejected		

The tender documents comprise the following: -

- Annexure-T1 : Detailed Scope of Work & Technical Specifications
- Annexure-T2 : Special Terms & conditions of the Contract
- Annexure-T3 : Terms & conditions for submitting the offers
- Annexure-T4 : General Terms & Conditions of the Contract
- Annexure-P1 : Price bid - Work / Rate Schedules

Tender can be cancelled at any stage due to unavoidable circumstances. Please note that this is only a request for an Offer and not a Contract.

Dy. Manger / WCM
(Anjana Pachori)

Date :
Place:

Signature of the Bidder with seal
(Authorized Signatory)

ANNEXURE-T1

DETAILED SCOPE OF WORK & TECHNICAL SPECIFICATIONS

1. BILL OF QUANTITY (BOQ)

Item SL.	Scope of Work	UOM	Qty
10	AMC for OLYMPUS portable Metal Analyzers – 6 Nos.	No. of visits	8

2. DETAILED SCOPE OF WORK

- 2.1 Four visits in a year (once in a three-month period) for service.
- 2.2 Total no of machines: Olympus make:6 Nos. (Model No: Vanta C series)
- 2.3 Breakdown service visit within 48 hours.
- 2.4 Contract period is for two years from the date of LOI.
- 2.5 One calibration validation in the said period of Service Contract on yearly basis per unit. Calibration certificate to be issued, machine to be maintained in calibration validity through the contract period.
- 2.6 Re- calibration to be done when X-ray tube, Detector & Processor are replaced.
- 2.7 Periodic calibration verification on a quarterly basis. (By CRM sample checking during AMC visit).
- 2.8 Complete check-up of inner parts and performance checking of the instrument.
- 2.9 Addition of New grades/ Libraries as required.
- 2.10 Updating recent or new software in all instruments.
- 2.11 Loading the Software in the identified PCs in BHEL.
- 2.12 Adjustment of Tube current if required.
- 2.13 Replacing Kapton / polypropylene window in all visits.
- 2.14 Training to the users for operational handling and testing once in six months.
- 2.15 Training certificate to the operators.
- 2.16 Onsite/mail/telephonic support for immediate remedies.
- 2.17 If any spares and consumables are to be replaced at BHEL cost and Fixing of same is in contractor's scope.
- 2.18 During an AMC visit, if a machine is found to be defective and requires spares, number of visits needed to rectify the fault (and delay due to non-availability of spares, etc.) should not be chargeable on BHEL as extra visits.

Date :
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(Authorized Signatory)



- 2.19 All defective spares are to be returned back to BHEL with an endorsement by the BHEL Security Department.
- 2.20 AMC charges will be firm throughout the contract period and no escalation of charges and any other charges other than statutory taxes will be entertained.
- 2.21 The invoices shall be submitted after completion of each AMC visit.
- 2.22 Payment will be made for the invoices as per BHEL norms.

3. TIME/ DELIVERY SCHEDULE FOR CONTRACT.

- 3.1 Payment terms: Payment will be made only after completion of work on pro rata, based on number of Portable analyzers serviced/ calibrated during the preventive maintenance visit after acceptance and certification of area in charge (BHEL executive).
- 3.2 AMC consists of periodic preventive maintenances which shall be done at an interval of three months over the contract period (2 years), apart from unlimited emergency breakdown visits for a year.
- 3.3 The first AMC visit shall be completed within 30 days from the date of award of Work. All subsequent preventive maintenance visits shall be completed within 3 months of the previous preventive maintenance visit.

Date :
Place:

Signature of the Bidder with seal
(Authorized Signatory)

ANNEXURE-T2

SPECIAL TERMS AND CONDITIONS OF THE CONTARCT

1. DURATION OF CONTRACT:

1.1 The duration of contract will be **Two Years** from the date of award of contract.

2. PRICE VARIATION CLAUSE

2.1 Fixed price: Prices quoted by the bidder shall be fixed and not subject to any escalation whatsoever during the period of bid validity and execution of the Purchase Order. A bid submitted with an adjustable price will be treated as non - responsive and rejected

3. LIQUIDATED DAMAGES (LD) / PENALTY:

3.1 Break down maintenance response shall be within 48 hrs as and when required.

3.2 If the Contractor fails to deliver any or all of the Services within the original/re-fixed delivery period(s) specified in the contract, the BHEL 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 10% of the contract value of delayed quantity without any controversy/dispute of any sort whatsoever.

4. TERMS OF PAYMENT:

4.1 No advance payment shall be paid to the agency for service during the stage of services.

4.2 Payment will be made after Completion of Visit & Submission of invoice on pro data basis within reasonable time, as given below, after the certification of bills by the end user / executing agency.

SL	Type of Firm	Payment Terms
1	Micro & Small Enterprises (MSEs)	100% payment - 45th day from CRAC date
2	Medium Enterprises	100% payment - 60th day from CRAC date
3	Non MSME	100% payment - 90th day from CRAC date

Note : CRAC : “Consignee Receipt and Acceptance Certificate” in GeM

4.3 All payments to be made to the contractor, shall be through NEFT (National Electronic Fund Transfer) / RTGS (Real Time Gross Settlement).

4.4 The agency shall raise the bill for claiming service amount and shall be routed through area in-charge/BHEL, the area where service was rendered. The payment would be effected only after recommendation from area in-charge for satisfactory completion of such service.

4.5 MSE Bidders has to provide UDYAM Registration Certificate while submitting offer. If UDYAM Registration Certificate not submitted substantiating the MSE Status, payment will be processed on Non MSME basis

5. TAXES AND DUTIES

5.1 The rates shall be quoted inclusive of all applicable Taxes & Duties. No extra claim whatsoever shall arise on any account over and above the accepted rates during the currency of Contract will be entertained.

5.2 After award of contract, if any statutory changes in the Act / Rules / Regulations / Guidelines etc., which will have major impact on the prices, the same will be dealt separately based on the approval of competent authority of BHEL.

Date :
Place:

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6. INCOME TAX:

- 6.1 Income Shall be deducted at the applicable rate in respect of the service contract including supply of labour for any work as follows:
- 6.2 Self-attested copy of PAN card shall be submitted to Account Dept. along with original for verification.
- 6.3 TDS Certificate will be issued to vendors for each quarter ending as on 30th June, 30th Sept, 31st Dec and 31st Mar during the following quarter.

7. GST:

- 7.1 Wherever GST is liable to be paid by the contractor, the contractor shall register himself under the GST Rules and a Self-attested copy of Certificate of Registration shall be furnished to Account Dept.
- 7.2 After registration, the payment of GST shall be effected by the contractor to the Central Government monthly/quarterly based on the invoices raised before the due date of payment. The GST Return also shall be submitted to the Government before the due date.
- 7.3 The invoice/bill in original duly signed by the contractor claiming the payment for GST shall clearly indicate the following:
 - 7.3.1.1 Continuous Serial no. & date of the bill
 - 7.3.1.2 Cost of the service
 - 7.3.1.3 Separately showing the GST amount calculated at the applicable rate
 - 7.3.1.4 PAN based GST Registration No.
- 7.4 The GST claimed in the bill will be paid to the contractor based on the proof of payment of GST to the Government for the previous month/quarter as the case may be.
- 7.5 GST shall be shown extra in the bid. Bharat Heavy Electricals Limited, Trichy will not entertain any claim what so ever in this respect after opening the tenders. Also GST Registration number has to be provided as applicable.
- 7.6 All payments from BHEL in view of the execution of the contract are liable for Works Contract Tax, Income Tax (TDS), GST, PF & Group Insurance and all other statutory provisions as applicable. Hence, bidder shall confirm that they have suitable mechanism for effective compliance to the same.

8. AVAILING INPUT TAX CREDIT (ITC):

- 8.1 As per GST in line with new GST Return System from 1st Oct 2019.

9. GOODS & SERVICE TAX (GST) REGISTRATION & COMPLIANCE

- 9.1 Response to Tenders for Indigenous supplier will be entertained only if the vendor has a valid GST registration Number (GSTIN) which should be clearly mentioned in the offer. If the dealer is exempted from GST registration, a declaration with due supporting documents need to be furnished for considering the offer. Dealers under composition scheme should declare that he is a composition dealer supported by the screen shot taken from GSTN portal.
- 9.2 The dealer has to submit necessary documents if there is any change in status under GST.
- 9.3 Supplier shall mention their GSTIN in all their invoices (incl. credit Notes, Debit Notes) and invoices shall be in the format as specified/prescribed under GST laws. Invoices shall necessarily contain Invoice number (in case of multiple numbering system is being followed for billing like SAP invoice no, commercial invoice no etc., then the Invoice No. which is

Date :
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- linked/uploaded in GSTN network shall be clearly indicated), Billed to party (with GSTIN) & Shipped to party details, item description as per PO, Quantity, Rate, Value, applicable taxes with nomenclature (like IGST, SGST, CGST & UTGST) separately, HSN/ SAC Code, Place of Supply etc. Wherever E-Invoice is applicable, the tax invoice/ CN / DN submitted by the vendor must contain the QR code generated in E-Invoice Portal & IRN.
- 9.4 All invoices shall bear the HSN Code for each item separately (Harmonized System of Nomenclature)/ SAC code (Services Accounting Code)
- 9.5 Invoices will be processed only upon completion of statutory requirement and further subject to following:
- 9.5.1 Vendor declaring such invoice in their GSTR-1 Return/ IFF
- 9.5.2 Receipt of Goods or Services and Tax invoice by BHEL
- 9.6 As the continuous uploading of tax invoices in GSTN portal (in GSTR-1/ IFF) is available for all (i.e. both Small & Large) tax payers, all invoices raised on BHEL may be uploaded immediately in GST portal on dispatch of material /rendering of services. The supplier shall ensure availability of Invoice in GSTN portal before submission of invoice to BHEL. Invoices will be admitted by BHEL only if the invoices are available in GSTN portal (in BHEL's GSTR-2A/ GSTR-2B).
- 9.7 In case of discrepancy in the data uploaded by the supplier in the GSTN portal or in case of any shortages or rejection in the supply, then BHEL will not be able to avail the tax credit and will notify the supplier of the same. Supplier has to rectify the data discrepancy in the GSTN portal or issue credit note or debit note (details also to be uploaded in GSTN portal) for the shortages or rejections in the supplies or additional claims, within the calendar month informed by BHEL.
- 9.8 In cases where invoice details have been uploaded by the vendor but failed to remit the GST amount to GST Department (Form PMT-08 or Form GST RET-01 to be submitted) within stipulated time, then GST paid on the invoices pertaining to the month for which GST return not filed by the vendor will be recovered from the vendor along with the applicable interest (currently 24% p.a) and all subsequent bills of the vendor will not be processed till filing of the GST return by the vendor
- 9.9 In case GST credit is denied to BHEL due to non-receipt or delayed receipt of goods and/ or tax invoice or expiry of timeline prescribed in GST law for availing such ITC, or any other reasons not attributable to BHEL, GST amount claimed in the invoice shall be disallowed to the vendor.
- 9.10 Where any GST liability arising on BHEL under Reverse Charge (RCM), the vendor has to submit the invoices to BHEL well within the timeline prescribed in GST Law, to enable BHEL to discharge the GST liability. If there is a delay in submission of invoice by the vendor resulting in delayed payment of GST by BHEL along with Interest, then such Interest payable or paid shall be recovered from the vendor.
- 9.11 GST TDS will be deducted as per Section 51 of CGST Act 2017 and in line with Notification 50/2018 –Central Tax dated 13.09.2018. GST TDS certificate will be generated in GSTN portal subsequent to vendor accepting the TDS deduction in the GSTN portal & the vendor can directly download the Certificate from the GSTN Portal.

Date :
Place:

Signature of the Bidder with seal
(Authorized Signatory)

ANNEXURE-T3

TERMS & CONDITIONS FOR SUBMITTING THE OFFERS

1. SIGNING THE TENDER DOCUMENTS

- 1.1 The tender & all other connected documents shall be digitally / physically signed by the Authorized Signatory Only. Authorized signatory shall be the person holding 'Power of Attorney' on behalf of the firm/company/Bidder-concerned authorized/empowered, by MD or Board of Directors or authorized person, to act on behalf for the specific purpose of quoting tender and all procedures connected with, till finalization and execution of the Contract.

2. QUOTING OPTIONS

2.1 Quoting

- 2.1.1 Rates should be quoted as per the Work / Rate schedule (Annexure-P1). Rates quoted in any other form will not be accepted, and will be rejected.

3. VALIDITY OF OFFERS

- 3.1 The rates quoted shall be valid for acceptance for a minimum period of 120 days from the date of Tender opening. If bidder indulge in withdrawal of Tender or increasing the rates, within this validity period, BHEL will tale suitable auction as per BHEL's the guidelines of Suspension of Business Dealings with Suppliers / Contractors.
- 3.2 After price bid opening but before placement of LOI / Order, if the bidder withdraws his offer / varies it any manner within the validity period, BHEL will initiate suitable penal action against the bidder as per the guidelines of Suspension of Business Dealings with Suppliers / Contractors.

4. SUBMISSION OF OFFERS

- 4.1 Tender only to be submitted electronically by logging to GeM portal i.e. <https://gem.gov.in>. Physical submission of Tender shall not be accepted.
- 4.2 The fill set of NIT copy shall be duly digitally / physically signed & stamped by the bidder in all the pages and uploaded in GeM Portal while submitting offer.
- 4.3 The price bids shall be uploaded in GeM Portal while submitting offer.

5. GENERAL

- 5.1 Kindly ensure that the total size of the scanned documents to be uploaded remains minimum. If required, documents may be scanned at lower resolutions say at 150 dpi. However, it shall be sole responsibility of bidder that the uploaded documents remain legible.
- 5.2 Bidder is advised not to wait till the last minutes or last few seconds w.r.t tender closing time to submit their offer to avoid complications related with internet connectivity / network problem/ power failure etc.
- 5.3 Bidder is advised take due care while quoting the technical and price bids forms in the GeM Portal. If the bidder tampers with tendering procedure affecting ordering process or misusing the technical information of the tender document or withdrawing his offer after price bid opening, will be penalized as per BHEL guidelines on suspension of business dealings with suppliers/ contractors. Abridged version of the guideline is available in www.bhel.com.

Date :
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- 5.4 It is advised that all the documents to be submitted are kept scanned or converted to PDF format in a separate folder on your computer before starting online submission.
- 5.5 The bidder has to upload the scanned copy of all the mentioned original documents during online bid-submission.

6. OTHER CONDITIONS

- 6.1 All entries in tender documents shall be clearly written in one ink or typed. All the corrections/cancellations/ insertions, if any, shall be duly attested by the Bidder.
- 6.2 Rates should be quoted as per the Price Bid. Rates quoted in any other form will not be accepted and will be rejected.
- 6.3 The tender shall fill in all the required particulars of the tender documents and also sign on each and every page of the tender documents before submitting their offer.
- 6.4 Should a Bidder find discrepancies or omissions in the tender documents or should there any doubt as to their meaning, he should at once address the authority inviting the Tender, for clarification well before the due date, so as to submit his Tender in time. (No extension of time shall be given for submission of the tender on any account)
- 6.5 Conditional offers, offers which are incomplete or otherwise considered defective with respect to tender Terms & conditions and tenders not in accordance with the Terms & Conditions herein contained and the tenders not in original shall be rejected, out rightly, at any point of time during the evaluation process.
- 6.6 If the bidder deliberately gives wrong information in his offer or creates conditions favorable for the acceptance of his offer, the BHEL WILL REJECT SUCH OFFER AT ANY STAGE and take very severe action as per BHEL procedure/ guidelines/ practices.
- 6.7 Canvassing in any form, in connection with the tender is strictly prohibited and such tender are bound to be rejected. All information furnished is taken to be authentic by the Bidder for evaluation of offers. Should any information found to be incorrect subsequently, at any point of time, the LOI / Contract shall be rejected / terminated and take very severe action as per BHEL procedure/ guidelines/ practices.
- 6.8 Should a Bidder's or a Contractor's or in the case of a firm or company of Bidder/any of its shareholder's or shareholder's relative is employed in BHEL, the authority inviting the Tenders shall be informed in writing of this fact at the time of submission of the tender, failing which the offer may be disqualified, or if such fact subsequently comes to light, the LOI / Contract may be cancelled.
- 6.9 The Tender schedule and the total Tender Terms and Conditions shall be deemed to form an integral part of the Contract to be entered into for this work.
- 6.10 BHEL Trichy may at its sole discretion amend the Bidding Documents at any time prior to the deadline for submission of bids. However, in case of such amendment, the bid submission date may be extended at the discretion of BHEL Trichy.
- 6.11 All corrigenda/addenda/amendments/time extensions/clarifications, etc. to the Tender will be hosted on GeM portal, BHEL website only (i.e. <http://www.bhel.com>) and will not be published in any other media. Bidder should regularly visit above website(s) to keep themselves updated.
- 6.12 BHEL may reject the bid or in case the contract has been awarded, then terminate the contract apart from taking any other suitable action under the contract or applicable legal provisions or BHEL guidelines including GeM GTC, without any liability for any compensation to the bidder if, BHEL discovers at any time that any statement made by the bidder in the affidavit cum undertaking is

Date :
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false, fraudulent or any document submitted by the bidder was fake and forged or If BHEL determines in the sole discretion that any statement was aimed at deliberately misleading BHEL with a view to ensure award of the subject contract to the bidder

- 6.13 Expenses incurred by bidder towards preparation of bid incidental to Tender irrespective of whether it is accepted or not, shall be borne by bidder only
- 6.14 In order to avoid unforeseen delay, it is advised that, any correspondence by bidder to BHEL shall be emailed to all the addressees instead of one individual, as mentioned in Tender. The correspondence through email wherever sought by BHEL shall be replied with all the addressees in 'cc' of the mail. Bidder shall furnish valid email id's in the Tender and regularly verify the same.
- 6.15 The Tenderer/Bidder or any of his authorized personnel or agents will be granted permission by the BHEL to enter upon its premises and lands for the purpose of site visit. However, the bidder shall undertake that he, his personnel, and agents will be responsible against all liability in respect thereof, including death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.
- 6.16 In general, Bidder shall themselves obtain all necessary information. Bidder shall be deemed to have full knowledge of the Site, whether he inspects it or not and no extra claims due to any misunderstanding or otherwise shall be allowed. The cost of visiting the Site shall be at the Bidder's own expense.
- 6.17 If Tenderer expires after the submission of his Tender or after the acceptance of his Tender the BHEL may, at their discretion, cancels such Tender. If a partner of a firm expires after submission of Tender or after the acceptance of the Tender, BHEL may cancel such Tender at their discretion unless the firm retain its character. The works executed in the own name of the Tenderer only will be considered for eligibility criteria.

Date :
Place:

Signature of the Bidder with seal
(Authorized Signatory)

ANNEXURE-T4

GENERAL TERMS AND CONDITIONS OF THE CONTRACT

1 DEFINITION: -

In these general conditions of contract, the following terms shall have the meaning hereby assigned to them, except where the context otherwise requires: -

- 1.1 The "Contract" means, the documents forming the tender and acceptance thereof, together with all the documents referred to therein including general and special conditions to contract. All these documents as applicable taken together shall be deemed to form one contract and shall be complementary to one another.
- 1.2 The "work" means, the work described in the tender documents in individual work-orders as may be issued from time to time to the contractor by the Officer-In charge within the power conferred upon him including all notified or additional items of works and obligations to be carried out as required for the performance of contract.
- 1.3 The "contractor" means, the individual Firm or Company whether incorporated or not, undertaking the work and shall include the legal personal representatives of such individuals or the persons composing the firm or Company or the successors of the firm or company and the permitted assigns of such individual or firm or Company.
- 1.4 "The Officer-In charge" means, the Officer deputed by the Head / WCM (CONTRACTS DEPARTMENT) or Head / of Executing Department, to supervise the work or part of the work.
- 1.5 "Approved" and "Directed" means, the approval or direction of Head / WCM (CONTRACTS DEPARTMENT) or Head of Executing Department, or person deputed by him for the particular purposes.
- 1.6 "BHARAT HEAVY ELECTRICALS LIMITED" (herein after referred to as BHEL) shall mean the Board of Directors, Chairman, Executive Director, General Manager or other Administrative Officer of the said Company including Head/WCM (CONTRACTS DEPARTMENT) authorized to invite tenders and enter into contract for works on behalf of the Company.
- 1.7 The "Contract sum" means, the sum accepted or the sum calculated in accordance with the prices accepted in tender and / or the contract rates as payable to the contractor for the execution of the work during the currency of the contract.
- 1.8 A "week" means, Seven Days, without regard to the number of hours worked or not worked in any day in that week.
- 1.9 A "day" means, the day of 24 hours (TWENTY-FOUR) irrespective of the number of hours worked or not worked in that day.
- 1.10 A "working day" means, any day other than that prescribed by the NEGOTIABLE INSTRUMENTS ACT as being a Holiday, and consists of the number of hours of labour as commonly recognized by good employers in the trade in the district where the work is carried out or as laid down in the BHEL regulations.

2 HEADING TO THE CONTRACT CONDITIONS: -

- 2.1 The heading to these conditions shall not affect the interpretations thereof.

Date :
Place:

Signature of the Bidder with seal
(Authorized Signatory)



3 WORK TO BE CARRIED OUT: -

- 3.1 The Contract shall, include all labour, materials, tools, plant, equipment and transport which may be required for the execution of the work. The Contractor will be deemed to have satisfied himself as to the nature of the site, local facilities of access and all matters affecting the execution of the work. No extra charges consequent on any misunderstanding in these respects or otherwise will be allowed.

4 DEVIATIONS: -

- 4.1 The contractor shall not carry out any work not covered by schedule except in pursuance of the written instructions of an executive not below the rank of Head of WCM (CONTRACTS DEPARTMENT). No such work shall be valid unless the same has been specifically confirmed and accepted by BHEL in writing and incorporated in the Contract.

5 ASSIGNMENT OR TRANSFER OF CONTRACT: -

- 5.1 The Contractor shall not without the prior written approval of the BHEL, assign or transfer the contract or any part thereof, or any share, or interest thereon to any other persons. No sum of money which may become payable under the contract shall be payable to any person, other than the contractor unless the prior written approval of the BHEL to the assignment or transfer of such money is given.

6 SUB-CONTRACT: -

- 6.1 The Contractor shall not sub-let any portion of the contract.

7 COMPLIANCE TO REGULATIONS AND BY-LAWS: -

- 7.1 The Contractor shall confirm to the provisions of any statute relating to the work and regulations and Bye-Laws of any local authority. The Contractor shall be bound to give all notices required by statute regulations or By-Laws as aforesaid and to pay all fees and taxes payable to any authority in respect thereof.

8 SECURITY DEPOSIT: -

- 8.1 BHEL shall not be responsible for any loss of securities, due to liquidation for any other reasons, what-so-ever or any depreciation in the value of the securities while in their charge or for any loss of interest there on.
- 8.2 All compensation or other sums of money payable by the Contractor to BHEL under the terms of this contract or under any other contract with BHEL may be deducted from the Security Deposit or realized by the sale of the securities or from the interest arising therefrom or from any sums which may be due or may become due to the contractor by BHEL and in the event of this Security Deposit being deducted by reason of such deductions or sale, as aforesaid, the Contractor shall within 7 days thereafter, make good in cash or in securities endorsed as aforesaid, any sum by which the Security Deposit has been reduced.

9 REFUND OF SECURITY DEPOSIT: -

- 9.1 The Security Deposit mentioned above may be refunded to the Contractor on completion of the contract provided always that the Contractor shall first have been paid the last and final bill and have rendered a "NO DEMAND CERTIFICATE".

Date :
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10 RECOVERY FROM CONTRACTOR: -

10.1 Whenever under the contract, any sum of money, shall be recoverable from or payable by the Contractor, the same may be deducted from or any sum then due or which at any time thereafter may become due to Contractor under the contract or under any other contract with BHEL or from his Security Deposit or he shall pay the claim on demand.

11 ORDERS UNDER THE CONTRACT: -

11.1 All orders, notices etc. to be given under the contract shall be in writing, type-script or printed and if sent by registered post to the address given in the tender of the Contract, shall be deemed to have been served on the date, when in the ordinary course they would have been delivered to him. The Contractor shall carry out without delay all orders given to him.

12 CONTRACTOR'S SUPERVISION: -

12.1 The Contractor shall either himself supervise the execution of the contract or shall appoint a competent agent acceptable to the Executive not below the rank of Head of Executing Department, to act in his stead.

12.2 Orders given to the Contractor's agent shall be considered to have the same force as if they have been given to the Contractor himself.

12.3 The Contractor or his accredited agent shall attend when required without making any claim for doing so, either the office of the Head/ Executing Department or the OFFICER-INCHARGE, to receive instructions.

12.4 The Executive not below the rank of Head of WCM (CONTRACTS DEPARTMENT), shall have full powers and without assigning any reason, require the Contractor to immediately cease to employ in connection with this contract, any agent, servant or employee where continued employment is, in his opinion undesirable. The Contractor shall not be allowed any compensation on this account.

13 LABOUR: -

13.1 The Contractor shall remain liable for the payment of all wages or other moneys to his work-people or employees under the payment of Wages Act 1936, Employees Liability Act. 1938, Workmen's Compensation Act 1923 or any other Act or enactment, relating thereto and rules framed, thereunder from time to time.

14 PRECAUTIONS AGAINST RISK: -

14.1 The Contractor shall be responsible for providing at his own expense for all precautions to prevent loss or damage from any and all risks and to minimize the amount of any such loss or damage and for the necessary steps to be taken for the said purpose.

15 DAMAGE & LOSS TO PRIVATE PROPERTY & INJURY TO WORKMEN: -

15.1 The Contractor shall at his own expense reinstate and make good to the satisfaction of the Executive not below the rank of Head of WCM (CONTRACTS DEPARTMENT) and pay compensation for any injury, loss or damage occurred to any property or rights whatever including property and rights of BHEL (or agents) servants or employee of BHEL, the injury loss or damage arising out of or in any way in connection with the execution or purported execution of the contract and further the contractor shall indemnify, the BHEL against all claims enforceable against BHEL (or any agent, servant or employee of BHEL) or which would be so enforceable against BHEL where BHEL is a private person, in respect of any such injury (including injury resulting in death) loss or damage to any person whomsoever or property including all claims which may arise under the Workmen's Compensation Act or otherwise.

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(Authorized Signatory)



16 LAWS GOVERNING THE CONTRACT: -

16.1 The contract shall be governed by the Indian Laws for time being in force.

17 CANCELLATION OF CONTRACT FOR CORRUPT ACTS: -

17.1 BHEL, whose decision shall be final and conclusive, shall without prejudice to any other right or remedy which shall have accrued shall accrue thereafter to BHEL cancel the contract in any of the following cases and the Contractor shall be liable to make payment to BHEL for any loss or damage resulting from any such cancellation to the same extent as provided in the case of cancellation for default.

If the Contractor shall: -

- 17.2 Offer or give or agree to give to any person in BHEL service any gift or consideration of any kind, as an inducement or reward for doing or for bearing to do or for having done or for borne to do any act, in relation to the obtaining or execution of this or any other contract for BHEL service,
OR
- 17.3 enter in to a contract with BHEL in connection with which commission has been paid or agreed to be paid by him or with his knowledge, unless the particulars of any such commission and the terms of payment thereof have previously been disclosed in writing to BHEL.
OR
- 17.4 obtain a contract with BHEL as a result of ring tendering or by non-bonafide methods of competitive tendering, without first disclosing the fact in writing to BHEL.

18 CANCELLATION OF CONTRACT FOR INSOLVENCY ASSIGNMENT OF TRANSFER OR SUB-LETTING OF CONTRACT: -

18.1 BHEL, without prejudice to any other right or remedy which shall have accrued or shall accrue thereafter to BHEL shall cancel the contract in any of the following cases:

If the Contractor,

- 18.2 being an individual or if a firm any partner thereof shall at any time be adjudged bankrupt or have a receiving order for administration of his estate, made against him or shall take any proceedings for liquidation or composition under any bankruptcy Act or assignment of his effects of composition or arrangement for the benefit of his creditors or purport to do so, or if any application made under any Bankruptcy Act for the time being in force for the sequestration of his estate or if a trust deed be granted by him on behalf of his creditors
OR
- 18.3 being a Company, shall pass a resolution or the Court shall make an order for the liquidation of its affairs, or a receiver or Manager on-behalf of the debenture holders shall be appointed or circumstances shall arise which entitle the Court or debenture holders to appoint a receiver or Manager,
- 18.4 The contractor shall not Assigns, Transfers, Sub-lets or attempts to assign, transfer or sub-let any portion of the work. No sum of money which may become payable under the contract shall be payable to any person, other than the contractor.
- 18.5 Whenever BHEL exercise the authority to cancel the contract under this conditions, BHEL may have the work done by any means at the Contractor's risks and expenses provided always that in the event of the cost of the work so done (as certified by an Executive not below the rank of Head of Executing Department or WCM (CONTRACTS DEPARTMENT) which is final and conclusive) being less than the contract cost, the advantage shall accrue to the BHEL and if the cost exceeds the money due to Contractor under the contract, the Contractor shall either pay the excess amount ordered by the Executive not below the rank of Head of Executing Department or WCM (CONTRACTS DEPARTMENT), or the same shall be recovered from the Contractor by other means.

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18.6 In case the BHEL carries-out the work under the provisions of this condition the cost to be taken into account in determining the excess cost to be charged to the Contractor under this condition shall consist of the cost of the materials, hire charges of tools and plants and/or labour provided by the BHEL with an addition of such percentage to cover superintendence and establishment charges as may be decided by the Executive not below the rank of Head of Executing Department or WCM (CONTRACTS DEPARTMENT), whose decision shall be final and conclusive.

19 CANCELLATION OF CONTRACT IN PART OR FULL FOR CONTRACATOR'S DEFAULT:

If the Contractor:

- 19.1 makes default in carrying out the work as directed and continues in that state after a reasonable notice from the Executive not below the rank of Head of WCM (CONTRACTS DEPARTMENT), or his authorized representative;
- 19.2 fails to comply with any of the Terms and Conditions of the contract or after reasonable notice in writing with orders properly issued thereunder;
- 19.3 BHEL, may without prejudice to any other right or remedy which shall have accrued or shall accrue thereafter to BHEL CANCEL the contract as whole or in part thereof or only such work order or items of work in default from the contract. Whenever BHEL exercise the authority to cancel the contract as whole or part under this condition BHEL may complete the work at the contractor's risk and cost (as certified by the Executive not below the rank of Head of WCM (CONTRACTS DEPARTMENT), which is final and conclusive) being less than the contract cost, the advantage shall accrue to the BHEL. If the cost exceeds the moneys due to the Contractor under this contract the Contractor shall either pay the excess amount ordered **by the Executive not below the rank of Head of WCM (CONTRACTS DEPARTMENT)** or the same shall be recovered from the Contractor by other means. In case the BHEL carries out the work or any part thereof under the provisions of the conditions the cost to be taken into account in determining the excess cost to be charged to the Contractor under this condition shall consist of the cost of the materials, hire charges of tools and plant and/or labour provided by the BHEL with an addition of such percentage to cover the superintendence and establishment charges as may be decided by the Executive not below the rank of Head of WCM (CONTRACTS DEPARTMENT), whose decision shall be final and conclusive.

20 TERMINATION OF CONTRACT ON DEATH OF CONTRACTOR. :-

20.1 Without prejudice to any of the rights or remedies under this contract, if the Contractor dies, or if the firm is dissolved or the company is liquidated BHEL shall have the option of terminating the contract without compensation to the Contractor.

21 SPECIAL POWER TO TERMINATION: -

21.1 If at any time after the award of contract, BHEL shall for any reason whatsoever not require whole or any part of the work to be carried out the Executive not below the rank of Head of WCM (CONTRACTS DEPARTMENT), shall give notice in writing of the fact to the Contractor who shall have no claim to any payment of compensation or otherwise howsoever on account of any profit or advantage which he might have derived from the execution of the work in full but which he did not derive in consequence of the fore-closing of the work.

22 SUBMISSION OF BILLS BY CONTRACTOR: -

22.1 The Contractor at the end of each month shall submit a bill in triplicate detailing the various items of work done during the quarter supported by the requisitions issued from time to time. The Contractor shall, once in every quarter, submit to the Executive not below the rank of Head of Executing Department details of his claims for the work done by him up to and including the previous quarter which are not covered by his contract agreement in any of the following aspects:

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- 22.2 Deviation from the items provided in the contract documents.
- 22.3 Extra items / new items of work.
- 22.4 Items in-respect of which rates have not been settled. He should in addition furnish a clear certificate to the effect that the claims submitted by him as aforesaid cover all his claims and that no further claims shall be raised by him in respect of the work done upto and including the period under report.

23 POST TECHNICAL AUDIT OF WORK AND BILLS: -

- 23.1 BHEL reserves the right to carry out the post-payment Audit and technical examination of the work and final bill including all supporting vouchers, abstracts etc., and enforce recovery of any sum becoming due as a result thereof in the manner provided in the presiding sub-paragraphs. However, no such recovery shall be enforced after three years of passing the final bill.

24 FORCE MEJEURE CLAUSE: -

- 24.1 If, at any time during the continuance of this Contract the performance in whole or in part by either party of any obligations under this Contract shall be prevented or delayed by reason of any War, Hostile acts of the public enemy Civil Commotion, Epidemics, or Acts of God (Floods, Storm/Cyclone, Hurricane, Earth Quake etc.) provided notice of happening of any such event is given by either party to other within 7 days from the date of occurrence thereof neither party shall by reason of such event be entitled to terminate this Contract nor shall either party have any claim for damages against the other in respect of such non-performance and delay in performance under the contract shall be resumed as soon as practicable after such event has come to an end or ceased to exist. If the performance in whole or part of any obligation under this Contract is prevented or delayed by reason of any such event, claims for extension of time shall be granted for periods considered reasonable by the Executive not below the rank of Head of Executing Department subject to prompt notification by the contractor.

25 SIGNING OF CONTRACT: -

- 25.1 Each contract document shall be signed by the Contractor with his usual signature. Contract by partnership of Hindu Joint Family firm, may be signed in the FIRM'S name by one of the Partners or the Karta or Manager as the case may be or by any other duly authorized representative followed by the name and designation of the persons so signing. Contracts by a Company shall be signed with the name of the Company by a person authorized in this behalf and a power of attorney or other satisfactory proof showing that the persons signing the Contract documents on behalf of the Company is duly authorized to do so, shall accompany the contract.

26 STATUTORY REQUIREMENTS:

- 26.1 All statutory requirements under Minimum Wages Act,1948, Factories Act 1948, Workmen Compensation Act 1923, Employees Provident Fund and Miscellaneous Provisions Act, 1952, Payment of Gratuity Act 1972, Employee State Insurance Act 1948, Contract Labour (R&A) Act 1970, Payment of Bonus Act 1965, Income Tax Act, GST Act and all other applicable Acts shall be complied with by the Contractor.
- 26.2 Contractor shall comply with all statutory requirements, rules, regulations, notifications in relation to employment of his employees issued from time to time by the concerned authorities.
- 26.3 Contractor shall indemnify BHEL against all claims and losses under various Labour Laws, statutes or any civil or criminal law in connection with employees deployed by him.
- 26.4 Contractor wherever applicable shall maintain proper records prescribed by the concerned statutory authorities and provide a copy of the same to BHEL.

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26.5 Contractor shall furnish proper returns to the concerned statutory authorities and provide a copy of the same to BHEL.

27 REGISTERS & RECORDS: -

27.1 The Contractor shall maintain all registers and records in the proper manner and as required by the regulations of the various authorities concerned and indemnify the Employer from the consequences due to any inaccurate or faulty documentation on the part of the Contractor.

28 REMOTE TRANSACTIONS: -

28.1 The Contractor shall agree to and comply with all such terms and conditions as BHEL may prescribe from time to time and shall confirm that all transactions effected by or through facilities for conducting remote transactions including the Internet, World Wide Web, electronic data interchange, call centers, teleservice operations (whether voice, video, data or combination thereof) or by means of electronic, computer, automated machines network or through other means of telecommunication established by BHEL shall constitute legally binding and valid transactions when done.

29 CHANGE IN CONSTITUTION OF FIRM: -

29.1 Changes in constitution of firm whenever it is made after submission of application or during currency of the contract, the existing firm has to duly inform the proposed changes to contracting department of BHEL at the appropriate time before the changes in the constitution are made. In case the absence of any such information BHEL is not responsible for the consequences arising out of the absence or suppression of information and the issue / dispute arising out of these changes and the firm is responsible for settling the issue or dispute among themselves (Partners etc.) or with the bankers or with any third party. Under the above circumstances when dispute arises and the firm does not inform the change in the constitution of the firm BHEL may reserve its rights for suspending or terminating the contract.

30 EMPLOYER'S INTERESTS

30.1 Contractor shall watch and safeguard Employer's interests during the performance of the work. The Contractor shall carefully check each consignment with the relevant despatch documents to ensure correctness of each despatch and each delivery.

31 INDEMNITY:

31.1 The Contractor shall have to indemnify BHEL against all claims for injury or damage to any person or property caused by his negligence or negligence of his employees whilst in BHEL premises / sites.

31.2 The Contractor shall indemnify the company against all payments by way of compensation or otherwise which the company may be called upon to make under the provisions of the applicable Acts to any Contract employee as aforesaid, and any cost incurred by the company in connection with any claim preferred by such Contract employee and or against all actions, claims and demands whatsoever in respect thereof or in respect of any loss, injury or damages whatsoever to any third person arising out of or occasioned by the negligent, imperfect or improper performance of this Contract by the Contractor, their employee servants or agents.

31.3 The Contractor approved and operating under the Tender, Works Contracts shall further indemnify BHEL against: -

31.3.1 Observance of Labour & Industrial Laws.

31.3.2 All claims by way of compensation and all other types of unforeseen claims, which may arise in the course of Contract.

31.3.3 Documentary compliance relating to billing.

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32 INSURANCE POLICIES

32.1 The Contractor shall at his own cost take insurance and maintain at all times until the close out of the Contract, insurance policies in respect of equipment and workmen engaged by him for providing services under this Contract.

33 NOTICES OF ACCIDENTS:

33.1 In the event of an accident the contractor shall be required to fill injury report and submit to the Engineer In-charge immediately and ensure compliance of ESI / Workmen's Compensation of accident as per the Act.

34 SAFETY CONDITIONS & GUIDELINES

34.1 The Factories' Act, 1948:

34.1.1 Section 32: Floors, stairs and means of access shall be properly maintained to ensure safety. Every place of working should have safe access. When any person has to work at a height from which he is likely to fall, provision shall be made, so far as is reasonably practicable, by fencing or otherwise, to ensure the safety of person so working.

34.2 Tamil Nadu Factories' Rules, 1950

34.2.1 Rule 55: Hoists and Lifts & Rule 55A. Lifting machines, chains, ropes and lifting tackles: Shall be maintained in good condition, thoroughly inspected and examined by competent persons and records to be maintained.

34.2.2 Rule 57: Excessive Weights: No person shall, unaided by another person, lift, carry or move by hand or on head, any material, article, tool or appliance exceeding the maximum limit in weight set out in the schedule (50 kg for adult male and 30 kg for adult female).

34.2.3 Rule 61E: Machinery and plant: No machinery, plant or equipment shall be constructed, situated, operated or maintained in any factory in such a manner as to cause risk of bodily injury.

34.2.4 Rule 61F: Methods of Work: No process or work shall be carried on in any factory in such a manner as to cause risk of bodily injury.

34.2.5 Rule 61G: Stacking and storing of materials etc.: No materials or equipment shall be stacked or stored in such a manner as to cause risk of bodily injury.

34.2.6 Rule 61-K. Examination of eye sight of certain workers: No person shall be employed to operate a crane or to give signals to crane operator unless his eye sight and colour vision have been examined and declared fit by a qualified ophthalmologist.

34.2.7 Rule 61-N and Rule 61- O: Workers to be provided with Personal Protective equipment suitable for the hazards and should be of good quality / have certification by Indian Standard Institute.

34.2.8 Note: For the type of work envisaged, personal protective equipment such as helmet, safety shoes and gloves are essential.

34.2.9 Rule 96: Notification of accidents: Shall be complied with as required in the Factories Act (Section 88 and Section 88A) and Tamil Nadu Factories Rules.

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35 BHEL'S FRAUD PREVENTION POLICY

35.1 The Bidder along with its associate/ collaborators/ 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 fraud or suspected fraud as soon as it comes to their notice. Fraud Prevention policy and List of Nodal Officers shall be hosted on BHEL website, vendor portals of Units / Regions intranet.

36 BHEL'S GUIDELINES FOR SUSPENSION OF BUSINESS DEALINGS WITH SUPPLIERS / CONTRACTORS:

36.1 Penal action can be initiated on the Bidder/Contractor in line with extant 'Guidelines for Suspension of Business Dealings with Suppliers/ Contractors'. The abridged version of extant 'Guidelines for suspension of business dealings with suppliers/ contractors' has been uploaded on <http://www.bhel.com> on "supplier registration page".

37 INTEGRITY COMMITMENT, PERFORMANCE OF THE CONTRACT AND PUNITIVE ACTION THEREOF:

37.1 Commitment by BHEL: BHEL commits to take all measures necessary to prevent corruption in connection with the tender process and execution of the contract. BHEL will during the tender process treat all Bidder(s) in a transparent and fair manner, and with equity.

37.2 Commitment by Bidder/ Supplier/ Contractor: The bidder/ supplier/ contractor commit to take all measures to prevent corruption and will not directly or indirectly influence any decision or benefit which he is not legally entitled to nor will act or omit in any manner which tantamount to an offence punishable under any provision of the Indian Penal Code, 1860 or any other law in force in India.

37.3 The bidder/ supplier/ contractor will, when presenting his bid, disclose any and all payments he has made, and is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract and shall adhere to relevant guidelines issued from time to time by Govt. of India/ BHEL.

37.4 The bidder/ supplier/ contractor will perform/ execute the contract as per the contract terms & conditions and will not default without any reasonable cause, which causes loss of business/ money/ reputation, to BHEL.

37.5 If any bidder/ supplier/ contractor during pre-tendering/ tendering/ post tendering/ award/ execution/ post-execution stage indulges in 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 acts or omits in any manner which tantamount to an offence punishable under any provision of the Indian Penal Code, 1860 or any other law in force in India, then, 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.

38 SECRECY OF CONFIDENTIAL INFORMATION:

38.1 The Contractor undertakes and agrees that he/it will not disclose or reveal in part or full the proprietary/confidential information, which terms shall mean and include patents, trademarks, service marks, registered designs, copyright, design rights, know-how, confidential information, trade and business names and any other similar protected information of BHEL received during negotiation or currency of the contract to any third party or governmental authorities without written permission from BHEL. In the event of termination or expiry of the contract, the contractor shall return all proprietary/confidential information to BHEL. This clause shall survive termination or expiry of the contract.

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- 38.2 All the input details: transmittals and sample drawings supplied for preparation of drawings are confidential information of BHEL for specific purpose only. The contractor shall never pass on / part with the information to anybody and shall maintain the secrecy of the information. As soon as the bills are certified by BHEL, all the relevant drawing files shall be erased from PCs and shall not be made use under any circumstances.
- 38.3 BHEL reserves the right to initiate appropriate action including legal proceeds / termination of contract, recovery of damages, penalties etc., if the contractor is found guilty / wrong usage of the documents given by BHEL for any unauthorised activity.

39 BREACH OF CONTRACT, REMEDIES AND TERMINATION

- 39.1 In case of breach of contract, wherever the value of security instruments like performance bank guarantee available with BHEL against the said contract is atleast 10% of the contract value, the same be encashed. in case the value of the security instruments available is less than 10% of the contract value, the balance amount be recovered from other financial remedies (i.e. available bills of the contractor, retention amount, etc. with BHEL) or legal remedies be pursued.
- 39.2 Further, levy of liquidated damages, debarment, termination, de-scoping, short-closure, etc., shall be applied as per provisions of the contract.
- 39.3 Accordingly, recovery of an amount equivalent to 10% of the contract value will be recovered in case of breach of contract

40 RESOLUTION OF DISPUTES

- 40.1 The Parties agree that if at any time (whether before, during or after the arbitral or judicial proceedings), any Disputes (which term shall mean and include any dispute, difference, question or disagreement arising in connection with construction, meaning, operation, effect, interpretation or breach of the contract/tender which the Parties are unable to settle mutually), arise inter-se the Parties, the same may, be referred by either party to Conciliation to be conducted through Independent Experts Committee to be appointed by competent authority of BHEL from the BHEL Panel of Conciliators.
- 40.2 The proceedings of Conciliation shall broadly be governed by Part-III of the Arbitration and Conciliation Act 1996 or any statutory modification thereof.
- 40.3 Notes:
- 40.3.1 No serving or a retired employee of BHEL/Administrative Ministry of BHEL shall be included in the BHEL Panel of Conciliators.
- 40.3.2 Any other person(s) can be appointed as Conciliator(s) who is/are mutually agreeable to both the parties from outside the BHEL Panel of Conciliators.
- 40.4 The proceedings of Conciliation shall broadly be governed by Part-III of the Arbitration and Conciliation Act 1996 or any statutory modification thereof and as provided in **Annexure-1** to the Terms and conditions of the tender.
- 40.5 The **Annexure-1** together with its appendices will be treated as if the same is part and parcel hereof and shall be as effectual as if set out herein in the terms and conditions of the tender.
- 40.6 Except as provided elsewhere in this Contract, in case amicable settlement is not reached between the parties, in respect of any dispute or difference; arising out of the formation, breach, termination, validity or execution of the Contract; or, the respective rights and liabilities of the Parties; or, in relation to interpretation of any provision of the Contract ; or , in any manner touching upon the Contract, then, either Party may , by a notice in writing to other Party refer such dispute or difference to sole arbitration of an arbitrator appointed as per the Arbitration and Conciliation Act, 1996 (India) or statutory modification or re-enactment thereof and the rules made thereunder and for the time being in force .

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- 40.7 The Arbitrator shall pass a reasoned award and the award of the Arbitrator shall be final and binding upon the parties.
- 40.8 Subject as aforesaid, the provision of Arbitration & Conciliation Act 1996 (India) or statutory modification or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceeding under this clause.
- 40.9 The seat of arbitration shall be the place from which the Contract is issued.
- 40.10 The cost of arbitration shall be borne as per the award of the Arbitrator.
- 40.11 Subject to arbitration in terms of clause above, the Courts at the place from which the Contract is issued shall have exclusive jurisdiction over any matter arising out of or in connection with this Contract.
- 40.12 Notwithstanding the existence or any dispute or difference and/or reference for the arbitration, the vendor shall proceed with and continue without hindrance the performance of its obligation under this Contract with due diligence and expedition in a professional manner except where the Contract has been terminated by either Party in terms of this Contract.
- 40.13 In Case of Contract with Public Sector Enterprise (PSE) or a Government Department, the following shall be applicable:
- 40.14 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 as mentioned in DPE OM No. 4(1)/2013 –DPE (GM)/FTS-1835 dated 22-05-2018.

ANNEXURE-1

BRIEF PROCEDURE FOR CONDUCT OF CONCILIATION PROCEEDINGS

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

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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.

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18. A Settlement Agreement shall contain a statement to the effect that each of the person(s) signing thereto (i) is fully authorized by the respective Party(ies) he/she represents, (ii) has fully understood the contents of the same and (iii) is signing on the same out of complete freewill and consent, without any pressure, undue influence.
19. The Settlement Agreement shall thereafter have the same legal status and effect as an arbitration award on agreed terms on the substance of the dispute rendered by an arbitral tribunal passed under section 30 of the Arbitration and Conciliation Act, 1996.
20. Acceptance of the Draft Settlement Agreement/recommendations of the Conciliator and/or signing of the Settlement Agreement by BHEL shall however, be subject to withdrawal/closure of any arbitral and/or judicial proceedings initiated by the concerned Party in regard to such settled issues.
21. Unless otherwise provided for in the agreement, contract or the Memorandum of Understanding, as the case may be, in the event of likelihood of prolonged absence of the Conciliator or any member of IEC, for any reason/incapacity, the Competent Authority/Head of Unit/Division/Region/Business Group of BHEL may substitute the Conciliator or such member at any stage of the proceedings. Upon appointment of the substitute Conciliator(s), such reconstituted IEC may, with the consent of the Parties, proceed with further Conciliation into the matter either de-novo or from the stage already reached by the previous IEC before the substitution.
22. The proceedings of Conciliation under this Scheme may be terminated as follows:
 - a. On the date of signing of the Settlement agreement by the Parties; or,
 - b. By a written declaration of the IEC, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or,
 - c. By a written declaration of the Parties addressed to the IEC to the effect that the Conciliation proceedings are terminated, on the date of the declaration; or,
 - d. By a written declaration of a Party to the other Party and the IEC, if appointed, to the effect that the Conciliation proceedings are terminated, on the date of the declaration.
 - e. On rejection of the Draft Settlement Agreement by the Competent Authority of BHEL or the other Party.
23. The Conciliator(s) shall be entitled to following fees and facilities:

SL.	Particulars	Amount
1	Sitting fees	Each Member shall be paid a Lump Sum fee of ₹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 ₹5 Crores. : ₹50,000/- (Sole Conciliator) In cases involving claim and/or counter-claim of exceeding ₹5 Crores but less than ₹10 Crores : ₹75,000 (per Conciliator) In cases involving claim and/or counter-claim of more than ₹10 Crores. ₹1,00,000/- (per Conciliator) Note: The aforesaid fees for the drafting of the Settlement Agreement shall be paid on Signing of the Settlement Agreement after approval of the Competent Authority or Rejection of the proposed Settlement Agreement by the Competent Authority of BHEL.
3	Secretarial expenses	₹10,000/- (one time) for the whole case for Conciliation by a Sole Member IEC. Where Conciliation is by multi member Conciliators – ₹30,000/- (one time)- to be paid to the IEC

Date :
Place:

Signature of the Bidder with seal
(Authorized Signatory)

SL.	Particulars	Amount
4	Travel and transportation and stay at outstation i) Retired Senior Officials of other Public Sector Undertakings (pay scale wise equivalent to or more than E-8 level of BHEL)	As per entitlement of the equivalent officer (pay scale wise) in BHEL.
	Others	As per the extant entitlement of whole time Functional Directors in BHEL. Ordinarily, the IEC Member(s) would be entitled to travel by air Economy Class.
5	Venue for meeting	Unless otherwise agreed in the agreement, contract or the Memorandum of Understanding, as the case may be, the venue/seat of proceedings shall be the location of the concerned Unit / Division / Region / Business Group of BHEL. Without prejudice to the seat/venue of the Conciliation being at the location of concerned BHEL Unit / Division / Region / Business Group, the IEC after consulting the Parties may decide to hold the proceedings at any other place/venue to facilitate the proceedings. Unless, Parties agree to conduct Conciliation at BHEL premises, the venue is to be arranged by either Party alternately.

24. The parties will bear their own costs including cost of presenting their cases/evidence/witness(es)/expert(s) on their behalf. The parties agree to rely upon documentary evidence in support of their claims and not to bring any oral evidence in IEC proceedings.
25. If any witness(es) or expert(s) is/are, with the consent of the parties, called upon to appear at the instance of the IEC in connection with the matter, then, the costs towards such witness(es)/expert(s) shall be determined by the IEC with the consent of the Parties and the cost so determined shall be borne equally by the Parties.
26. The other expenditures/costs in connection with the Conciliation proceedings as well as the IEC's fees and expenses shall be shared by the Parties equally.
27. Out of the lump sum fees of ₹75,000/- for Sitting Fees, 50% shall be payable after the first meeting of the IEC and the remaining 50% of the Sitting Fees shall be payable only after termination of the conciliation proceedings in terms of para 22 hereinabove.
28. The travelling, transportation and stay at outstation shall be arranged by concerned Unit as per entitlements as per Serial No. 3 of the Table at para 23 above, and in case such arrangements are not made by the BHEL Unit, the same shall be reimbursed to the IEC on actuals limited to their entitlement as per Serial No. 4 of the Table at Para 23 above against supporting documents. The IEC Member(s) shall submit necessary invoice for claiming the fees/reimbursements.
29. The Parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of its implementation and enforcement or as required by or under a law or as per directions of a Court/Governmental authority/ regulatory body, as the case may be.
30. The Parties shall not rely upon or introduce as evidence in any further arbitral or judicial proceedings, whether or not such proceedings relate to the Disputes that is the subject of the Conciliation proceedings:

Date :
Place:

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- 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.

Appendix I

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

To,

M/s. (Stakeholder's name)

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

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

Sir,

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

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

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

Yours faithfully,

Representative of BHEL

Date :
Place:

Signature of the Bidder with seal
(Authorized Signatory)



Appendix II

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

To,

BHEL

.....

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

Ref: Contract/MoU/Agreement/LOI/LOA No _____ & date_____

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

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

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

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

Yours faithfully,

**(Signature with stamp)
Authorized Representative of Contractor
Name, with designation Date**

Appendix III

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

1. Chronology of the Disputes
2. Brief of the Contract/MoU/Agreement/LOI/LOA
3. Brief history of the Disputes:
4. Issues:
5. Details of Clam(s)/Counter Claim(s):

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

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.

Date :
Place:

Signature of the Bidder with seal
(Authorized Signatory)



ANNEXURE-P1

PRICE BID

(Vendor to quote the price GeM portal)

1. WORK / RATE SCHEDULE

Item SL.	Scope of Work	Qty	<u>TOTAL</u> AMC Charge for 6 Machines for 2 Years (Including GST)
10	AMC for 6 Numbers of OLYMPUS portable Metal Analyzers for Two Years	Total 8 (Eight) Visits.	< to be filled in GeM portal only >

2. IMPORTANT INSTRUCTIONS

2.1 Rate shall be quoted including GST in GeM.

Date :
Place:

Signature of the Bidder with seal
(Authorized Signatory)