

Memorandum Of Understanding

Licensing and Engineering Services for LEPC-7 PACKAGE OF SULPHUR RECOVERY UNIT (1 x 400 MTPD) INCLUDING CONTROL ROOM AND SUBSTATION FOR SULPHUR BLOCK FOR "LuPech" (J-18) PROJECT at IOCL GUJARAT REFINERY, VADODARA, GUJARAT, INDIA

**** This is DRAFT and will be finalised before Price Bid Opening****

Memorandum of Understanding

This Memorandum of Understanding (MoU) is made on _____ at Hyderabad by and

between **Bharat Heavy Electricals Limited** of one part, a company registered under the Indian Companies Act 1956, with its Registered and Corporate Office at **BHEL House, Siri fort, New Delhi 110043** (hereinafter referred to as "BHEL/First Party" which expression shall mean and include its legal heirs, administrators and permitted assigns),

AND

_____ having its registered office at _____ (hereinafter referred to as "**ESC/Second Party**" which expression shall mean and include its legal heirs, administrators and permitted assigns).

(referred to herein as "Parties" or individually as "Party")

WHEREAS

A. **BHEL**, a Government of India Undertaking under the Ministry of Heavy Industries, is a leading company in Capital Goods Sector and is equipped with required expertise, manpower, equipment and other resources to undertake and perform activities as LSTK Contractor.

B. _____ is, inter alia, engaged in _____.

On behalf of **Indian Oil Corporation Limited, New Delhi** (The 'Customer'), **M/s Technip India Ltd** as CONSULTANT invited e-Bids (vide Bidding Document Reference: **IBCE-6373-C00-PJM-TEN-EPCC-03**) on 08.08.2020, for **LEPC-7 PACKAGE OF SULPHUR RECOVERY UNIT (1 x 400 MTPD) INCLUDING CONTROL ROOM AND SUBSTATION FOR SULPHUR BLOCK FOR "LuPech" (J-18) PROJECT** at **IOCL GUJARAT REFINERY, VADODARA, GUJARAT, INDIA: Project Management, Residual Process Design, Detailed Engineering (including HAZOP/ SIL study), procurement, fabrication, inspection, transportation of all the equipment's/ materials to work site, storage, assembly, erection, installation, construction and testing of all above mentioned facilities, including statutory approvals, and to achieve mechanical completion, pre-commissioning, commissioning, performance guarantee test run (PGTR) and handing over of all the facilities to Client including supply of mandatory/ recommended spares based on FEED Package provided by Toyo Engineering India Pvt. Ltd. (TOYO) of NEW SULPHUR RECOVERY UNIT (SRU), TAIL GAS TREATMENT UNIT (TGTU), NEW AMINE REGENERATION UNIT (ARU), NEW SOUR WATER STRIPPER UNIT (SWS), SULPHUR YARD CAPACITY EXPANSION to 9.0 MMTPA PROJECT". for IOCL BARAUNI Refinery on Open Global Tender basis from competent CONTRACTORS with sound Technical, Financial and Execution capabilities fulfilling the Qualification Criteria as stated in the Tender document (herein after referred to as "**Tender**"). The supply**

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and services which are subject matter of the tender are herein after referred to as "**Project**" and will include any revised or amended tender or clarifications or corrigenda to the tender which may be issued by the Customer for the above referred Project.

BHEL is participating in the said tender floated by the Customer and accordingly has floated a Notice Inviting Pre-Bid Tie-up Offer vide Notice No.: _____ for **Engineering Sub-Contracting Services for Pre-Bid and Post-Offer Residual Engineering and Detailed Engineering** (herein after referred to as **Notice**). In response to the notice, the ESC has submitted his technical and commercial offer for the scope of work of the Project.

- C. The parties having read and understood the terms of the tender and the notice, have agreed to cooperate with each other and work together as a team for the submission of bid proposal against the above mentioned tender with **BHEL** as the **Prime Bidder** and _____ as **ESC**. The Parties hereby agree to perform Contract, if any awarded, by diligently executing their respective Scope of Work, on the terms and conditions agreed to in this Agreement.
- D. The ESC has proposed to offer their services as the Engineering Sub-Contractor for Residual Process Engineering and Detailed Engineering as per the requirements of **Tender**.
- E. The MoU shall be valid for 04 (Four) years *or* till the Defect Liability Period whichever is later, from the date of scheduled bid submission. MoU shall be converted into a Contract on BHEL receiving the order from its customer.
- F. The parties have therefore mutually decided to enter into this Agreement on the terms and conditions as mentioned herein after.

NOW, THEREFORE, "BHEL" and "ESC" hereby agree as follows:

- 1. **BHEL** will submit the Proposal to the Customer, participate in the negotiations with the Customer, and if awarded, conclude the Contract against this Tender. "BHEL" and "ESC" shall use commercially best efforts to assist each other with respect to scope of activities related to each party as defined in the tender while preparing and submitting the Bid.
- 2. **Scope of Work:** The scope of work of the Parties shall be as per the mutually agreed responsibility matrix annexed as Annexure-A. Any modifications/changes in the Scope of work of ESC as a result of any change in the Project scope of work, as per Customer request or change in any requirements shall be binding upon the ESC.
- 3. In case the BHEL/ ESC ceases to exist on account of merger/acquisition, the new entity so formed shall be responsible for all obligations in terms of providing engineering services as contracted (as the initial BHEL/ESC) with regards to this Project.
- 4. Both parties agree to submit an irrevocable undertaking in non-judicial stamp paper of appropriate value duly signed by them stating that both of them i.e. the bidder (BHEL) and

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their Engineering Partner shall be liable for due performance of the contract jointly and severally in accordance with the terms & conditions of the Tender.

5. In the event of price reduction during negotiation by BHEL with IOCL, corresponding reduction will be passed on to the ESC.
6. The successful ESC on whom LOI will be placed for Post-Order Engg Work, shall deposit to BHEL within 30 days of signing the MOU, 1% of Final agreed Price of Post-Order Engineering Work, towards Bid Bond (in the form of Bank Guarantee or Security Deposit etc, for continued commitment during the validity period of MOU
7. **Performance Bank Guarantee:** The ESC shall submit to BHEL at the time of award of Work Order (WO), a Contract Performance Bank Guarantee (CPBG) of 5 % of the PO value valid for up to WO delivery date + 3 months in the prescribed format, which shall also cover the performance obligation regarding the contract during warranty period. The CPBG will be discharged by BHEL after completion of OEM/vendor performance obligations including any warranty obligations under the contract.
8. **Communication:** It is agreed between the Parties that BHEL shall be the prime point of contact with the Customer concerning the Proposal. BHEL will coordinate the involvement and participation of ESC in all activities emanating from this Agreement. BHEL will involve the ESC in all deliberations with the customer wherein mutual interest of both the parties is involved.
9. On award of contract work by the Customer, a detailed agreement (inclusive of but not limited to the following – Scope of Work, Responsibilities & Duties, Communication, Relationship, Sub-Contracting, Exclusivity, Confidentiality, IPRs, Representations, Costs, Liabilities, Indemnities, Payment Terms, Delivery Terms, Liquidated Damages, SLA Conditions, Quality of Works, Insurance, Fall Clause, Force Majeure, Termination, Arbitration, Set Off, Performance Security, etc.) shall be entered into between BHEL and “ESC” based on this MoU.
10. All technical, financial and commercial terms and conditions of the tender, except, pricing, risk purchase, advance payment, LD/Penalty and termination will apply on back-to-back basis between BHEL and ESC for their respective part/scope of work.
11. However, if the ESC fails to fulfil its part of the work to the satisfaction of BHEL, then BHEL shall have the right to terminate the contract with the ESC and get the same executed departmentally or by other agencies at the risk and cost of ESC.
12. **Payment Terms:** Refer NIT. BHEL will release payments to ESC only after release of corresponding payment from Customer.
13. **Integrity Pact:** ESC shall sign an Integrity Pact with BHEL at the time of award of contract award.
14. **Confidentiality:** BHEL and “ESC” agree to keep confidential all the information shared with each other and disclose to third party only after taking prior written consent of each other. This

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clause excludes information available in public domain. The confidentiality provisions of this Agreement shall remain in full force and effect during the term of this Agreement and 12 months thereafter.

15. **Term and Termination:** This Agreement will become effective on the date of signing and will remain in effect till 60 calendar months from the date of award of work or till the successful completion of the project whichever is later; until the occurrence of any of the following:
- a. Contract is not awarded to BHEL.
 - b. Bankruptcy proceedings being initiated against either of the Parties
 - c. Mutual agreement between the "Parties"
 - d. Tender got cancelled by the Customer
 - e. In case ESC is not performing as per project requirement (ref cl. no. 15.8 of TCC)
16. **Correspondence:** Notices and other communications under this Agreement shall be in writing in English language and communicated through post, courier, fax, email or any other recognized mode of such communication. All such notices and communications shall be directed to the address as mentioned in the Agreement.
17. **Governing Law and Jurisdiction:** This MoU shall be construed and governed by the laws of India and the parties hereby submit to the exclusive jurisdiction of Hyderabad Courts of Law.
18. **Arbitration & conciliation:** The Parties agree that if at any time (whether before, during or after the arbitral or judicial proceedings), any Disputes (which term shall mean and include any dispute, difference, question or disagreement arising in connection with construction, meaning, operation, effect, interpretation or breach of the agreement, contract or the Memorandum of Understanding (delete whichever is inapplicable), which the Parties are unable to settle mutually), arise inter-se the Parties, the same may, be referred by either party to Conciliation to be conducted through Independent Experts Committee to be appointed by competent authority of BHEL from the BHEL Panel of Conciliators. The proceedings of Conciliation shall broadly be governed by Part-III of the Arbitration and Conciliation Act 1996 or any statutory modification thereof Except as provided else 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 contract ; or , in any manner touching upon the Contract , then , either party may , by a notice to the other party refer such dispute or difference to the sole arbitration appointed by Head of the BHEL Unit/Region/Division issuing the Contract. The Arbitrator shall pass a reasoned award and the award of the Arbitrator shall be final and binding upon the parties. Subject as aforesaid, the provisions of Arbitration and Conciliation Act 1996 (India) or statutory or enactments thereof and the rules made thereunder and for the time being in shall apply to the arbitration proceedings under this clause. The seat of arbitration shall be Sangareddy. The cost of arbitration shall be borne as per the award of the Arbitrator. Subject to the arbitration in terms of clause _ above , the courts at Sangareddy/Hyderabad shall have exclusive jurisdiction over any matter arising out of or in connection with this contract. Notwithstanding

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the existence or any dispute or differences and /or reference for the arbitration, the Contractor shall proceed with and continue without hindrance the performance of its obligations under this Contract with due diligence and expedition in a professional manner except where the Contract has been terminated by either Party in terms of this Contract

19. Dispute Resolution mechanism between government organizations (AMRCD)

"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 as mentioned in DPE OM No 4(1)/2013-DPE(GM)/FTS 1835 dated 22 05-2018".

20. Any sum of money (including Bank Guarantees) due and payable to the ESC, under this contract or any other contract entered into between the parties herein, whether continuing or completed may be appropriated by BHEL and set off against any claim of BHEL of any nature whatsoever, arising under this contract or any other contract entered into between the parties herein, whether continuing or completed.

21. Any matter, which is not stipulated in the Agreement, shall be settled in good faith by discussion among the parties in the spirit of understanding and cooperation.

22. By signing this MoU, the "Parties" acknowledge that it correctly records the understanding they have reached with regard to the Project.

IN WITNESS WHEREOF, the parties hereto has caused this MoU to be executed in duplicate to be effective as of effective date by its duly authorized representatives.

(For: Bharat Heavy Electricals Limited)

(For: _____)

Signature:

Signature:

Name:

Name:

Designation:

Designation:

Address:

Address:

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Witness

1)

1)

Annexure-A

Pre-Award Responsibility Matrix

SNo	Activity	BHEL	LESC
1.	Lead Bidder and front ending with Customer on all technical and commercial issues.	√	-
2.	Back end support provider on technical issues and technical assistance on commercial issues	-	√
3.	Preparation and submission of the complete proposal with all the required documents to Customer with backend support from ESC.	√	√
4.	Responsible for providing detailed & compliant technical proposal for the offered subsystem to BHEL.	-	√
5.	Submission of overall proposal & clarifications.	√	-

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6.	Front Ending Technical Presentation on overall BHEL Bid / Proposal to the evaluation committee setup by the customer.	√	-
7.	Back end support during Technical Presentation for their scope of work to the evaluation committee setup by the Customer.	-	√

Post-Award Responsibility Matrix

SNo	Activity	BHEL	LESC
1.	Front ending with customer on all technical and commercial issues.	√	-
2.	Back end support provider on technical issues and technical assistance on commercial issues	-	√
3.	Submission of Performance / Financial Securities to Customer.	√	-
4.	Submission of Performance / Financial Securities to BHEL on back-to-back basis for their scope of work.	-	√
5.	Overall Project Monitoring, Supervision and coordination.	√	-
6.	Any other project related activity for successful execution of the project work.	√	√

Note:

- √ Within the responsibility of the party indicated at the head of the column concerned.
- Not within the responsibility of the party indicated at the head of the column concerned