

Annexure A – General Terms & Conditions

1. PURCHASE PREFERENCE FOR MAKE IN INDIA

"For this procurement, the local content to categorize a supplier as a Class I local supplier/ Class II local Supplier/ Nonlocal Supplier and purchase preference to Class I local supplier, is as defined in Public Procurement (Preference to Make in India), Order 2017 dated 04.06.2020 issued by DPIIT. In case of subsequent orders issued by the nodal ministry, changing the definition of local content for the items of the NIT, the same shall be applicable even if issued after issue of this NIT, but before finalization of contract / PO / WO against this NIT". In the event of any Nodal Ministry prescribing higher or lower percentage of purchase preference and / or local content in respect of this procurement, same shall be applicable.

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

'Class-I local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content equal to or more than 50%, as defined under this Order.

'Class-II local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content more than 20% but less than 50%, as defined under this Order.

'Non-Local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than or equal to 20%, as defined under this Order. ***Bids of Non-Local supplier shall be liable for rejection as the enquiry is not a global tender.***

In case item is divisible, following procedure will be followed-

- Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract for full quantity will be awarded to L 1.
- If L1 bid is not a 'Class-I local supplier', 50% of the order quantity' shall be awarded to L1. Thereafter, the lowest bidder among the 'Class-I local supplier' will be invited to match the L1 price for the remaining 50% quantity subject to local supplier's quoted price falling within the margin purchase preference, and contract for that quantity shall be awarded to 'Class-I local supplier' subject to matching the L 1 price. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price or accepts less than the offered quantity, the next higher 'Class-I local supplier' within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and so on, and contract shall be awarded accordingly. In case some Quantity is still left uncovered on Class-I local suppliers, then such balance quantity may also be ordered on the L 1 bidder.

In case item is not divisible, following procedure will be followed-

- Among all qualified bids, the lowest bid will be termed as L1. If L1 is from a 'Class-I local supplier', the contract will be awarded to L1.
- If L1 is not from a local supplier, the lowest bidder among the 'Class-I local supplier', will be invited to match the L1 price subject to 'Class-I local supplier's' quoted price falling within the margin of purchase preference, and the contract shall be awarded to such 'Class-I local supplier' subject to matching the L1 price.
- In case such lowest eligible 'Class-I local supplier' fails to match the L1 price, the 'Class-I local supplier' with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly. In case none of the 'Class-I local supplier' within the margin of purchase preference matches the L1 price, then the contract may be awarded to the L1 bidder.
- Any item wherein the net quantity is less than 2 (i.e. if qty is 1 No.) will be considered as not divisible for the purpose of operating purchase preference.

"Class-II local supplier" will not get purchase Preference in any procurement.

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Document certifying local content and penal action in case of wrong declaration by suppliers.

- The 'Class-I local supplier' / 'Class-II local supplier' at the time of tender, bidding or solicitation shall be required to provide self-certification on their letter head certified by the authorized signatory of the bidder that the item offered meets the minimum local content and shall give details of the location(s) at which the local value addition is made.
- In cases of procurement for a value in excess of Rs. 10 crores, the local supplier shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.
- False declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law.
- A supplier who has been debarred by any procuring entity for violation of this order shall not be eligible for preference for procurement by any other procuring entity for the duration of the debarment. The debarment for such other procuring entities shall take effect prospectively from the date on which it comes to the notice of other procurement entities, the debarment takes effect prospectively from the date of uploading on the website(s) of The Department of Expenditure, GOI in such a manner that ongoing procurements are not disrupted.
- The onus of submission of appropriately certified documents lies with the bidder and BHEL shall not have any liability to verify the contents and will not be responsible for the same. However, in case BHEL has any reason to doubt the authenticity of the Local Content, BHEL reserves the right to obtain the complete back up calculations before award of contract failing which the bid shall be rejected.

2. PRICE FINALIZATION

Prices will be finalized by opening of Price bids (Bid Part-II) thru Sealed Price Bid Opening. BHEL may decide to negotiate with L1 vendor of price bids.

3. PURCHASE PREFERENCE FOR MSE SUPPLIERS.

- Purchase preference for local MSE's quoting in the tender will be 25%.
- Within the 25% reservation for local MSE's, 3% reservation will be applicable for women owned MSE's and 6.25% reservation will be applicable for MSE's owned by SC / ST.
- Payment for MSE Indigenous vendors will be as per MSMED Act, 2006

Document to be submitted as proof of MSE.

MSE suppliers can avail the intended benefits only if they submit along with the offer, attested / notarized copies (by a Gazetted officer) of anyone of the following documents along with Copy of CA certificate (in BHEL's standard format) applicable for the relevant financial year (latest audited)-

- Valid EM II certificate having deemed validity (5 years from the date of issue of acknowledgement in EM II).
- Valid NSIC certificate.
- Copy of UAM certificate

OR UDHYAM CERTIFICATE WILL ALSO BE ACCEPTED IN PLACE OF ABOVE.

Date to be reckoned for determining the deemed validity will be the date of bid opening (Part 1 in case of Two part bid). Non submission of such documents will lead to consideration of their bid at par with other bidders. No benefit shall be applicable for the Enquiry if any deficiency in the above required documents are not submitted before price bid opening. However, credentials of all MSE suppliers will be verified before considering the intended benefits for MSE suppliers at the time of tender evaluation.

In case item is not divisible, following procedure will be followed-

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- Among all qualified bids, the lowest bid will be termed as L1. If L1 is from a MSE supplier, the contract will be awarded to L1.
- If L1 is not from a MSE supplier, the lowest bidder among the MSE suppliers, will be invited to match the L1 price subject to MSE supplier's quoted price falling within the margin of purchase preference, and the contract shall be awarded to such MSE supplier subject to matching the L1 price.
- In case such lowest eligible MSE supplier fails to match the L1 price, the MSE supplier with the next higher bid within the margin of MSE preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly. In case none of the MSE suppliers within the margin of purchase preference matches the L1 price, then the contract may be awarded to the L1 bidder.
- Any item wherein the net quantity is less than 2 (i.e. if qty is 1 No.) will be considered as not divisible for the purpose of operating purchase preference.

Note: - In case of L1 vendor is having any one of MSE OR Make in India preference, but vendor is falling in MSE/MII price range with both MSE and Make in India preference then quantity will be counteroffered to the vendor who is giving both the preferences.

4. BHEL STANDARD GUARANTEE CLAUSE

The materials are to be guaranteed for satisfactory performance for a period of 24 months from the date of dispatch or 18 months from the date of commissioning / putting into use whichever is earlier and if any defect is noticed during the above period, the same shall be rectified / replaced free of cost on FOR destination basis within a reasonable time, maximum limited to the agreed delivery period. To this effect a guarantee certificate should be sent along with the dispatch documents in the event of an order.

5. The offers of the bidders who are under suspension as also the offers of the bidders, who engage the services of the banned firms, shall be rejected. The list of banned firms is available on BHEL web site www.bhel.com.

6. Integrity commitment, performance of the contract and punitive action thereof:

1.1. 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.

1.2. Commitment by Bidder / Supplier / Contractor:

1.2.1. 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.

1.2.2. 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.

1.2.3. 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.

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.

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7. CANCELLATION / TERMINATION OF CONTRACT, DEFAULT / BREACH OF CONTRACT AND RISK PURCHASE

In case of abnormal delays (beyond the maximum late delivery period as per Penalty clause) in supplies / defective supplies or non-fulfilment of any other terms and conditions given in Purchase Order as enumerated subsequently in this clause, Purchaser shall be entitled to cancel the Order / Contract either in whole or portion thereof without compensation to Seller / Contractor and if the Purchaser so desires, may procure upon such terms and in such manner as deemed appropriate, stores not so delivered or others of similar description where stores exactly complying with particulars are not, in the opinion of the Purchaser, which shall be final, readily procurable, at the risk and cost of the Seller / Contractor and the Seller / Contractor shall be liable to the Purchaser for any excess costs provided that the Seller / Contractor shall continue the performance of the Order / Contract to the extent not cancelled under the provisions of this clause. The Seller / Contractor shall on no account be entitled to any gain on such repurchases. If bidder does not agree to the above Risk Purchase Clause, BHEL reserves the right to reject the offer.

Risk & Cost Clause, in line with Conditions of Contract may be invoked in any of the following cases:

- a. Contractor / supplier's poor progress of the work vis-à-vis execution timeline as stipulated in the Contract, backlog attributable to contractor/ supplier including unexecuted portion of work / supply does not appear to be executable within balance available period (#) considering its performance of execution.
- b. Withdrawal from or abandonment of the work by contractor before completion of the work as per contract.
- c. Non completion of work / Non-supply by the Contractor / supplier within scheduled completion / delivery period as per Contract or as extended from time to time, for the reasons attributable to the contractor / supplier.
- d. Termination of Contract on account of any other reason (s) attributable to Contractor / Supplier.
- e. Assignment, transfer, subletting of Contract without BHEL's written permission resulting in termination of Contract or part thereof by BHEL.
- f. Non-compliance to any contractual condition or any other default attributable to Contractor / Supplier.

Risk and Cost amount against Balance Work

Risk & Cost Amount= $[(A-B) + (A \times H/100)]$

Where,

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

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

H= Overhead Factor to be taken as 5

In case (A-B) is less than 0 (zero), value of (A-B) shall be taken as 0 (zero).

***(Balance scope of work / supply)**

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

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

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

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

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

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Note: In case portion of work is being withdrawn, contract quantities pertaining to portion of work withdrawn shall be considered as 'Balance scope of work / supply' for calculating Risk & Cost amount.

LD against delay in executed work / supply in case of Termination of Contract in case of Risk and Cost Option

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

Method for calculation of "LD against delay in executed work / supply" is given below.

- a. Let the time period from scheduled date of start of work till termination of contract excluding the period of Hold (if any) not attributable to contractor / supplier= T1
- b. Let the value of executed work / supply till the time of termination of contract= X
- c. Let the Total Executable Value of work / supply for which inputs / fronts were made available to contractor / supplier and were planned for execution till termination of contract= Y
- d. Delay in executed work / supply attributable to contractor/supplier i.e. $T2 = (1 - X/Y) * T1$
- e. LD shall be calculated in line with LD clause of the Contract for the delay attributable to contractor / supplier taking "X" as Contract Value and "T2" as delay attributable to contractor / supplier.

Note: In case portion of work / supply is withdrawn, no LD shall be applicable for portion of work / supply withdrawn.

Recovery from Supplier

Recoveries from contractor / supplier on whom risk & cost has been invoked shall be made from the following:

- a. Dues available in the form of Bills payable to contractor / supplier, SD, BG's against the same contract.
- b. Dues payable to contractor / supplier against other contracts in the same Region / Unit / Division of BHEL.
- c. Dues payable to contractor / supplier against other contracts in the different Region / Unit / division of BHEL.
- d. Legal Options for recovery of dues payable by the supplier / contractor.

8. SUSPENSION OF BUSINESS DEALING

In order to protect the commercial interests of BHEL, it becomes necessary to take action against suppliers / contractors by way of suspension of business dealings, who either fail to perform or are in default without any reasonable cause, cause loss of business / money / reputation, indulge in malpractices, cheating, bribery, fraud or any other misconduct or formation of cartels so as to influence the bidding process or influence the price etc. Suspension of Business Dealings could be in the form of "Hold" or "Banning" a supplier / contractor or a bidder or an applicant for registration as a registered supplier. For this purpose, the abridged version of guidelines hoisted at website http://www.bhel.com/vender_registration/vender.php (Suspension of business dealings with suppliers / contractors) is being followed across all BHEL units. Vendors shall keep themselves aware of these guidelines before submission of their bid.

9. FRAUD PREVENTION POLICY

The Bidder along with their associates / collaborators / sub-contractors / sub-vendors / consultants / service providers shall strictly adhere to BHEL fraud prevention policy displayed on BHEL website at www.bhel.com/pdf/BHEL_Fraud_Prevention_Policy.pdf and shall immediately bring to the notice of BHEL management about any fraud or suspected fraud as soon as it comes to their notice.

10.FORWARDING OF TEST CERTIFICATES & INSPECTION REPORTS

Test certificates (TC) along with Inspection Reports (IR) as called for in the TDC (Three ink signed originals) / approved Quality Plan shall be sent to Dy.Manager / Purchase (Fittings), BHEL Piping Centre immediately after the shipment / dispatch of items. Forthcoming section may please be refereed for detailed list of documents to be submitted to respective agencies in BHEL.

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TC & IR shall be furnished for each batch of shipment / dispatch. If entire PO quantity is manufactured in one lot but dispatched in phased manner, original “documents” should be submitted with the first consignment. For subsequent consignments, attested Xerox copy of IBR along with copies of TC and IR indicating invoice detail against which original TC and IR was handed over to BHEL shall be submitted. Soft copies of the all the test certificates shall also be submitted through email.

Year of code for the technical standards shall be latest and the specific year shall be indicated in the MTC's as well as applicable documents.

11. PAYMENT DOCUMENTS

Payment shall be made against submission of the following documents-

- a. Original GST compliant invoice and 2 copies of the same.
- b. Original site acknowledged Lorry Receipt (Goods Receipt (GR) date for in case of BHEL Trichy stores).
- c. Original inspection report and all original documents as called for in TDC / approved QP.

If one original certificate / LR is applicable for more than one invoice quantity / invoice, Xerox copy is acceptable with original correlation details on the Xerox copy with attestation by suppliers Quality in charge.

GST compliance-

- a. Response to Tenders for Indigenous supplier will be entertained only if the vendor has a valid GST registration No (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 GST portal. The dealer has to submit necessary documents if there is any change in status under GST.
- b. 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 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.
- c. All invoices shall bear the HSN Code for each item separately (Harmonized System of Nomenclature)/ SAC code (Services Accounting Code).
- d. Invoices will be processed only upon completion of statutory requirement and further subject to following:
 - Vendor declaring such invoice in Form GST ANX-1
 - Receipt of Goods or Services and Tax invoice by BHEL
- e. As the continuous uploading of tax invoices in GSTN portal (in GST ANX-1) is available for all (i.e. both Small & Large) tax payers under proposed new GST Return System, 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 GST 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 GST ANX-2).
- f. 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.

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- g. 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
- h. 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.
- i. 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.
- j. Under GST regime, BHEL has to discharge GST liability on LD recovered from suppliers/contracts. Hence applicable GST shall also be recoverable from suppliers/contractors on LD amount. For this Tax Invoice will be issued by BHEL indicating the respective supply invoice number.
- k. 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 which will be generated in GST portal subsequent to vendor accepting the TDS deduction in the GST portal, will be issued to the vendor.