

Annexure A – General Terms & Conditions

1. PURCHASE PREFERENCE FOR MAKE IN INDIA

For this procurement, Public Procurement (Preference to Make in India), Order 2017 dated 15.06.2017, 28.05.2018 & 29.05.2019 and subsequent Orders issued by the respective Nodal Ministry 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.

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 from a local supplier, the contract for full quantity will be awarded to L1.
- If L1 bid is not from a local supplier, 50% of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the local suppliers, will be invited to match the L1 price for the remaining 50% quantity subject to the local supplier's quoted price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such local supplier subject to matching the L1 price. In case such lowest eligible local supplier fails to match the L1 price or accepts less than the offered quantity, the next higher 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 local suppliers, then such balance quantity may also be ordered on the L1 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 local supplier, the contract will be awarded to L1.
- If L1 is not from a local supplier, the lowest bidder among the local suppliers, will be invited to match the L1 price subject to local supplier's quoted price falling within the margin of purchase preference, and the contract shall be awarded to such local supplier subject to matching the L1 price.
- In case such lowest eligible local supplier fails to match the L1 price, the 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 local suppliers within the margin of purchase preference matches the L1 price, then the contract may be awarded to the L1 bidder.

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

- The 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 the provisions of the Public Procurement (Preference to Make in India), Order 2017 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

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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. 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 UAM certificate-

- Valid EM II certificate having deemed validity (5 years from the date of issue of acknowledgement in EM II).
- Valid NSIC certificate.
- Copy of CA certificate (in BHEL's standard format) applicable for the relevant financial year (latest audited).

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.

3. REVERSE AUCTION

BHEL reserves the right to go for reverse auction (RA) (guidelines as available on www.bhel.com) instead of opening the sealed envelope price bid submitted by the bidder. This will be decided after Techno-Commercial evaluation. Bidders to give their acceptance with the offer for participation in RA. Non-acceptance to participate in RA may result in non-consideration of their bids, in case bhel decides to go For RA.

Those bidders who have given their acceptance to participate in Reverse Auction will have to necessarily submit 'Process Compliance Form' (to the designated service provider) as well as 'Online Sealed Bid' in the Reverse auction. Non-submission of 'Process Compliance Form' or 'Online Sealed Bid' by the agreed bidder(s) will be considered as tampering of the tender process and will invite action by BHEL as per extant Guidelines for suspension of Business Dealings with Suppliers / Contractors (as available on www.bhel.com).

The bidders have to necessarily submit Online Sealed Bid less than or equal to their envelope sealed price bid already submitted to BHEL along with the offer. The envelope sealed price bid of successful L1 bidder in RA, if conducted, shall also be opened after RA and the order will be placed on lower of the two bids (RA closing price & envelope sealed price) thus obtained. The bidder having submitted this offer specifically agrees to this condition and undertakes to execute the contract on thus awarded rates.

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If it is found that L1 bidder has quoted higher in online sealed bid in comparison to envelope sealed bid for any item(s), the bidder will be issued a warning letter to this effect. However, if the same bidder again defaults on this count in any subsequent tender in the unit, it will be considered as fraud and will invite action by BHEL as per extant Guidelines for Suspension of Business Dealings with Suppliers / Contractors (as available on www.bhel.com).

4. 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.

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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.

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.

5. 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.