Annexure A - Terms & Conditions for Enq-4201800044 Dt.17.05.2018

AUX.PRDS VALVES FOR NTPC TELENGANA 2X800MW PROJECT

1. 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:

i. 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.
ii. Withdrawal from or abandonment of the work by contractor before completion of the work as per contract.
iii. 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.
iv. Termination of Contract on account of any other reason (s) attributable to Contractor / Supplier.
v. Assignment, transfer, subletting of Contract without BHEL's written permission resulting in termination of Contract or part thereof by BHEL.
vi. 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 x 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.

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.

i. 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
ii. Let the value of executed work / supply till the time of termination of contract= X
iii. 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
iv. Delay in executed work / supply attributable to contractor/supplier i.e. T2= (1- X/Y) * T1
v. 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:

i. Dues available in the form of Bills payable to contractor / supplier, SD, BG's against the same contract.
ii. Dues payable to contractor / supplier against other contracts in the same Region / Unit / Division of BHEL.
iii. Dues payable to contractor / supplier against other contracts in the different Region / Unit / division of BHEL.
iv. Legal Options for recovery of dues payable by the supplier / contractor.

2. 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. Bidders shall keep themselves aware of these guidelines before submission of their quote.

3. Bill of Entry filing (Applicable for foreign bidders)

Indian Customs has imposed a penalty on late filing of Bill of Entries (Air / Sea Shipments) by the importer @ INR 5,000/- per day (for Initial 03 days) & INR 10,000/- per day (thereafter). The maximum free time allowed for filing Bill of Entry is 24 hrs from the time of arrival of cargo at final port of discharge.

The vendor should furnish the Non-Negotiable Documents (Air Way Bill / Bill of Lading, Error free Commercial Invoice, Packing List, Certificate of Origin) by email and by post / courier to BHEL well in advance (ie. 5 days prior to landing in case of sea and 2 days prior to landing in case of Air) at final port of discharge.

Vendor will be held responsible for the penalty arising against late filing of Bill of Entry by BHEL due to-

a. Non-availability of Non-Negotiable Documents (NND's) before the cargo arrival
b. Discrepancy in documents
c. Short landing of consignments (For shipments on CFR – Chennai Port)

For all shipments for the contracts (PO's) finalized on CFR Chennai port basis-

a. 21 FREE DAYS FOR Container detention shall be provided.
b. In case of shipment through Containers on CFR basis, the BL should bear the endorsement that "21 free days for Container Detention is applicable".
c. Delivery Orders involving multiple agencies like liners / freight forwarders are not allowed. There must be a single agency office at the final discharge Port (Chennai) for issuing the Delivery Order to BHEL.
d. Detention / demurrage charges arising due to the delay in collection of Delivery Orders from multiple agencies of liner / freight forwarder also whose offices are not at available Chennai, the same amount will be deducted from vendor's bills.
e. Bill of Lading should clearly endorse the detention free period and the same should be honored by the freight forwarder and liner. Detention / demurrage if any due to non-acceptance of detention free period indicated in bill of lading will be to vendors account only.

Apart from the normal charges like Terminal handling charges, Container cleaning charges, Delivery Order charges at final port of discharge, other charges indicated in delivery order will not be borne by BHEL. The liner / freight forwarders should be properly communicated by the vendor not to claim such charges for issuing Delivery Order. If the liner / freight forwarder claims such charges in their invoices, the same amount will be deducted from the vendor's bill without any prior intimation in order to avoid the delay in Customs clearance. The likely additional / hidden costs or charges are-

a. CIC - Container Imbalance Charges / Surcharges
b. EIC - Equipment Imbalance Charge / Surcharges
c. CAF - Container / Currency Adjustment Factor
d. BAF - Bunker adjustment Factor
e. RDS - Rupee Depreciation Surcharge
f. CDS - Currency Depreciation Surcharge
g. ISPS - International Ship & Port Facility Security charges
h. OHS - Origin handling Charges

4. Port Congestion Charge

5. General note

- Vendors are requested to ensure correctness of their quoted prices. Not honoring the rates after opening of the price bid will be viewed seriously. Supplier will be put on hold from participating in future tenders as per BHEL's guidelines for Suspension of Business Dealings with suppliers / contractors.
- Vendors shall not alter the description and size details given in the Enquiry.
- Any cost implication arising due to non-compliance to TDC conditions will be debited from vendors account after informing the same.
- Acknowledgement for receipt of PO shall be sent within 5 days from the date of receipt of the PO.
- During the Contract period, any of our sister units of BHEL Piping Centre will be entitled to place order for this item on the same terms and conditions with the consent of the vendor.
- BHEL reserves the right to cancel the tender without assigning any reasons what so ever.
- Deviation taken after placement of order will not be accepted (Both technical & on delivery).
- Lowest prices received against BHEL tenders do not mean order will be placed on that Supplier. BHEL reserves the right not to consider the same.
- BHEL reserves the right to negotiate or re-float the tender opened if L1 price or other details are not acceptable to BHEL.
- BHEL reserves the right to order on more than one vendor at the lowest acceptable price.
- Vendors are requested to take note of the "BHEL Fraud Prevention Policy" available in website www.bhel.com.