



BHARAT HEAVY ELECTRICALS LIMITED, RANIPET
NOTICE INVITING TENDER (NIT)

Title: Engineering Process Automation of ESP structure and Components

Pre-Bid Meeting Date: 30.05.2011

Tender Due Date : 07.06.2011

1. This is Notice Inviting Tender for tender notification No. KBE:DA:AQCS:001:01 dt. 23.05.2011 for the development of **customized software module for "Engineering Process Automation of Structural Components"** ("hereinafter referred as to **Project-1**") and **"Engineering Process Automation of ESP Components"** ("hereinafter referred as to **Project-2**") using **NX & TeamCenter**.
2. Only qualified vendors who have been empanelled by BHEL for Knowledge Based Engineering work, and to whom this enquiry is addressed, are eligible to bid for this tender.
3. The offers should be in two-part bid
 - * Part-I:
 - a) Technical bid and
 - b) Un-priced Proforma of Priced bid (with applicable rate of taxes and duties must be filled.) and
 - * Part-II: Price bid.
4. Bidders shall read carefully the enclosed documents that comprise this Tender:
 - a) Section I-:
 - i) Part A: Instruction to Bidders
 - ii) Part B: Contract
 - b) Section II:
Common Technical Specifications for both **"Project-1" & "Project-2"**.
 - c) Section III:
Technical specification & Detailed Scope of work for **Project-1**
 - d) Section IV:
Technical specification & Detailed Scope of work for **Project-2**

The Notice Inviting Tender, Section I (including Parts A and B), Section-II, Section- III & Section-IV shall hereinafter be referred to collectively as **"Tender Documents"**.



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5. Any clarification may be sought by Bidder from the undersigned with due written requests at least ten (10) days prior to Tender Due Date.
 6. The sealed tenders will be received by the undersigned at his office at BAP/ Ranipet/ EDC- AQCS up to 14.30 hrs on the Tender Due Date. BHEL shall have the right to extend the Tender Due Date. The technical Bid (i.e., Part-I of the offer) will be opened on Tender Due Date or any other day BHEL may specify at 15.00 hrs in presence of the Bidders or their authorized representatives (authorisation letter required) who choose to be present.
 7. During the course of finalization of Tender and Award of Contract, the Bidder shall
 - a. promptly and completely respond to all clarifications sought by the undersigned and
 - b. attend any meeting on the date and time called by the undersigned with written intimation to the Bidder.

Bids to be submitted by the Bidders shall be complete in all respects and shall be unconditional and unqualified and the Bidders would be deemed to have accepted all the terms and conditions of the Tender Documents with all its contents including the ITB, Contract and Technical Specifications.

Any conditional or incomplete Bid shall be regarded as non-responsive and would be liable to be rejected.

Bids not in conformity with Section-I (including Part A and B) and Section II, Section III & Section IV (Technical Specifications Project-1 and Technical Specifications Project-2) and/or are not in the prescribed format will not be considered and are liable to be rejected.

8. Sealed Tenders shall be addressed to the undersigned and the envelope shall be super scribed with Tender Number, signature & stamp of the Bidder and the Tender Due Date.
9. BHEL reserves the right to accept or reject any bid and to annul the bidding process and reject all bids at any time prior to the award of contract without assigning any reason there for.

Mailing Address:

S. S. Mani
SDGM / EDC - AQCS
BHEL/ BAP/ RANIPET.
PIN : 632406 (TN)
Contact No: 04172-284852.



BHARAT HEAVY ELECTRICALS LIMITED, RANIPET

SECTION-I

PART - A

INSTRUCTIONS TO BIDDERS

1. Two-Part Bid

- a) The offer shall be submitted in a sealed envelope which would contain two separate sealed envelopes as (i) Technical bid with Unpriced proforma of Priced Bid with applicable rate of taxes and duties and (ii) Price Bid.
- b) The Technical Bid, in English, shall contain (i) separate sealed envelope containing EMD (hereinafter defined); (ii) confirmation of compliance to all terms & conditions in the Tender Documents; (iii) technical offer in detail for the entire scope of work as given in the Technical Specification; and (iv) Price Schedule (without prices).
- c) The technical proposal shall cover, but not be limited to, the following:
 - i) Clear understanding of complete scope of work and deliverables with respect to product information and automation requirements given.
 - ii) Development methodology and all software programs / packages required to be used for the development of the software module.
 - iii) Proposed work schedule with duration so that total duration of the project does not exceed specified delivery period.
 - iv) Clear understanding of the working modalities. Bidder should indicate the computer systems and manpower proposed to be deployed at BHEL for this project.
- d) The price bid shall consist of the Price Schedule format with prices filled in (see ANNEXURE-B).
- e) Each sealed envelope shall be super scribed with the type of bid (Technical or Price), Tender Number and Bidder's name, stamp & signature. Both these envelopes should be submitted through one covering letter in a sealed envelope super scribing the Tender number and bidder's name, stamp & signature.
- f) The sealed Bids shall be submitted on or before the time & date specified and shall be addressed to the official as mentioned in the Notice Inviting Tender. Tenders submitted by post shall be sent preferably as "REGISTERED POST ACKNOWLEDGEMENT DUE / SPEED POST" and shall be posted with due allowance for any postal delay. Tenders received after the due date and time of opening are liable to be rejected.



g) Bidder shall fill up all the schedules and furnish all the required information as per the instructions given in various sections of the Tender Documents. Each and every page of the Tender Documents shall be SIGNED, STAMPED AND SUBMITTED ALONG WITH THE OFFER by the Bidder in token of complete acceptance thereof. The information furnished shall be complete in itself.

2. Right to Accept or Reject Bids and Other Rights

- a) Notwithstanding anything contained in the Tender Documents, BHEL reserves the right to accept or reject any Bid and to cancel or withdraw the Bid process and reject all Bids, call for fresh Bids or restart the Bid process, at any time without any liability or any obligation for such acceptance, rejection or annulment, without assigning any reasons.
- b) Deleted.
- c) BHEL reserves the right to not accept the lowest Priced Bid or financial offer or any other offer received and may negotiate and conclude the Contract with any technically qualified party.

3. Scope of Tender

- a) This Tender is for design, development, supply, installation, testing and demonstration of the software modules as per the requirements identified by BHEL in the enclosed Technical Specification (Section II, Section III, Section IV).
- b) The Bidder shall identify areas in which their solutions conform to open standards and areas that are proprietary in nature. Justification about proprietary components in terms of functionality, upgradability and performance shall be given.
- c) The complete Project, any activities during the Warranty Period and Annual Maintenance activities will be carried out on BHEL premises at BHEL Ranipet. BHEL will only provide necessary work place and FOUR (4) nos. of Work stations each for Project -1 & Project-2 respectively. No net connection shall be provided.
- d) All the necessary hardware required to carry out the work shall be arranged by BHEL.
- e) All the necessary software (including licenses for development packages) required to carry out the work shall be arranged by the Bidder. Use of pirated software is prohibited.
- f) All expenses towards logistics and incidentals, including lodging, boarding, travel, etc., incurred in connection with the execution of the Project shall be borne by the Bidder and shall not be reimbursed by BHEL.



g) The Bidder shall post an adequate number of qualified and experienced personnel to execute the Contract. The list of personnel proposed to be deployed shall be submitted as part of the technical proposal, by name and title. Further, the successful Bidder shall deploy competent and sufficient manpower for Annual Maintenance.

h) Except as BHEL may otherwise agree, no changes shall be made in the key manpower. If, for any reason beyond the reasonable control of the Bidder, it becomes necessary to replace any of the key manpower, the bidder shall provide as a replacement a person of equivalent or better qualifications and experience, subject to approval of BHEL.

4. Prices

a) Bidder shall indicate prices for all the items indicated in the Price Schedule. In addition, the total price of the contract shall also be clearly indicated. All Prices should be firm for the duration of the contract. All applicable duties and taxes shall be clearly indicated in the Offer. The tariff rates as applicable on the date of bid shall be specified. Wording like "Extra as applicable" or "as applicable at the time of dispatch", etc., will not be acceptable.

The total price for entire scope of work and Annual Maintenance Charges ("AMC") for three (3) years, together with taxes and duties (but excluding Service Tax) will be considered for bid evaluation purposes.

Bidders shall quote AMC valid for a period of Three (3) years from the date of expiry of the Warranty Period. The order for AMC will be placed on the successful Bidder / Contractor before the expiry of the Warranty period. For scope of AMC, refer Section-I, Part -B.

Rate quoted shall be inclusive of all taxes and duties as applicable seven (7) days prior to the date of Tender opening except Service Tax, if any. If the Offer is silent then 10.3% (as applicable presently) service tax shall be deemed to have been included and BHEL will proceed to finalize the Tender accordingly. The Vendor is to produce tax invoices as per the provisions of the law to enable BHEL to avail CENVAT Credit. Non – compliance of the same will result in deduction of tax amount from the bills.

b) The Bidder shall quote the PRICES in English Language and international numerals. These rates shall be entered in figures as well as in words.

c) Bidders shall quote, as part of the price schedule, man month and man day charges at which the additional work will be evaluated. **The Prices for Optional items will not be considered for bid evaluation purpose.**

d) L1 price will be decided taking the sum of the following charges (cost to BHEL):

i) Base Price of developed software plus applicable taxes and duties.

ii) AMC Charges plus applicable taxes and duties.



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Even though a single tender, both "Project-1" & "Project-2" will be treated as separate work and two L1 parties will be arrived based on the prices quoted against (i) & (ii).

However, if single party is L1 for both the Project-1 and Project-2 the contract will be awarded to the same party company who is L1 in both the projects.

Bidder has to mention applicable taxes and duties separately for both base price and AMC charges. Offers received with deviation to the above will not be considered for evaluation and will be summarily rejected.

In case any taxes and duties are imposed after submission of Bidder's offer, the Bidder shall convey its impact on the price, duly substantiated by documentary evidence in a sealed cover, before opening the Price Bid. Claim for any such impact after opening the Price Bid will not be considered by BHEL for reimbursement of tax or reassessment of offer.

e) **Difference between Rates in Words and Figures:** In case of difference in rates between words and figures, THE LESSER OF THE TWO will be treated as valid for the purpose of the tender. In case of difference in (i) sum of the items and (ii) total indicated, the former will be considered. The metric system of units shall be used.

5. Erasures and Corrections:

All entries in the tender shall either be typed or be written in ink. Erasures and overwriting are not permitted and may render such tenders liable to rejection. The Bidder shall duly attest all cancellations and insertions.

6. Site Visit:

a) The site is located at BHEL Ranipet, Vellore District, Tamil Nadu (hereinafter known as the "Site").

b) The Bidder is advised to visit and examine the Site and its surroundings and obtain for themselves all information that may be necessary for preparing the Bid and entering into the Contract. The timelines of all such Site visits shall be coordinated by BHEL with the interested Bidders in due course.

c) The Bidder and any of its personnel or authorised representative will be granted permission by the BHEL to enter upon its premises for the purpose of such inspection, but only upon the explicit condition that the Bidder, their personnel, agents and authorised representatives shall exercise all due care, will be responsible for personal injury (whether fatal or otherwise), loss of or damage to property and any other loss, damage, cost and expenses incurred as a result of such visit and inspection, and that the Bidders, their personnel, agents and authorised representatives hereby undertake to indemnify the BHEL and their personnel, agents and authorised representatives from and against all liability in respect thereof.



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d) Bidders shall have the right to conduct a Site visit only with the prior consent of, and on conditions specified by, the BHEL, and further, the Bidder shall always be accompanied by the BHEL's representative(s) during a Site visit.

e) Bidders shall, notwithstanding any Site visits, make independent enquiry and satisfy themselves with respect to all the required information, inputs, conditions and circumstances and factors that may have any effect on their Bids. In assessing the Bids, it is deemed that the Bidders have inspected and examined the Site conditions (irrespective of whether the Bidders have actually visited the Site or not), its surroundings and weather conditions, determined the BHEL's rights and authority with respect to the Site and the Project, examined all the laws and regulations in force and prepared their Bids by taking into account all relevant conditions and also all the risks, contingencies and other circumstances which may influence or affect the entire Project.

f) Bidders are advised to familiarize themselves with the applicable legal regime. BHEL shall not entertain any request for clarifications from the Bidders regarding the same.

7. Incomplete/ Conditional/ Unsigned Tenders:

Conditional and unsigned tenders, tenders containing absurd or unworkable rates and amounts, tenders which are incomplete or otherwise considered defective and tenders not in accordance with the terms, conditions and specifications, mentioned in the Tender Documents are liable to be rejected.

8. Mode of Signature

Tenders shall be signed by persons duly authorised / empowered to do so. Certified copies of such authority and relevant documents shall be submitted along with the tenders. The Declaration (see Annexure A) shall be signed by the duly authorised person.

9. Change in Legal Status:

a) In the event of the Bidder merging with or getting acquired by another company, all obligations under the contract shall automatically get transferred to the acquiring company till the end of the period, including the guarantee period and AMC.

b) Bidder shall intimate BHEL if there is any change in their legal status, within fifteen days (15) of such change. BHEL shall review the implications and take necessary action.

10. Compliance with Applicable Laws:

Bidders are required to comply with the provisions of all statutes, enactments, acts of legislature or parliament, laws, ordinances, rules, bye-laws, regulations, notifications, guidelines, policies, directions, directives, including amendments thereof and orders of any



Governmental Authority, statutory authority, tribunal, board, court or recognised stock exchange and, if applicable, international treaties and regulations, and amendments thereof.

11. Earnest Money Deposit (EMD)

a) The bidders for this Tender have to pay an EMD of Rs. **2,00,000/- (Rupees Two lakhs only) each for Project-1 & Project-2** along with offers. EMD can be paid in cash (as permissible under the Income Tax Act) at BHEL Cash Office or through DD/ Pay Order in favour of BHEL, Ranipet. payable at Mukundarayapuram (Branch code: 7013). The Demand Draft/ Pay Order issued by a Scheduled Bank shall be submitted along with offer. (The SBI branch in BHEL premises is Mukundarayapuram) Offers without EMD shall be summarily rejected.

b) EMD given by all unsuccessful tenderers shall be refunded normally within Fifteen (15) days acceptance of award of work by the successful tenderer.

c) EMD shall not bear any interest in any manner whatsoever.

d) EMD by the Bidder will be forfeited if:

i) After opening the tender, the Tenderer revokes his tender within the validity period or increases his earlier quoted rates.

ii) The tenderer does not commence the work within the period as per the LOI /Contract. In case the LOI/ Contract is silent in this regard then within Fifteen (15) days from the award of the work.

12. Security Deposit (SD)

a) The **successful Bidder** shall pay Security Deposit (SD) within fifteen (15) days from the notification of the award of the contract (Letter of Intent). The quantum of SD shall be based on the total contract price as per rates given below:

i) Upto Rs. 10 lakhs : 10%

ii) Above Rs. 10 lakhs upto Rs.50 lakhs: 1 lakh + 7.5% of amount exceeding Rs. 10 lakhs.

iii) Above Rs. 50 lakhs : Rs. 4 lakhs + 5% of amount exceeding Rs. 50 lakhs.

b) EMD of the successful Bidder shall be adjusted against SD.

(c) Security may be furnished in any one of the following terms:

i. Cash, (as permissible under the Income Tax Act)



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- ii. Pay Order, Demand Draft in favour of BHEL.
- iii. Local cheques of Scheduled Banks, subject to realization.
- iv. Securities available from Post Office such as National Savings Certificates, Kisan Vikas Patras etc., (Certificates should be held in the name of Contractor furnishing the Security and duly pledged in favour of BHEL and discharged on the back).
- v. Bank Guarantee from Scheduled Bank / Public Financial Institutions as defined in the Companies Act. The Bank Guarantee format should have the approval of BHEL.
- vi. Fixed Deposit Receipt issued by Scheduled Banks / Public Financial Institutions as defined in the Companies Act. The FDR should be in the name of the contractor, A/C BHEL, duly discharged on the back.
- vii. Security deposit can also be recovered at the rate of 10% from the running bills. However in such cases at least 50% of the Security Deposit should be paid before start of the work and the balance 50% may be recovered from the running bills.

Note : Acceptance of Security Deposit against sl.nos. (iv) and (vi) above will be subject to hypothecation or endorsement on the documents in favour of BHEL. However, BHEL will not be liable or responsible in any manner for the collection of interest or renewal of the documents or in any other matter connected therewith.

- d) SD shall be returned on the satisfactory completion of the warranty period. BHEL shall have the right to adjust any penalties or dues from the SD.
- e) SD shall be forfeited if the contract is abandoned by the bidder during the Contract period.
- f) SD shall not bear any interest in any manner whatsoever.

13. Pre-Bid Meeting:

For a better understanding of the project, a pre-Bid meeting will be held on **30.05.2011** in the office of the undersigned, as otherwise indicated in the Tender Documents or any other place as may be subsequently communicated by the BHEL to the Bidders. BHEL shall not be responsible in case the Bidder does not attend the Pre-Bid Meeting.

14. Bid Clarifications

- a) Any response by BHEL to a Bidder's queries/ request for information, would be furnished as expeditiously as possible to all Bidders who have been issued the Tender Documents. However, BHEL is not under any obligation to respond to any queries, clarification or



request for information where so sought by a Bidder or to consider any amendment suggested by the Bidders.

b) The Bidder shall closely peruse all the clauses, specifications and drawings indicated in the Tender Documents before submission of their bid. Any clarifications on the tender specifications can be sought from the authority inviting the tender, up to 10 (Ten) days before the Tender Due Date.

15. Amendment to Tender Documents

At any time prior to the Tender due date, BHEL may at its sole discretion, suo motu, or in response to a clarification sought by a Bidder, modify the bidding documents and communicate the said modification to all Bidders. For compliance of the requirements by the Bidder owing to the change, BHEL may, at its sole discretion change the Tender Due Date.

16. Validity of Offer and Evaluation

a) The offer shall be kept open for acceptance for a minimum period of 90 (ninety) days from the date of opening of Technical Bid (such period shall hereinafter be called as “Bid Validity Period”). Only the Technical Bid will be opened on the due date mentioned in the enquiry.

b) Notwithstanding the above, BHEL may instruct the Bidder in writing to extend the Bid Validity Period. The Bidder hereby consents to extension of the Bid Validity Period where instructions are given by BHEL.

c) An extension of the Bid Validity Period, shall not entitle a Bidder to modify its Bid, unless specifically permitted by BHEL to do so.

d) Not used

e) Bidders shall not be permitted to make changes in their Technical or Price bids after bid submission, unless asked to do so by BHEL. Unsolicited clarifications are liable to be rejected.

f) In case of minor changes in scope and/ or technical specifications or commercial terms, having price implications, technically accepted Bidders shall be asked, at BHEL’s sole discretion to submit their revised Price Bids in line with the revised scope and terms & conditions.

g) Price Bids of only the qualified and technically acceptable Bidders will be opened.

h) In case BHEL calls for negotiations, such negotiations shall not amount to cancellation or withdrawal of the original offer, which shall be binding, on the Bidder. All expenses for attending such negotiations are to be borne by the Bidder.



i) The entire work of "Project-1" & "Project-2" covered in this Tender shall be entrusted to the respective L1 Bidder of each Project-1 & Project-2. The successful Bidders are not permitted to off load part or whole of the work to a sub-vendor, without the prior written consent of BHEL.

17. Award of Contract

The successful Bidder shall attend the office of the Official nominated by BHEL on the date fixed by the Official through a written intimation. The Bidder shall forthwith accept award of the contract and complete the execution of the agreement by signing all documents connected therewith.

18. Execution of Contract

a) Upon the notification of the award of Contract to the successful Bidder, the Contractor shall execute a formal contract with BHEL as per the form of the Contract specified in Part-B of Section-I on a non-judicial stamp paper of appropriate value. The cost of non-judicial stamp paper and other applicable stamp duty shall be borne by the Contractor.

b) Till such time as the formal Contract is executed, the terms and conditions mentioned in the Tender Documents together with all and amendments and any modifications thereto and/or there from shall be binding on the parties.

19. Confidentiality

a) Bidder shall treat all information that is generated in connection with the Project as strictly confidential. All information, analysis, reports and recommendations, both in the form of hard copy or on electronic media, will be the property of BHEL and the Bidders are prohibited from using such information etc for any purpose other than this Project.

All Bidders are required to sign a Non-Disclosure Agreement with BHEL as per Annexure-C of Part-A of Section-I.

b) Further, the recipients of this Tender Documents, undertake to hold in confidence the Tender Documents, and not disclose the terms and conditions of the transactions contemplated hereby or the transaction itself to third parties

20. Late Bids

Any Bid received by BHEL after the deadline for submission of the Bids including any extension(s) hereof) will be declared "Late" and shall ordinarily be liable to be rejected.

21. Language of the Bid

The Bid prepared by the Bidder and all correspondence and documentation relating to the Bid, as maybe exchanged by the Bidder and BHEL shall be in English language.



22. Cost of Bid Preparation

The Bidders shall bear all costs associated with the preparation and submission of the bid including any and all costs and expenses related to visits to the Site and any pre-bid meetings. BHEL shall in no case be liable for these costs regardless of the conduct or outcome of the process.

23. Conflict of Interest and Undue Influence

a) Should a Bidder or, in the case of a Firm or Company, its Partner(s) / major Shareholder(s)/ Director(s) have relation(s) employed in BHEL, BHEL shall be informed of the fact along with the offer. Otherwise, BHEL may, at its sole discretion, reject the tender or cancel the contract at any stage of the Contract without any cost or any other adverse implications to BHEL

b) Any attempt by a Bidder to exert influence on BHEL during the process of bid evaluation or award of the contract, would make their bid liable for rejection.

24. Reverse Auction (RA) / On-line bidding on internet

(a) At its option BHEL may choose to conduct a Reverse Auction (R/A) or bidding through the Internet for the price, instead of opening the sealed Price-Bids. This will be decided after technical evaluation, and

b) In case BHEL decides not to go for Reverse Auction procedure for the tender enquiry, the Price bids and price impacts, if any, already submitted and available with BHEL shall be opened as per BHEL's standard practice.

c) BHEL decision regarding this will be final.

The General Terms & Conditions for RA are as below:

i) For a proposed reverse auction, technically and commercially accepted bidders alone shall be eligible to participate.

ii) BHEL will engage the services of a service provider who will provide all necessary training and assistance before commencement of on line bidding on internet.

iii) BHEL will inform the Supplier in writing in case of reverse auction, the details of Service Provider to enable them to contact the Service Provider & get trained.

iv) Business rules like event date, time, start price, bid decrement, extensions etc. also will be communicated through the Service provider for compliance.



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v) Bidders have to fax/ e-mail/ courier the Compliance form in the prescribed format (provided by Service provider) to both BHEL & Service provider before start of Reverse auction. Without this, the vendor will not be eligible to participate in the event.

vi) BHEL will provide the calculation sheet (e.g., Excel sheet) which will help to arrive at 'Total landed cost to BHEL' like Taxes and Duties, Service Tax for Services, etc. for each of the Supplier to enable them to fill-in the price and keep it ready for keying-in during the Auction.

vii) Reverse auction will be conducted on scheduled date & time.

viii) At the end of Reverse Auction event, the lowest bidder value will be known on the network, and

ix) The lowest bidder has to Fax the duly signed filled-in prescribed format as provided on case-to-case basis to BHEL through Service provider within 24 hours of Auction without fail. Failure to do so or if there is any variation between the on-line bid value and the signed document the same will be considered as sabotaging the tender process and will invite disqualification of Supplier to conduct business with BHEL as per prevailing procedure.

Formats – I & II for Reverse Auction (Applicable to commercially & technically accepted bidders) are enclosed for reference.



FORMAT – I

EVENT INFORMATION

BHEL Ranipet has contracted ----- (Name of Service Provider) to conduct this online bidding event. Service Provider shall answer all questions relating to the bidding process and conduct of the Reverse Auction Event.

1. Scheduled Date & Time of the event :

Date :

Start Time :

Close Time :

Any change in the scheduled time will be duly informed to you in advance.

2. Contact information

“ BHEL Ranipet ”

General Contract related Queries	
Name :	
Designation :	
Tel Nos :	
E-Mail ID :	

“ Service Provider ”

Software Related Queries / Process related Queries	
Name :	
Designation :	
Tel Nos :	
E-Mail ID :	



Process Compliance Form

To

Service Provider,

Sub : Agreement to the Process related Terms and Conditions

Dear Sir,

This has reference to the Terms & Conditions for the Reverse mentioned in the Tender document for **Engineering Process Automation of ESP structure and Components** against BHEL Tender No : : KBE:DA:AQCS:001

This letter is to confirm that :

- 1) The undersigned is authorized official of the company.
- 2) We have studied the Reverse Auction Terms & Conditions and the Business rules governing the Reverse Auction as mentioned in your letter and confirm our agreement to them.
- 3) We also confirm that we have taken the training on the auction tool and have understood the functionality of the same thoroughly.

We, hereby confirm that we will honor the Bids placed by us during the auction process.

With Regards

Signature with company seal

Name : :

Designation :

Company / Organization name :

Address of Company :



FORMAT – II

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Reverse Auction Terms & Conditions

1. **LOG IN NAME & PASSWORD:** Each Bidder is assigned a Unique User Name & Password by Service Provider. The Bidders are requested to change the Password and edit the information in the Registration Page after the receipt of the Initial Password from Service Provider. All bids made from the Login ID given to the bidder will be deemed to have been made by the bidder.
2. **BIDS PLACED BY BIDDER :** The bid of the bidder will be taken to be an offer to contract as per Tender specification. Bids once made by the Bidder cannot be cancelled. The bidder is bound to honor the Tender specification as mentioned above at the price that they bid. Should any bidder back out and not accept the contract as per the rates quoted , BHEL and / or Service Provider shall take action as appropriate.
3. **LOWEST BID OF A BIDDER :** In case the bidder submits more than one bid, the lowest bid will be considered as the bidder's final offer to contract.
4. **AUCTION TYPE:** Standard English Reverse Auction i.e. no two bids can have identical price from two different bidders. That is there can never be a tie in the bids.
5. **VISIBILITY TO BIDDER :** The Bidder shall be able to view the following on his screen along with the necessary fields:
 - Leading Bid in the Auction (only total price – Lowest Bid)
 - Bid Placed by him.
6. **AUCTION WINNER :** At the end of the Reverse Auction, BHEL will evaluate all the bids submitted and will decide upon the winner.
7. **GENERAL TERMS & CONDITIONS:** Bidders are required to read the “ Terms and Conditions” section of the auction site----- using the Login ID and passwords given to them.
8. **OTHER TERMS & CONDITIONS:**
 - The Supplier / Bidder shall not involve himself or any of his representatives in Price manipulation of any kind directly or indirectly by communicating with other vendors/ bidders.
 - The Bidder shall not divulge either his Bids or any other exclusive details of BHEL to any other party.
 - BHEL's decision on award of Contract shall be final and binding on all the Bidders.
 - BHEL along with Service Provider can decide to extend, reschedule or cancel any



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Auction. Any changes made by BHEL and/ or Service Provider after the first posting will have to be accepted if the Bidder continues to access the site after that time.

- Service Provider shall not have any liability to Bidders for any interruption or delay in access to the site irrespective of the cause.
- Service Provider is not responsible for any damages, including damages that result from, but are not limited to negligence. Service Provider will not be held responsible for consequential damages, including but not limited to systems problems, inability to use the system, loss of electronic information etc.

N.B.

- All the Bidders are required to submit the Agreement Form duly signed to Service Provider by ----- (date). After the receipt of the Agreement Form, Login ID & Password shall be allotted to the Bidders.
- After the completion of the Auction event, all the Bidders have to submit the Price Breakup immediately to Service Provider for further proceedings.



FORMAT – II

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Business Rules for Reverse Auction

- 1. Material for Bid Engineering Process Automation of ESP structure and Components using UG-NX & Teamcenter**
- 2. SCHEDULE for Reverse Auction :** The Reverse Auction is scheduled on dd/mm/yy
 - Auction Start Time : _____ hrs
 - Auction Close Time : _____ hrs
- 3. AUCTION EXTENSION TIME :** If a bidder places a Bid in the last __ minutes of closing of the Auction, the auction shall get extended automatically for another 10 minutes. In case, there is no Bid in the last 10 minutes of closing of Auction, the Auction shall get closed automatically without any extension.
- 4. BID PRICE :** The Bidder has to quote the Total cost to BHEL for the Items specified.
(Calculation sheet to arrive at the Total cost to BHEL will be provided by BHEL)
- 5. BIDDING CURRENCY :** Bidding will be conducted in Indian Rupees.
- 6. OPENING PRICE :** Shall be provided before the start of the event.
- 7. BID DECREMENT :** Shall be provided before the start of the event.
- 8. The technical & commercial terms are as per BHEL Tender No. KBE:DA:AQCS:001. Dt. .02.2011 . Vendors technical and commercial bid and subsequent correspondences/ mutual agreement between BHEL and the vendors regarding commercial terms & conditions.**
- 9. VALIDITY OF BIDS:** The Bid Price shall be firm for a period of 30 days and shall not be subjected to any change whatsoever.
- 10. POST AUCTION PROCEDURE :** BHEL will proceed with the Lowest Bid in the Reverse Auction as per the normal procedure.



Engineering Development Centre/ Air Quality Control Systems
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25. Miscellaneous Information

Bidder shall fill up Organizational Information (Annexure–D) and Filled up Check List (Annexure–E) and Certificate of NO DEVIATION (Annexure – F). If deviated the Offer will be rejected.



ANNEXURE - A

DECLARATION

I/We, _____ hereby certify that, all the information and data furnished by me with regard to this Tender Notification dated are true and complete to the best of my knowledge. I have gone through the specification, conditions and stipulations in detail and agree to comply with the same.

I/We, further certify that I am / we are the duly authorized representative(s) of the under mentioned tenderer and a valid power of attorney to this effect is also enclosed.

I/We, hereby declare that I/We shall treat the Tender Documents, drawings, specifications and other records connected with the Project as secret/confidential and shall not communicate information / derived there from to any persons other than a person to whom I/We am/are authorized to communicate the same or use the information in any manner prejudicial to the safety of the same.

Bidder's Name & Address

Signature & Office Seal of the Bidder



Engineering Development Centre/ Air Quality Control Systems
Tender No: KBE:DA:AQCS:001:01 dt. 23.05.2011

ANNEXURE - B

Tender Notification No.: KBE:DA:AQCS:001:01 dt. 23.05.2011

SCHEDULE OF PRICES: "PROJECT-1"

SR. NO	DESCRIPTION	PRICE (In figures Indian Rupees)
1	Software Development Charges	
2	Taxes & duties (other than Service Tax) for sl.no.1	
3	AMC Charges for three years after Guarantee Period	
4	Taxes & duties (other than Service Tax) for sl.no.3	
5	Total (In words) of sl.nos. 1 to 4 above	
6	Service Tax (Rate and amount) for sl.no.1	
7	Service Tax (Rate and amount) for sl.no.3	
	Optional Items	
8	Man Month Charges (If there is an increase of scope on account of BHEL)	
9	Man Day Charges (If there is an increase of scope on account of BHEL)	

Bid evaluation will be decided on overall Price Total indicated in sl.no.5 (including sl.nos. 1 to 4 only). BHEL reserves the right to opt for Reverse auction. The conditions of Reverse Auction indicated in Section-I Part-A, Clause 24.

The applicable rate of taxes & duties to be indicated in the Un-priced Schedule of Prices to be enclosed in the Technical Bid. AMC shall be quoted separately in sl.no.3. Otherwise Offer will be rejected.

Bidder's Name & Address

Signature & Office Seal of the Bidder



Engineering Development Centre/ Air Quality Control Systems
Tender No: KBE:DA:AQCS:001:01 dt. 23.05.2011

ANNEXURE - B

Tender Notification No.: KBE:DA:AQCS:001:01 dt. 23.05.2011

SCHEDULE OF PRICES: "PROJECT-2"

SR. NO	DESCRIPTION	PRICE (In figures Indian Rupees)
1	Software Development Charges	
2	Taxes & duties (other than Service Tax) for sl.no.1	
3	AMC Charges for three years after Guarantee Period	
4	Taxes & duties (other than Service Tax) for sl.no.3	
5	Total (In words) of sl.nos. 1 to 4 above	
6	Service Tax (Rate and amount) for sl.no.1	
7	Service Tax (Rate and amount) for sl.no.3	
	Optional Items	
8	Man Month Charges (If there is an increase of scope on account of BHEL)	
9	Man Day Charges (If there is an increase of scope on account of BHEL)	

Bid evaluation will be decided on overall Price Total indicated in sl.no.5 (including sl.nos. 1 to 4 only). BHEL reserves the right to opt for Reverse auction. The conditions of Reverse Auction indicated in Section-I Part-A, Clause 24.

The applicable rate of taxes & duties to be indicated in the Un-priced Schedule of Prices to be enclosed in the Technical Bid. AMC shall be quoted separately in sl.no.3. Otherwise Offer will be rejected.

Bidder's Name & Address

Signature & Office Seal of the Bidder



ANNEXURE - C

THIRD PARTY NON-DISCLOSURE AGREEMENT

I _____ on behalf of the _____ (Name of Company), acknowledge that the information received or generated, directly or indirectly, while working with BHEL on contract is confidential and that the nature of the business of the BHEL is such that the following conditions are reasonable, and therefore:

I warrant and agree as follows:

I, or any other personnel employed or engaged by our company, agree not to disclose, directly or indirectly, any information related to BHEL. Without restricting the generality of the foregoing, it is agreed that we will not disclose such information including, but not necessarily limited, to the following, information:

- Technical information: Methods, drawings, processes, formulae, compositions, systems, techniques, inventions, computer programs/data/configuration and research projects.
- Business information: Customer lists, project schedules, pricing data, estimates, financial or marketing data.

I shall not sub-contract/ sub-let the execution of the Project to any other entity, without the permission in writing from BHEL.

On conclusion of contract, I, or any other personnel employed or engaged by our company shall return to BHEL all documents and property of BHEL, including but not necessarily limited to: drawings, blueprints, reports, manuals, computer Programs/data/configuration, and all other materials and all copies thereof relating in any way to BHEL's business, or in any way obtained by me during the course of contract. I further agree that I, or any others employed or engaged by our company shall not retain copies, notes or abstracts of the foregoing.

This obligation of confidence shall continue after the conclusion of the contract also.

I acknowledge that the aforesaid restrictions are necessary and fundamental to the business of BHEL, and are reasonable given the nature of the business carried on by BHEL. I agree that this agreement shall be governed by and construed in accordance with the laws of country.

I enter into this agreement totally voluntarily, with full knowledge of its meaning, and without duress.

Dated at _____, this _____ day of _____, 2011.

Bidder's Name & Address

Signature & Office Seal of the Bidder



Engineering Development Centre/ Air Quality Control Systems
Tender No: KBE:DA:AQCS:001:01 dt. 23.05.2011

ANNEXURE - E

CHECK LIST to be filled up & submitted by Bidder.

Bidder has to fill up the following details. No detail in this Check list or any Enclosure / Annexure indicated should be left blank.

Sl.No.	ITEM DESCRIPTION	
1	Notice Inviting Tender (NIT) enclosed duly signed and stamped by Bidder.	YES / NO
2	SECTION –I Part A Instructions to Bidders, Part B Contract, Filled up Annexures – A, B, C, D & E enclosed duly signed and stamped by Bidder	YES / NO
3	SECTION – II Technical Specification, Tables – 1 to 4, Input / Output Process diagrams (Annexure – I) 3 pages & KBE Technical Check list (Annexure –II) 2 pages.	YES / NO
4	EMD details	YES / NO
5	Reverse Auction (R/A) / Bidding through Internet. Terms & Conditions Accepted by vendor	YES / NO
6	Validity of Offer / rates quoted for 90 Days from the date of opening tender	YES / NO

Signature & Seal of Bidder



ANNEXURE - F

CERIFICATE OF NO DEVIATION

I / We of M/s
Here by certify that there is no deviation from the tender conditions either technical or commercial and I am /We are agreeing to all the terms and conditions mentioned in the Tender Specification.

Date:

Signature of the tenderer



SECTION -I

PART - B

CONTRACT

This agreement (hereinafter "Contract") is this [insert] day of [insert] 2011, at [insert], by and between:

M/s Bharat Heavy Electricals Limited, Unit: Boiler Auxiliaries Plant, Ranipet 632 406 having its Registered Office at BHEL House, Siri Fort, New Delhi-110 049 (hereinafter called BHEL) of the one part and

M/s _____ [insert the registered office of the Contractor] (Hereinafter called the Contractor) of second part.

Each of the BHEL and the Contractor may hereinafter be referred to individually as a "Party" and collectively as the "Parties".

Recitals:

Whereas:

A. BHEL had invited tenders for executing Project (as defined hereinafter) pertaining to, associated with, and ancillary to the development of customized software module for "**Engineering Process Automation of Structural Components**" ("**Project-1**") and "**Engineering Process Automation of ESP Components**" ("**Project-2**")

B. The Contractor has represented that it has the necessary skilled human resources and technical capabilities and is ready and willing to perform the Project (as defined hereinafter) as per the Tender Documents, Contract and instructions given from time to time by BHEL.

C. BHEL has agreed to pay the Contractor on the basis of agreed milestones as mentioned in the Contract for the Project.

D. The Parties have decided to set forth the terms and conditions governing execution of the Project in writing

NOW THEREFORE, the Parties with the intent to be legally bound, hereby agree in good faith as follows:-



Article 1
Definitions

In this Contract, the following terms shall have the meaning hereby assigned to them, except where the context otherwise requires.

a) "Applicable Laws" shall include all statutes, enactments, Acts of legislature or parliament, laws, ordinances, rules, bye-laws, regulations, notifications, guidelines, policies, directions, directives, including amendments thereof and orders of any Governmental Authority, statutory authority, tribunal, board, court or recognised stock exchange and, if applicable, international treaties and regulations.

b) " BHEL Project Leader" shall mean a person nominated by BHEL to discharge the functions of BHEL under this contract. "Approved" or "Directed" shall mean the approval or direction, in writing, of the BHEL Project Leader, or person deputed by him for the particular purposes.

c) "Contract" shall mean this agreement, including any Annexure, and the terms and conditions in the Tender Documents that are not inconsistent with this Contract (including all the Annexure)

d) "Contractor" shall mean the individual, firm or company whether incorporated or not, undertaking the Project and shall include the representatives of such individuals or the firm or Company or their successors of the firm and permitted assigns.

e) NOT USED

f) "Day" means, the day of 24 hours (TWENTY FOUR) irrespective of the number of hours worked or not worked in that day. A reference to 'Day' shall mean a reference to a calendar day

g) NOT USED

h) "Applicable Taxes" means any tax, charge, impost, tariff, duty, fee, cess or levy of any kind or nature (whether Central, State, or Local or otherwise) whatsoever and wherever and whenever charged, imposed or levied, directly or indirectly, by any governmental authority, including but without limitation any income tax, service tax, value added tax, sales tax, (including value added tax on Project contract), stamp duty, import duty, withholding tax (whether on dividends, interest payments, fees, equipment rentals or otherwise), tax on foreign currency loans or foreign exchange transactions, excise duty, property tax, registration fee or license, octroi tax or water tax together with any interest and penalties in relation thereto.

i) NOT USED

j) NOT USED



k) "Project" shall mean the work pertaining to, associated with, and ancillary to the work described in the Contract, in individual work-orders as may be issued from time to time to the Contractor by BHEL and includes all notified or additional items of Project and obligations to be carried out as required for the performance of Contract.

Article 2 Interpretation

In this Contract, unless the context otherwise requires:

a) provisions of this Contract which, either expressly or by their very nature survive termination of the Contract, shall survive termination of the Contract.

b) any reference to any statute or statutory provision shall include

(i) all subordinate legislation made from time to time under that provision (whether or not amended, modified, re-enacted or consolidated);

(ii) such provision as from time to time amended, modified, re-enacted or consolidated (whether before or after the date of this Contract) to the extent such amendment, modification, re-enactment or consolidation applies or is capable of applying to any transactions entered into under this Contract and (to the extent liability there under may exist or can arise) shall include any past statutory provision (as from time to time amended, modified, re-enacted or consolidated) which the provision referred to has directly or indirectly been replaced;

c) A reference to any document, agreement, deed or other instrument (including, without limitation, references to this Contract), includes a reference to any document, agreement, deed or other instrument as may be varied, amended, supplemented, restated, novated or replaced, from time to time.

d) A reference to any statutory body or authority includes a reference to any successor as to such of its functions as are relevant in the context in which the statutory body or authority was referred to.

e) The words 'include' and 'including', "such as", "comprising" and the like are to be construed without limitation, and they shall be deemed to be completed by the expression "but not limited to", unless a contrary indication is expressly mentioned

f) In this Contract headings are for the convenience of reference only and are not intended as complete or accurate descriptions of the content thereof and shall not be used to interpret the provisions of this Contract

g) Where in the Contract, the expressions "require", "request", "submit", "answer", "notify", "instruct", "state", "inform", "agree" and the like or derivatives thereof are encountered, they shall be deemed to be completed by the expression "in writing"



Article 3
Term of Contract

- a) The Project shall be completed and all the deliverables specified handed over within 15 (Fifteen) months from the date of award of Contract.
- b) Time is of the essence of the Contract

Article 4
Performance of Project

- a) The Contractor shall use all reasonable care and skill in providing the services and shall be responsible for the quality of workmanship and accuracy of the deliverables to the satisfaction of BHEL. The Contractor shall implement in-house quality control and shall carry out 100% quality checks prior to submitting the Project to BHEL for acceptance.
- b) The Contract shall be considered successfully completed upon acceptance by the BHEL Project Leader of deliverables as specified in the Contract. The BHEL Project Leader shall effect the sign-off along with the Contract for closing the Contract.
- c) Contractor shall adhere to the material movement and security procedures of BHEL.
- d) The Contractor shall not utilize services of BHEL employees for carrying out Project in any manner whatsoever. In case of any breach of this condition, the contract shall be terminated forthwith without any prior notice, or assigning any reason at the sole discretion of BHEL without any cost or other adverse implications to BHEL provided that this shall not apply to any clarification or request for instructions sought by the Contractor and Validation / testing of Contractor outputs for checking if these are in line with BHEL Technical specifications.
- e) The Contractor will perform the Project as per instructions as may from time to time be given by BHEL.
- f) The Contractor shall be deemed to have satisfied itself of the Project to be done, the nature of the site, local facilities of access, Applicable Laws and all matters affecting the execution of the Project. No extra charges consequent on any misunderstanding in these respects or otherwise shall be allowed.
- g) Should any error or ambiguity be discovered in the specification or information given to the Contractor, the Contractor shall forthwith bring the same to the notice of BHEL before commencement of the Project.

Article 5
Supervision by the Contractor

- a) The Contractor shall either himself supervise the execution of the Contract or shall appoint a competent agent (“Contractor Project Leader”) acceptable to the BHEL Project Leader.



b) Instructions or communications given to the Contractor Project Leader shall be considered to have the same force as if they have been given to the Contractor himself.

c) BHEL shall have full powers and without assigning any reason, require the Contractor to immediately cease to employ in connection with this Contract, any Contractor Project Leader, servant or employee where continued employment is, in his opinion undesirable. The Contractor shall not be allowed any compensation on this account.

d) The Contractor Project Leader shall ensure that human resources deployed for the Project and skilful to perform the Project in accordance with best industry practices and shall ensure adequate human resources and discipline by the human resources to be put on the Project and in general see that the Project is carried out in a safe and proper manner.

Article 6
Terms of Payment

a) No advance payments will be made.

b) Payment shall be made after certification issued by BHEL Project Leader regarding the satisfactory completion of scope of work as per the payment schedule enumerated hereunder.

c) Payment Milestones:

ca) Payment Terms: "Project-1"

i) Completion of Software Requirements Specification (SRS), Unit testing plans, Integration testing plans, Database design, integration methodology with legacy application, ERP (if applicable), all input/ output screen shots and signing off of these documents prior to coding - 10% of contract value.

ii) Completion of PGMA wise deliverables -- 60% of contract value.

PGMA	Deliverables	Release of Payment
X01, X80, X48, X81	2D drawings & input files for GMS	20%
X28, X49, X50, X57,x79	2D drawings & input files for GMS	20%
X55, X56, X59, X65, X82, X83, X84, X85, X86, 89-610, 89-611, 89-612, 89-613, 89-614.	2D drawings & input files for GMS	20%

iii) Completion of Integration test -- 10% of contract value.

iv) Demonstration of full functionalities -- 10% of contract value.



v) Final acceptance -- 10% of contract value.

cb) Payment Terms: "Project-2"

i) Completion of Software Requirements Specification (SRS), Unit testing plans, Integration testing plans, Database design, integration methodology with legacy application, ERP (if applicable), all input/ output screen shots and signing off of these documents prior to coding - 10% of contract value.

ii) Completion of PGMA wise deliverables -- 70% of contract value

PGMA	Deliverables	Release of Payment
X21, X22, X32, X08, X13, X43, X44, X45, X19, X20	2D drawings & input files for GMS	25%
X23, X26, X46, X47 X61, X51, X52, X53, X54 X61, X66, X69, X70, X79, X67, X68	2D drawings & input files for GMS	25%
X15, X11, X24, X25, X42, X16, X17, X09, X10, X06	2D drawings & input files for GMS	20%

iii) Demonstration of full functionalities -- 10% of contract value.

iv) Final acceptance -- 10% of contract value.

Contractor shall be required to furnish bank guarantees for the amount of payments under the above clauses ca(i) to ca(v) for Project-1 and cb(i) to cb(iv) for Project-2 respectively before the payments are released. The Bank Guarantees shall be valid until the end of the Contract period (Final Acceptance).

d) Contractor shall submit the invoices to BHEL Project Leader within ten (10) days from the date of successful completion of milestones and acceptance by BHEL.

e) Within Fifteen (15) days after final acceptance, Bidder shall be required to furnish performance bank guarantee equal to 10% of the contract value, to be valid for the duration of the guarantee period (12 months). The final payment will be released only after submission of the performance bank guarantee. Payment will be made to vendor within a period of 45 days from the receipt of the performance bank guarantee.

f) Deleted

g) Payments to be made to the Contractor under this contract shall be by electronic transfer for which the necessary details shall be furnished by the Contractor. BHEL may also choose to pay the Contractor by any other means at it may deem fit. In such cases, necessary details shall be furnished by the Contractor.



h) Contractor shall continue to have full liability to meet the complete requirements and rectify any defects till the expiry of the Warranty Period notwithstanding any part payments that may have been made for any part of the work.

Article 7

Warranty Period

a) The developed software shall be guaranteed for trouble-free operation for a period of twelve (12) months from its installation and acceptance at BHEL (“Warranty Period”). In case of any defects observed during the operation of this module during this period, the Contractor shall render their services without any additional cost for repair / rectification of the same within the time as prescribed by BHEL.

b) One (1) year support for operation and maintenance of the software product must be provided by one support engineer knowledgeable in NX and KF and associated with the project, stationed at BHEL after acceptance. . No extra payment on account of conveyance, lodging and boarding will be payable.

c) During the Warranty Period any software modification required for operational reasons shall be done at BHEL site at no extra cost.

Article 8

Annual Maintenance Charges

a) Prices pertaining to the Annual Maintenance Charges (“AMC”) shall be valid for a period of three (3) years. The AMC shall commence after expiry of Warranty Period.

b) SCOPE FOR THE AMC

i) Services to ensure trouble free operation & uptime of the software during AMC. Installation of software on new machines.

ii) Ensuring compatibility with the latest & upgraded version of UG NX by necessary updation / modifications to the software.

iii) Assistance in utilization of the software.

iv) Fixing of bugs in the software i.e. 3D modeling, animation, 2D drawing, GUI, Database, output files etc. if any.

v) Correction in developed software if required, for patches released by UG-NX during the AMC.



vi) Software developed in 32 bit machine shall be ported to 64 bit machine as and when BHEL goes for 64 bit configuration hardware during AMC period. When the hardware is migrated to 64 bit, the software should work in the new hardware.

vii) Payment of AMC charges would be quarterly, within 15th of the next month after expiry of the previous quarter.

Article 9

Compliance with Applicable Laws

a) The Contractor shall confirm to the provisions of Applicable Laws, including any laws relating to the Project, statutory compliances, tax, labour law. The Contractor shall be bound to give all notices required by Applicable Laws as aforesaid and to pay all fees and taxes payable to any authority in respect thereof. BHEL shall not be responsible for any reason whatsoever for the non-compliance by the Contractor of Applicable Laws.

b) BHEL shall have the right, but not the duty, to demand any document, receipt etc relating to or showing the proof of compliance by the Contractor with any of the Applicable Laws.

Article 10

Applicable Taxes

a) The Contractor shall duly pay Applicable Taxes to the statutory or governmental authorities.

b) Notwithstanding anything to the contrary, BHEL shall not be liable for payment of any fine, penalty, or interest or any other amount for delay in or failure by the Contractor to discharge statutory liabilities.

c) Payments to Contractor will be subject to deduction of taxes at source as per Applicable Laws.

d) Rate quoted shall be inclusive of all taxes and duties as applicable seven (7) days prior to the date of Tender opening except Service Tax, if any. If the Offer is silent then the normal service tax shall be deemed to have been included and BHEL will proceed to finalize the Tender accordingly. The Vendor is to produce tax invoices as per the provisions of the law to enable BHEL to avail CENVAT Credit. Non – compliance of the same will result in deduction of tax amount from the bills.

e) In case the government (Centre/ State) imposes any new indirect taxes or upward revision of indirect taxes on the output services / work after the submission of Bid, the same shall be reimbursed to the Contractor by BHEL at actuals. All necessary documents as required by BHEL shall have to be provided by the Contractor.

f) However, in the event of delay in work execution attributable to the Contractor, the new indirect taxes with effect from delay period shall not be reimbursed to the Contractor. BHEL's decision in this regard shall be final.



g) For the sake of clarity, the Parties agree that BHEL shall not be liable to reimburse any direct tax, whether present or in future to the Contractor.

Article 11
Confidentiality

The Contractor shall not within the period from the Effective Date until Five (5) years from expiry of all obligations of the Contractor, disclose or make available to any third party or use, directly or indirectly, any information acquired from BHEL or obtained by Contractor in connection with the Project, except as necessary for the performance of the Contract with prior approval, in which cases the same undertaking shall be signed prior to receipt by the recipient.

Article 12
Intellectual Property Rights

a) In the event that the services provided by the Contractor in connection with software programmes and related documentation supplied to BHEL in relation to which rights may be owned by third parties, Bidder shall warrant and represent that:

i) BHEL has all necessary permissions, express or otherwise, to enable the software programs and documentation to be copied or otherwise used by Bidder during the course of the services without infringing any third party copyright, patent or trade secret or any other proprietary right.

ii) In providing the services the Contractor shall not be infringing upon the intellectual property rights of any third parties.

iii) The disclosures or use of the software programmes and documentation during the course of services shall not involve the breach of any confidential or contractual relationship.

b) The deliverables, and all information, reports, studies, object or source codes, flow charts, diagrams and other tangible or intangible material related to the Project (collectively called “ Materials”) in relation to the Project and all copies thereof shall be the sole and exclusive property of BHEL and shall be considered as BHEL’s proprietary information. The Contractor hereby irrevocably grants, assigns and transfers all right, title and interest to BHEL of any kind or description of Materials, including but not limited to patents, copyrights, trade secrets and other intellectual property rights.

c) The Contractor shall keep BHEL indemnified from / against any and all damages, demands, losses, costs and expenses that BHEL suffers/ may suffer as a result of any infringement or alleged infringement of any patent, registered design, trademark, copy right or other intellectual property right registered or otherwise by reason of claims, actions, demands and proceedings whatsoever brought or made against BHEL on the basis of any patent or infringement thereof claimed or otherwise relating to and arising from any method or process employed or matter or thing done to or in connection with any work executed by the Contractor under the Contract and the Contractor shall, at his own risk and expenses,



defend any suit for infringement of patent or like suit brought against BHEL (whether with or without the Contractor being a party thereto) and shall pay any damages and costs awarded in such suit and keep BHEL indemnified from and against all costs and other consequences thereof.

Article 13
Security Deposit

a) The Contractor shall pay Security Deposit (SD) within fifteen (15) days from the award of the Contract (Letter of Intent). The quantum of SD shall be based on the total contract price as per rates given below:

(i) Upto Rs. 10 lakhs : 10%

(ii) Above Rs. 10 lakhs upto Rs.50 lakhs: 1 lakh + 7.5% of amount exceeding Rs. 10 lakhs.

(iii) Above Rs. 50 lakhs : Rs. 4 lakhs + 5% of amount exceeding Rs. 50 lakhs.

b) EMD of the successful Bidder shall be adjusted against SD.

c) Security may be furnished in any one of the following terms:

i. Cash, (as permissible under the Income Tax Act)

ii. Pay Order, Demand Draft in favour of BHEL.

iii. Local cheques of Scheduled Banks, subject to realization.

iv. Securities available from Post Office such as National Savings Certificates, Kisan Vikas Patras etc., (Certificates should be held in the name of Contractor furnishing the Security and duly pledged in favour of BHEL and discharged on the back).

v. Bank Guarantee from Scheduled Bank / Public Financial Institutions as defined in the Companies Act. The Bank Guarantee format should have the approval of BHEL.

vi. Fixed Deposit Receipt issued by Scheduled Banks / Public Financial Institutions as defined in the Companies Act. The FDR should be in the name of the contractor, A/C BHEL, duly ischarged on the back.

vii. Security deposit can also be recovered at the rate of 10% from the running bills. However in such cases at least 50% of the Security Deposit should be paid before start of the work and the balance 50% may be recovered from the running bills.

Note :Acceptance of Security Deposit against sl.nos. (iv) and (vi) above will be subject to hypothecation or endorsement on the documents in favour of BHEL. (However, BHEL will



not be liable or responsible in any manner for the collection of interest or renewal of the documents or in any other matter connected therewith).

d) SD shall be returned along with the final bill of bidder on the satisfactory completion of the contract and the warranty period . BHEL shall have the right to adjust any penalties or dues from the SD.

e) SD shall be forfeited if the Contract is abandoned by the bidder during the Contract period.

f) SD shall not bear any interest in any manner whatsoever.

Article 14

Instructions under the Contract

All instructions, requests, notices etc. to be given under the Contract shall be in writing, typescript 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.

Article 15

Force Majeure

a) Force Majeure means any cause which is beyond the control of the Contractor or BHEL, as the case may be, which they could not foresee or with a reasonable amount of diligence could not have foreseen and which substantially affects the performance of the contract, such as:

i) Natural phenomena including, but not limited to, floods, droughts, earthquakes and epidemics;

ii) Acts of any government, domestic or foreign, including, but not limited to, war, declared or undeclared, priorities, quarantines, embargoes;

However Force Majeure shall not include the following circumstances:

(i) mechanical breakdown of equipments of the Contractor of whatsoever kind not resulting itself from an event of Force Majeure;

(ii) financial distress of Contractor or its subcontractor, lack of funds or the inability of the Contractor to make payments in the manner specified herein;

(iii) inclement weather;

(iv) any event or circumstance that makes performance by the Contractor merely uneconomic or commercially impracticable including without limitation due to recession, depression, inflation, deflation, tax rate or law changes, exchange rate fluctuations, or changes in prices;



(v) any act or omission or default on the part of a subcontractor or a vendor that is not itself attributable to an event of Force Majeure (as defined herein); and

(vi) the imposition of sanctions by any governmental authority due primarily to the failure of the Contractor to comply with any Applicable Laws.

b) Either party shall within fifteen (15) days from the occurrence of Force Majeure notify the other in writing of such cause.

c) The obligation stipulated in this Contract can only be suspended in the case of any particular item of work, in the event of Force Majeure or as the result of an agreement between the parties. In the event of Force Majeure, neither of the parties may be considered in default of its obligations under the terms of this Contract.

d) If the Force Majeure circumstances mentioned in Article 15(a) above continue to exist for more than One (1) Month, BHEL shall have the right to terminate the Contract forthwith.

Article 16

Liquidated Damages

a) Liquidated Damages at the rate of 0.5% per week or part thereof, subject to a maximum of 10% of the order value, shall be levied for the late delivery/ execution of the Project-1 as per certification of the BHEL Project Leader.

b) Liquidated Damages at the rate of 0.5% per week or part thereof, subject to a maximum of 10% of the order value, shall be levied for the late delivery/ execution of the Project-2 as per certification of the BHEL Project Leader.

c) For the sake of clarity levy of Liquidated Damages in respect of Project-1 shall be independent of levy of Liquidated Damages in respect of Project-2.

d) Liquidated Damages shall be evaluated only at the time of final delivery and not during the stages of individual milestones, if any.

Article 17

Damage and Loss to Private Property and Injury to Workmen

The Contractor shall at his own expense reinstate and make good to the satisfaction of the BHEL Contract Leader 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, 1923 or otherwise.



Article 18
Indemnities

Contractor shall indemnify and keep indemnified BHEL, its other contractors and/or subcontractors and its/their employees from all actions, proceedings, suits, claims, demands, liabilities, damages, losses, costs, charges, expenses (including without limitation, wreck or debris, removal costs, where wreck or debris removal is ordered by a competent authority) judgments and fines arising out of or in the course of, or caused by the execution of work under the Contract or other obligations hereunder directly or indirectly associated herewith which may arise due to:

- a) breach of law by the Contractor, or any of its sub-contractor, or any of their respective employees.
- b) negligence or willful default by the Contractor, or any of its sub-contractor, or any of their respective employees.
- c) breach/ infringement by the Contractor, or any of its sub-contractor, or any of their respective employees of any intellectual property right;
- d) failure by Contractor to proceed with Project in accordance with the determinations, instructions and clarifications of Company pending disagreement, dispute, protest, request for arbitration/ court proceedings
- e) loss of property or death of any employee of BHEL or of its other contractors/ sub-contractors.

The above shall be without prejudice to any other remedy that may be available to BHEL whether as per law, contract, equity or otherwise.

Article 19
Risk Purchase

- a) In case of any neglect or refusal on the part of the Contractor to:
 - i) commence the Project, or
 - ii) provide sufficient labour for the Project or
 - iii) if in the opinion of BHEL Project Leader, the Project done by the Contractor are not satisfactory, or
 - iv) if the Contractor fails to carry out the Project as per the Contract or as per instructions of the BHEL Project Leader or officer authorized by him.

BHEL shall have the right to have the Work done by any means at the Contractor's sole risk and expenses.



The above shall be without prejudice to any other remedy that may be available to BHEL whether as per law, contract, equity or otherwise.

b) In the event, the cost of the work so done (as certified by BHEL Project Leader which is final and conclusive) is 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 BHEL Project Leader or the same shall be recovered from the Contractor by other means.

Article 20 Termination

a) Termination of Contract for Corrupt Acts

i) BHEL shall have the right to terminate the Contract in any of the following cases:

- The Contractor (or the Contractor's purported agent, representative or employee) offers, give or agrees to give to any personnel (whether employee, worker, labourer, official, director or otherwise) in BHEL 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
- The Contractor enters 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
- The Contractor obtains 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.

ii) In deciding whether the Contractor has committed the above acts, the decision of BHEL shall be final and conclusive.

b) Termination for Insolvency, Bankruptcy, Winding up, etc

i) BHEL shall have the right to terminate the Contract in any of the following cases:

If the Contractor, 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 initiate/ take any proceedings for liquidation or composition under any bankruptcy law or assignment of his effects of composition or arrangement for the benefit of his creditors or purports to do so, or if any application made under any Bankruptcy law 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



If the Contractor, being a Company, initiates or passes 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.

c) Termination of Contract in Part of Full for Contractor's Default

i) If the Contractor defaults in carrying out the work as directed and continues in that state after a reasonable notice from BHEL Project Leader or his authorised representative or the Contractor fails to comply with any of the Terms and Conditions of the contract or the Contractor makes poor progress in the execution of the Project, BHEL shall have the right to, after reasonable notice in writing and without prejudice to any other right or remedy which shall have accrued or shall accrue thereafter to BHEL, terminate the Contract as whole or in part thereof or only such work order or items of work in default.

ii) Without prejudice to the generality of the above, BHEL shall have the right to terminate the Contract as a whole or in part in the following circumstances:

- If the Contractor assigns, transfers, sub-contracts or sub-lets or attempts to assign, transfer or sub-Contract or Sub-let any portion of the work without the prior written approval of the BHEL.
- If the Contractor fails to deploy competent manpower and/ or equipment.
- If the Contractor fails to comply with the requirement of Applicable Laws.
- If the Contractor or any employee/ labourer/ worker of the Contractor is found involved in corrupt activities, the contract shall be terminated and the Contractor shall be banned for applying for any future Contract for at least three (3) years or any other period as BHEL may decide.

d) Whenever BHEL exercise the authority to terminate the Contract as whole or part under Article 20(a) or (b) or (c) , BHEL may complete the Work at the contractor's risk and cost (as certified by BHEL Project Leader which is final and conclusive). If the cost exceeds the moneys due to the Contractor under this contract the Contractor shall either pay the excess amount ordered by BHEL Project Leader or the same shall be recovered from the Contractor by any means, including but not limited to invocation of security deposit, deduction from pending payments etc. In case BHEL carries out the Work or any part thereof the cost to be taken into account in determining the excess cost to be charged to the Contractor 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 BHEL Project Leader whose decision shall be final and conclusive.

e) Termination of Contract on Death of Contractor

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 right to terminate the contract forthwith without any compensation to the Contractor.



f) Termination for Convenience

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 by the Contractor. BHEL Project Leader shall give notice in writing of the fact to the Contractor. In such case, the Contractor shall have no claim to any sum or 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 foreclosing of the work.

g) The right of BHEL to terminate the Contract under this Article 20 shall be without prejudice to any other right or remedy which shall have accrued or which shall accrue thereafter to BHEL, and the Contractor shall be liable to make payment to BHEL for any loss or damage of whatsoever nature resulting from any such termination to the same extent as provided in the case of termination for default.

Article 21

Governing Law, Arbitration and Jurisdiction

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

b) Arbitration

i) All disputes between the parties to the Contract, arising out of or relation to the Contract, other than those for which the decision of the BHEL Project Leader or any other person is by the Contract expressed to be final and conclusive shall, after written notice by either party to the Contract to the other party be referred to the sole Arbitration of Unit Head of BAP, BHEL Ranipet or any designate nominated by the Unit Head of BAP, BHEL Ranipet in his sole discretion.

ii) Unless the parties otherwise agree, such reference shall not take place until after the Completion, completion or abandonment of the Work or the determination of the contract.

iii) The venue of Arbitration shall be Ranipet, Tamil Nadu. The arbitrator may hold meetings for convenience in such a place or places discretion.

iv) The award of the Arbitrator shall be final, conclusive and binding on both parties to the Contract.

v) The Contractor shall, notwithstanding any disagreement, dispute, protest, request for arbitration, court or other proceedings, continue to perform the Services in accordance with the determinations, instructions and clarifications of BHEL

c) Subject to the above, the appropriate court in Vellore District shall have the exclusive jurisdiction over any disputing arising out of or in connection with this Contract.

Article 22

Deleted



Article 23
Miscellaneous

a) Assignment and Subcontracting

i) 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.

ii) The Contractor shall not sub-contract any portion of the contract without the prior written approval of the BHEL.

b) Waiver

Failure by BHEL to insist upon strict performance of any terms or conditions of this Contract, or failure or delay to exercise any rights or remedies provided herein or by Applicable Laws, or failure to properly notify the Contractor in the event of breach, or the acceptance of or payment for Project or otherwise, shall not release the Contractor from any of the obligations under this Contract and shall not be deemed a waiver of any right of BHEL to insist upon strict performance hereof or any of its rights or remedies as to any prior or subsequent default hereunder nor shall any termination of Project under this Contract by BHEL operate as a waiver of any of the terms hereof.

c) BHEL shall, at its discretion, recover any compensation or other sums of money payable by the Contractor to BHEL under the terms of this Contract or any other contract with BHEL or Applicable Laws from the Security Deposit or by the sale of the securities or from the interest arising there from or from any sums which may be due or may become due to the contractor by BHEL. In the event of this Security Deposit being deducted by reason of such deductions or sale, as aforesaid, the Contractor shall within Seven (7) Days thereafter, make good in cash or in securities endorsed as aforesaid, any sum by which the Security Deposit has been reduced. Without prejudice to the above, BHEL shall have the discretion to ask the Contractor to make the payment to BHEL on demand

d) The terms and conditions of the Tender Documents and the LOI shall be deemed to have been incorporated into this Agreement. Wherever the Tender Documents and the LOI are repugnant to terms and conditions of this Contract, the terms and conditions of this Contract shall prevail.



e) Signing of the Contract

The Contract shall be signed by the Contractor with his usual signature. Contract by partnership or 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 authorised 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 authorised 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 authorised to do so, shall accompany the contract

[Insert name of the Contractor]

Bharat Heavy Electricals Limited

Signature:

Name & Designation:

Witness:

Signature:

Name & Designation:

Signature:

Name & Designation:

Witness:

Signature:

Name & Designation:

Annexures:

A Schedule of Prices (Refer Section- I, Part- A, Annexure –B)

B Third Party NDA (Refer Section –I, Part-A, Annexure –C)

C Technical Specifications (Refer Section – II, Section-III, Section-IV)