

Ref Enquiry No.: PE/PG/RGM/E-6529/2020 dated 28.09.2020

DUE DATE
Oct 19, 2020
BY 2:00 PM

Dear Sir,

Subject: Tender Enquiry for "WIND TUNNEL TEST FOR CHIMNEY" for 3X200+3X500 MW NTPC Ramagundam TPP EGD Project.

BHEL invites offers in hard bid for **WIND TUNNEL TEST FOR CHIMNEY for 3X200+3X500 MW NTPC Ramagundam TPP EGD Project**

Your offer shall be submitted in two parts strictly as per "Instructions for submission of offer"

Your best quotation/offer for the above requirement, in line with our terms and conditions, should either be delivered in person or sent by courier/ registered post, to the following address only:

**Tender Box, Tender Room, Ground Floor, PPEI Building
(behind Reception Desk)**

C/o Sanjeev Kumar / Nitin Kumar / PGIII

M/s. Bharat Heavy Electricals Ltd.,

**Project Engineering Management, Power Project Engineering Institute,
HRD & FSI Complex, Plot No 25, Sector-16 A, Noida-201301, U.P., INDIA**

E-MAIL: nitin.kumar@bhel.in / sanjeevkr@bhel.in

Ph. No. +91 120-4368800 / 4368645

It shall be the responsibility of the bidder to ensure that the tender is delivered on or before the due date by 02:00 PM. The offer has to be deposited in tender box only. Part-I bids shall be opened at 03:00 PM on the due date in the presence of authorized representatives of the bidders, who may like to be present.

Note:-

1. Please note that Part scope offered for Project shall disqualify the institution's offer.
2. Techno Commercial Bids and Price Bids should be submitted in separate envelopes.
3. Incomplete offer or offer for part of NIT BOM/BOQ shall be summarily rejected.
4. Late tenders are liable to be rejected

A. INSTRUCTIONS FOR SUBMISSION OF OFFER

Nitin Kumar/ PG III
BHEL/PS-Project Engineering Management,
Power Project Engineering Institute,
Plot no. 25, Sector - 16A, Noida (UP) 201301, INDIA
(OFF) +91-120-4368645

Regd. Office
BHEL House Siri Fort
New Delhi-110049

W. J. Weller

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5. The Techno-Commercial and Price Bid should be as per Tender Documents.
6. Submission of offer shall mean that the Institution/Bidder has read the bid documents and agrees to abide by all terms and conditions mentioned in the documents, unless specifically mentioned in the bid as a deviation.
7. Tenders and all correspondence thereof shall be addressed to the undersigned by name & designation and sent at the following address:

Nitin Kumar, Manager/PG-III M/s Bharat Heavy Electricals Ltd. Project Engineering Management (PEM), Power Project Engineering Institute (HRDI), HRD & ESI Complex, Plot No 25, Sector-16 A, Noida-201301, U.P., INDIA E-MAIL: nitin.kumar@bhel.in Ph. No. +91 120 4368645/9871497600	Sanjeev Kumar, DGM/ PGIII M/s Bharat Heavy Electricals Ltd. Project Engineering Management (PEM), Power Project Engineering Institute (HRDI), HRD & ESI Complex, Plot No 25, Sector-16 A, Noida-201301, U.P., INDIA E-MAIL: sanjeevkr@bhel.in Ph. No. +91-120-4368800
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8. INSTRUCTIONS REGARDING CENTRALISED TENDER ROOM:

- a. Vendors are advised to submit the tenders in the tender box, containing Part-I & II offers in separate covers, preferably cloth lined envelopes should be used, properly marked before due date and time.
- b. The dispatch department shall not accept any tender in torn condition and return the same with the Stamping "Returned to Sender-Package Damaged". Offers in damaged condition will not be considered and no request for extension on this account will be considered.
- c. Bidder's representative shall deposit the offer in tender box only.
- d. Bidders shall be allowed in the tender room in area identified for bidders and only one authorized representative from each bidder shall be allowed.
- e. Bidder shall not be allowed to carry mobile/camera/ laptop in the tender room. The same shall have to be deposited at security in advance and taken back after tender opening.
- f. Details of offers shall be read out to bidders and in no case the offers shall be handed over to any of the bidders for noting down.
- g. Please ensure tender submission, minimum 1 hour before scheduled tender opening time. Late tenders shall not be accepted.
9. Tenders shall be submitted strictly in accordance with the requirements of the above tender documents. In case of deviations (Technical/ Commercial), the same shall be highlighted separately giving clause references along with the **Cost of withdrawal of Deviations as per Annexure-II** along with reasons for taking such deviations. **Institutions/Bidders to note all the points mentioned in "Notes" of Annexure-II.**
10. The offers of the institutions/Bidders who are on the banned list as also the offers of the institutions, who engage the services of the banned firms, shall be rejected. The list of banned firms is available on BHEL website www.bhel.com.

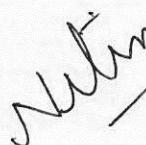
B. ENQUIRY TERMS AND CONDITIONS

1. Following Commercial terms & conditions are part of enquiry:

- a) **Payment Terms:** 100% payment on submission of final standard report duly certified by BHEL.
- b) Prices shall remain firm till completion of job.
- c) **Delivery Time (Report submission time):** - Institution/vendor shall arrange conduction of Wind Tunnel Test within Twelve (12) weeks from the date of furnishing of all inputs by BHEL and submission of final report within next two (02) weeks from the date of conduction of test.

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BHEL/PS-Project Engineering Management,
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- a. The end period specified is for completion of the deliveries. Deliveries to start progressively so as to meet the completion schedule.
- b. The delivery conditions specified are for contractual LD purposes, however BHEL may ask for early deliveries without any compensation thereof.
- c. Non-applicable drawings shall be decided during execution of the package.
- d. Wherever schedule of drawings/documents submission / re-submission is stipulated in the Technical Specifications, same shall be superseded by delivery specified in NIT.
- d) Validity of offer:** Six (06) months from Part-I opening.
- e) Liquidated Damages:** Not applicable.
- f) PVC** is not applicable for this package.
- g) No CIF** is available for this package.
- h) This is a Conditional Open Tender enquiry and the price bid (Part-II) opening shall be subject to following conditions:**
 - 1) Techno-commercial qualification/ recommendation of Institute/bidder by BHEL-PEM.
 - 2) Pre-Qualifying Requirements: - Bids of only those bidders shall be evaluated who meet the Technical pre-qualifying requirements. Credentials of all the techno-commercially acceptable bidders shall be submitted to NTPC for their acceptance.
 - i) Deviations (Commercial as well as Technical) from NIT are generally not acceptable. In case of deviations from NIT, the Institution shall give cost of withdrawal of such deviation in Sealed Cover as per Annexure-II. In case, a bidder chooses not to give any cost of withdrawal of deviation on account of payment terms, commercial loading shall be done for period of relaxation. Interest rate for loading will be taken as base rate of SBI (as applicable on the date of techno-commercial bid opening) + 6% for the period of relaxation sought by the bidders.

Payment will be released generally within 60 days after receipt of material/ services and complete documents as per order/ contract (45 days for vendors qualified and registered as Micro or Small as per MSMED Act).

j) EMD:

Earnest Money Deposit (EMD): EMD is to be paid by tenderers for securing fulfilment of any obligations in terms of the NIT. EMD amount for the tender is Rs. 60,000

The EMD is waived for Central/ State PSUs/ Government depts/ Autonomous/ Educational/ Research institutions

Modes of deposit:

The EMD may be accepted only in the following forms:

- (i) Cash deposit as permissible under the extant Income Tax Act (before tender opening)
- (ii) Electronic Fund Transfer credited in BHEL account (before tender opening). BHEL bank details are as per Annexure-A
- (iii) Banker's cheque/ Pay order/ Demand draft, in favour of BHEL (along with offer). BHEL bank details are as per Annexure-A

Forfeiture of EMD:

EMD by the Tenderer will be forfeited, if:

- i) After opening the tender and within the offer validity period, the tenderer revokes his tender or makes any modification in his tender which is not acceptable to BHEL.
- ii) The Contractor fails to deposit the required Security deposit or commence the work within the period as per LOI/ Contract.

EMD given by all unsuccessful tenderers shall be refunded normally within fifteen days of award of work.

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EMD shall not carry any interest.

EMD of successful tenderer will be retained as part of Security Deposit.

k) Security Deposit:

Security Deposit means the security provided by the Contractor towards fulfilment of any obligations in terms of the provisions of the contract.

The total amount of Security Deposit will be 5% of the contract value. EMD of the successful tenderer shall be converted and adjusted towards the required amount of Security Deposit.

Modes of deposit:

The balance amount to make up the required Security Deposit of 5% of the contract value may be accepted in the following forms:

- i) Cash (as permissible under the extant Income Tax Act)
- ii) Local cheques of Scheduled Banks (subject to realization)/ Pay Order/ Demand Draft/ Electronic Fund Transfer in favour of BHEL
- iii) Bank Guarantee from Scheduled Banks/ Public Financial Institutions as defined in the Companies Act. The Bank Guarantee format should have the approval of BHEL
- iv) Fixed Deposit Receipt issued by Scheduled Banks/ Public Financial Institutions as defined in the Companies Act (FDR should be in the name of the Contractor, a/c BHEL)
- v) Securities available from Indian Post offices such as National Savings Certificates, Kisan Vikas Patras etc. (held in the name of Contractor furnishing the security and duly endorsed/ hypothecated/ pledged, as applicable, in favour of BHEL)

(Note: 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)

The Security Deposit is waived off in following cases:

- a) Central/ State PSUs/ Government deptts
- b) Autonomous/ Educational/ Research institutions

Collection of Security:

At least 50% of the required Security Deposit, including the EMD, should be deposited before start of the work. Balance of the Security Deposit can be deposited by deducting 10% of the gross amount progressively from each of the running bills of the Contractor till the total amount of the required Security Deposit is collected.

If the value of work done at any time exceeds the contract value, the amount of Security Deposit shall be correspondingly enhanced and the additional Security Deposit shall be immediately deposited by the Contractor or recovered from payment/s due to the Contractor.

The recoveries made from running bills (cash deduction towards balance SD amount) can be released against submission of equivalent Bank Guarantee in acceptable form, but only once, before completion of work.

(Note: In case of (a) small value contracts not exceeding ` 20 lakhs work can be started before the required Security Deposit is collected. However, payment can be released only after collection/ recovery of initial 50% Security Deposit).

Security Deposit shall be released to the Contractor upon fulfilment of contractual obligations as per terms of the contract.

The Security Deposit shall not carry any interest.

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I) Termination of Contract:

BHEL shall have the right to cancel Order/ Contract, wholly or in part, in case they are obliged to do so on account of any decline, diminution, curtailment or stoppage of their business and in that event, the Seller/ Contractor compensation claim shall be settled mutually.

Purchaser shall have the right to cancel order/ contract at the risk and cost of Seller/ Contractor in case either the Seller/ Contractor himself or any of his representative or agent is found to have been a previous employee (rank of Executive Director or General Manager Incharge having powers of Executive Director or General Manager having powers of Executive Directors) of the Purchaser immediately before retirement and has within a period of one years of such retirement accepted the employment of the Seller/ Contractor either as a Seller/ Contractor or as an employee without having obtained prior permission of Purchaser.

m) Evaluation will be done overall L-1 basis (Total cost to BHEL excluding GST) with necessary loading, as applicable. The evaluation currency for this tender shall be INR. For evaluation, the exchange rate (TT selling rate of SBI) shall be taken for Date of Part-I bid opening. If the relevant day happens to be a bank holiday, then the forex rate as on the previous bank (SBI) working day shall be taken.

n) "This item/Package/System falls under the list of items defined in Para 3 of Ministry of Finance guideline dated 20.09.2016 (procurement of items related to public safety, health, critical security, operations and equipment etc) & hence criteria of prior experience/ turnover shall be same for all the bidders including start-up/ MSME."

o) All the enclosed Tender Documents shall automatically become a part of the order/Contract after its finalisation.

p) Please note that for technical bid, detailed offers are to be submitted including the following along with the Price schedules as per BHEL format enclosed with NIT:

- Un-Priced price schedules (format) duly filled in 'Quoted" or 'Q' in each column/row.
- Technical Deviations and commercial deviations (if, any) as per format enclosed at Annexure-II.
- Along with your offers, please submit a copy of this letter duly signed & stamped on each page as token of acceptance of all terms & conditions conveyed.

Note: Institution/Vendors must submit UN-PRICED Price format duly filled mentioning the word "QUOTED" in place of actual price. The actual price is to be filled in separately and submitted in price bid for each project separately.

q) PRICE DISCREPANCY CLAUSE:

Following shall be considered for evaluation and ordering for non-conformities/ errors/ discrepancies in price bid:

- i. Bidders should quote total price in "figures" with corresponding words in price bid format.
- ii. If, in the price structure quoted for the required goods/ services/ works, there is discrepancy between the unit price and the total price (which is obtained by multiplying the unit price by the quantity), the unit price shall prevail and the total price corrected accordingly., unless in the opinion of the Purchaser there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price corrected accordingly.
- iii. If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected.
- iv. If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject of (ii) and (iii) above.

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v. If there is such discrepancy in an offer, the same shall be conveyed to the bidder with target date up to which the bidder has to send his acceptance on the above lines and if the bidder does not agree to the decision of the Purchaser, the bid is liable to be ignored.

r) DIRECT TAX

- a. Institution/vendor is required to update himself on its own and comply with provisions of Indian Income Tax Act as notified from time to time. Purchaser shall not be liable towards liability of income tax accruing to the Seller or whatever nature including variations thereof, arising out of this Order/ Contract, as well as tax liability of the Seller/ Contractor and his personnel.
- b. Deductions of Tax at source at the prevailing rates shall be effected by the Purchaser before release of payment, as a statutory obligation, if applicable. TDS certificate will be issued by the Purchaser as per statutory provisions. The Institution/vendor has to mention their Permanent Account Number (PAN) and GSTIN in all invoices.

s) GST COMPLIANCES

- A. The bidder should be registered with the appropriate authority under relevant GST laws.
- B. The bidder to specify in their offer (part 1 bid) the category of registration under GST i.e. registered dealer and composite dealer.
- C. In the event of any GST quoted by a bidder (registered as a composite dealer), the GST shall be considered for evaluation and ordering purpose.
- D. In the event of any change in the status of vendor from composite to regular dealer after the submission of the bid but before the supply, no reimbursement of additional GST will be made. However, the vendor has to raise the invoice strictly, as per the law, by adjusting their ex-works price.
- E. Vendor/Supplier will share the Tax invoice along with LR/RR (as applicable) to BHEL immediately on removal of goods from vendor/supplier works.
- F. All payments against Tax Invoice to vendors/contractors shall be released only after:
 - i. Vendor/ contractor declaring such invoice in GSTR 1/GST-ANX-1 as per the relevant GST Act.
 - ii. The tax component charged by the vendor in the invoice should match with the details uploaded by vendor in GSTR 1/GST-ANX-2.
 - iii. Confirmation of payment of GST thereon by vendor on GSTN portal. In case, any GST credit is delayed/denied to BHEL due to non/delayed receipt of goods and/or tax invoice or expiry to timeline prescribed in the relevant GST Act for availing such ITC, or any other reasons not attributable to BHEL, tax amount shall be recoverable from the vendor/contractor along with interest levied/ leviable on BHEL.
- G. Wherein GST liability arises on BHEL under reverse charge, any interest levied/leviable due to any reasons not attributable to BHEL shall be recovered from the vendor/contractor.
- H. The applicable TDS under GST/ Goods and Services (Compensation to States) Act will be deducted from the payments.

t) STATUTORY VARIATION:

- A. In general, Statutory variation for GST is payable to the Seller during currency of the contract between Buyer and Seller. Further, for period beyond the currency of the contract, BHEL will reimburse the actual applicable tax even if the same is higher than the amount applicable within the contractual period in case BHEL is able to take the input tax credit. However, the decision of BHEL in this regard will be final and binding on the seller/contractor otherwise vendor/contractor has to bear the differential upward increase in tax and ex- works price is to be adjusted accordingly.
- B. No other variations such as on Custom Duty, exchange rate, minimum wages, prices of controlled commodities, any other input etc. shall be payable by the purchaser unless specifically agreed upon.

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u) CONFIDENTIALITY

- A. Institution/vendor shall, at all times, undertake to maintain complete confidentiality of all data, information, software, drawings & documents, etc. belonging to the Purchaser and also of systems, procedures, reports, input documents, manuals, results and any other company documents discussed and/ or finalized during the course of execution of order/ contract. i.e. Seller/Contractor shall in no way share or use such intellectual property of BHEL/purchaser to promote his own business with others.
- B. Purchaser reserves the right to claim damages from the Seller/Contractor, or take appropriate penal action as deemed fit against the Seller/Contractor, for any infringement of the provisions contained herein.

v) DEFAULT/ BREACH OF CONTRACT, INSOLVENCY AND RISK PURCHASE

In case of delays (beyond the maximum late delivery period as per LD clause) in supplies, or if there be defective supplies or non-fulfilment of any other terms and conditions of the Contract as enumerated subsequently in this clause, then, without prejudice to its right to recover any expenses, losses or damages to which the Buyer may be put to incur or sustain by reason of the Seller/Contractor's default or breach of Order/Contract or to suspend business dealings with the Seller/Contractor in terms of the Buyers' Guidelines for Suspension of Business Dealings as applicable from time to time, the Buyer shall also be entitled to cancel the Order/ Contract either in whole or portion thereof without compensation to Seller. On the occurrence of any of the acts/omissions mentioned below, the Buyer may if it so desires, procure upon such terms and in such manner as deemed appropriate, plant/ equipment/ stores not so delivered or others of similar description where plant/ equipment/ stores exactly complying with particulars are not, in the opinion of the Buyer (which shall be final), readily procurable, at the risk and cost of the Seller.

The Seller shall be liable to the Buyer for any excess costs incurred thereof and the Seller shall continue the performance of the Order/Contract to the extent not cancelled under the provisions of this clause. The Seller shall on no account be entitled to any gain on such repurchases. If the Bidder does not agree to this Risk Purchase clause, BHEL reserves the right to reject the bid/offer of the Bidder. Except for Clause (vii) b), institution's maximum liability will be limited to the total contract value including taxes, duties and freight.

The order/contract may be cancelled in whole or part thereof and Risk & Cost Clause in line with terms and conditions of PO/Contract may be invoked by the Buyer in any of the following cases:

- i. If the Institution/vendor fails to deliver the goods or materials or any installment thereof within the period (s) fixed for such delivery or the seller's poor progress of the supply/services vis-à-vis delivery/execution timeline as stipulated in the contract, backlog attributable to the Seller including unexecuted portion of supply does not appear to be executable within balance period available;
- ii. delivers goods or materials not of the contracted quality and failing to adhere to the contract specifications/execution methodology;
- iii. withdrawal from or repudiation/abandonment of the supply/services by the Seller before completion as per contract or if the Seller refuses or is unable to supply goods or materials covered by the order/Contract either in whole or in part or otherwise fails to perform the Order/Contract.
- iv. Non supply by the Seller within scheduled completion/delivery period as per contract or as extended from time to time for reasons attributable to the Seller;
- v. Termination of Contract on account of any other reason(s) attributable to the Seller.
- vi. Assignment, transfer, sub-letting of the contract without BHEL's written permission resulting in termination of Contract or part thereof by BHEL.
- vii. If the Institution/vendor be an individual or a Sole Proprietorship, in the event of death or insanity of the Seller.
- viii. If the Institution/vendor being an individual or if a partnership firm thereof, shall at any time be adjudged insolvent or shall have a receiving order for administration of his estate made against him or shall take any proceeding for composition under any Insolvency Act for the time being in force or make any assignment of the order/Contract or

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enter into any arrangement or composition with his creditors or suspend payment or if the firm dissolved under the Partnership Act;

ix. If the Institution/vendor being a Company is wound up voluntarily or by order of a Court or a Receiver, Liquidator or Manager on behalf of the debenture holders and creditors is appointed or circumstances have arisen which entitles the Court of debenture holder and creditors to appoint a receiver, liquidator or manager

x. Non- Compliance to any contractual condition or any other default attributable to the Seller.

Such defaulting vendor/Seller shall not be eligible to participate in re-tendering conducted on account of risk purchase made due to fault of such vendor/Seller.

BHEL's right to go for Risk and Cost, Calculation of Risk and Cost amount & LD, recovery options to BHEL are given in detail in Annexure-V hereto.

w) TRANSFER, SUB-LETTING/ ASSIGNMENT/ SUB-CONTRACTING

A. Institution/vendor shall not sublet, transfer or assign order/ contract or any part thereof or interest therein or benefit or advantage thereof save with the prior consent in writing of Purchaser. In the event of Seller/ Contractor sub-letting, transferring or assigning order/ contract or any part thereof or interest therein or benefit or advantage thereof without such permission, the Purchaser shall be entitled to cancel the Order/ Contract and to purchase the plant/ equipment/ stores from elsewhere at risk and costs of Seller/ Contractor and the Seller/ Contractor shall be liable for any loss or damage which Purchaser may sustain in consequence of or arising out of such risk purchase.

B. If Institution/vendor is a contractor or proprietary concern and the individual or the proprietor dies or the partnership is dissolved or substantially affected, then unless the BHEL is satisfied that legal representative of individual institution or proprietor of proprietary concern and surviving partners of partnership firm are capable of carrying out and completing the order/contract, BHEL shall be entitled to cancel the order/ contract as to its incomplete portion and without being in any way liable to payment of any compensation to estate of institution/ institution and/ or to surviving partners of Institution/vendor's firm on account of cancellation of the order/ contract.

C. Decision of BHEL that legal representatives of deceased contractor or surviving partners of the institution's firm cannot carry out and complete the order/ contract shall be final and binding on the parties hereto.

D. Terms and Conditions shall not get affected in case of merger/ amalgamation/ takeover/ re-arrangement etc.

x) FORCE MAJEURE

A. Notwithstanding anything contained in the contract, neither the Institution/vendor nor the Buyer shall be held responsible for total or partial non execution/non- performance of any of the contractual obligations, in case such execution/performance is impeded/prevented due to occurrence of a 'Force Majeure' event not within the reasonable control of the party affected, which materially interferes or directly affects the performance of the obligations or duties under the contract.

Force Majeure event means an event beyond the control of the parties to the contract including but not limited to war, Military operations of any nature, Act of God, earthquakes, floods, fire, quarantine restrictions, acts of public enemy, blockades, civil war, explosion, epidemics, insurgency, change in law or government policy etc.

B. The party claiming to be affected by such Force Majeure event shall notify/inform the other party in writing without delay within a reasonable period of the occurrence and cessation of such event specifying the Force Majeure event and its effect on performance of contractual obligations. In the event of the parties hereto not agreeing that a force majeure event has occurred, the parties shall submit the dispute(s) for resolution pursuant to the provisions hereunder, provided that the burden of proof as to whether a force majeure event has occurred shall be upon the party claiming such an event.

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- C. If it is agreed between the parties that a Force Majeure event has occurred and its effect continues for a period of 36 months, then either party shall be free to cancel the contract. However, if the effect of such event ceases within this period of 36 months, the performance of the obligations put on hold shall be resumed immediately.
- D. Not-withstanding the above provisions, Purchaser shall reserve the right to cancel the Order/ Contract, wholly or partly, in order to meet the overall project schedule and make alternative arrangements for completion of delivery and other schedules.
- E. If a war like situation developed in a country where seller's works (of this PO) is located or there is political instability or civil war and Indian Embassy located in that country/Indian Government forbids or advises for not having any business dealings in that country/ region/zone, then BHEL reserves the right to cancel the order/Contract without incurring any liability for any kind of payment or compensation to the Seller on that account.

y) HOLD ON CONTRACT EXECUTION CASES OTHER THAN FORCE MAJEURE

In case of uncertainty regarding lifting of HOLD on contract execution relating to any activity put by Buyer/BHEL (because of any reason other than Force Majeure) or by end customer (cancellation or hold on project), the contract/Purchase Order may be short closed by Buyer/BHEL after 3 years from date of imposition of HOLD without prejudice to any claim of either party with regard to the executed portion of the contract. However, all future obligations of the Buyer and Seller with respect to the contract/Purchase Order shall come to end in case of such short closure.

z) NON DISCLOSURE AND INFORMATION OBLIGATIONS

All drawing and technical documents or technical information whether contained in physical form or in electronic form or any oral information that is subsequently transcribed in to physical/electronic form etc. (hereinafter referred to as "Technical Information") relating to the product or its manufacture submitted by one party to the other, prior or subsequent to the formation of contract, shall remain property of the disclosing party. Technical Information belonging to one party and received by the other party, shall be treated as Confidential Information and shall not, without the express written consent of such disclosing party, be used by the receiving party or any of its agents, employees, representatives etc., for any other purpose, other than that, for which such Technical Information was provided. Such Technical Information shall not, without the prior written consent of the disclosing party, otherwise be used or copied, reproduced, transmitted or communicated to a third party.

The Institution/vendor shall provide Buyer with all information pertaining to the delivery in so far as it could be of importance to Buyer. The Seller shall not reveal confidential information (including price) to its own employees not involved with the tender/ Contract & its execution and delivery or to third parties, or to make use of such information pertaining to any data, designs, drawings, specifications and other information furnished to it by the Buyer, unless Buyer has agreed to this in writing beforehand. The Seller shall not be entitled to use the buyer's name in advertisements and other commercial publications without prior written permission from Buyer.

Upon completion, cancellation or termination of this order, Seller shall return to the Buyer all such data, designs drawings, specifications and other information, including copies made by Seller.

DRAWINGS, PATTERNS & TOOLS: All drawings, patterns & tools supplied by BHEL or made at BHEL's expense are BHEL's property. They cannot be used or referred to any other party and must only be used in the execution of BHEL's orders. These should be preserved at the seller's/contractor's cost for a period of not less than 5 years. Patterns & tools should be returned to BHEL within 90 days of issue of the same or completion of work, whichever is later.

Institution/vendor shall, at all times, maintain complete confidentiality of all technical information including data, information, software, drawings & documents, etc. belonging to the Buyer and also of systems, procedures, reports, input

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documents, manuals, results and any other company documents discussed and/ or finalized during the course of execution of order/ contract.

The Confidentiality obligation of the Seller under this Agreement shall survive the Expiration/early termination of this contract. The above undertaking in this clause shall, however, not apply to Technical Information which:

- i. through no fault of the receiving Party, is or comes in public domain through publication or otherwise, or
- ii. the receiving Party can establish was in its possession, without any restrictions as to its disclosure at the time of its receipt, or
- iii. is subsequently lawfully acquired by the receiving Party independently of the other Party, or
- iv. receiving Party is required to disclose to comply with applicable law, rule, regulation, or court order or other compulsory process of a court or other governmental body.

If the Institution/vendor, in order to perform its Contract needs to disclose to a subcontractor or suppliers the Technical Information received from the other Party e.g. for the purpose of use, manufacture, repair, maintenance and purchase, then such first mentioned Party shall have the right to do so to the extent needed for such purpose, but shall first obtain from such subcontractor or supplier a confidentiality undertaking consistent with the provisions of this Clause and submit to BHEL for records. In case of failure of seller to ensure compliance of this clause, he seller shall be liable to compensate BHEL for any damage/ loss whatsoever suffered by BHEL as a result of breach of this clause.

aa) SETTLEMENT OF DISPUTES

- A. Except as otherwise specifically provided in the Order/ Contract, all disputes concerning questions of the facts arising under the Order/ Contract, shall be decided by Purchaser, subject to written appeal by the Seller/ Contractor to the Purchaser, whose decision shall be final.
- B. Any dispute or difference shall be, to the extent possible, settled amicably between the parties hereto, failing which the disputed issues shall be settled through arbitration.
- C. Institute/Seller/ Contractor shall continue to perform the order/ contract, pending settlement of dispute(s).

bb) LAWS GOVERNING THE CONTRACT

Contract, including all matters connected with contract, shall be governed by the Indian Law, both substantive and procedural, for the time being in force including modification thereto, and shall be subject to the exclusive jurisdiction of the Indian courts at Delhi-NCR.

It shall be responsibility of the vendor to ensure compliance of Labor laws, safety regulations, workmen compensation, insurance, BOCW act or other relevant acts.

cc) CONCILIATION

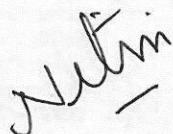
If at any time (whether before, during or after the arbitral or judicial proceedings), any Disputes (which term shall mean and include any dispute, difference, question or disagreement arising in connection with construction, meaning, operation, effect, interpretation or breach of the agreement, contract), which the Parties are unable to settle mutually, arise inter-se the Parties, the same may, be referred by either party to Conciliation to be conducted through Independent Experts Committee (IEC) to be appointed by competent authority of BHEL from the BHEL Panel of Conciliators under BHEL Conciliation Scheme.

Notes:

- i. No serving or a retired employee of BHEL/Administrative Ministry of BHEL shall be included in the BHEL Panel of Conciliators.

Nitin Kumar/ PG III
BHEL/PS-Project Engineering Management,
Power Project Engineering Institute,
Plot no. 25, Sector - 16A, Noida (UP) 201301, INDIA
(OFF) +91-120-4368645

Regd. Office
BHEL House Siri Fort
New Delhi-110049



Ref Enquiry No.: PE/PG/RGM/E-6529/2020 dated 28.09.2020

- ii. Any other person(s) can be appointed as Conciliator(s) who is/are mutually agreeable to both the parties from outside the BHEL Panel of Conciliators.
- ii. The proceedings of Conciliation shall broadly be governed by Part-III of the Arbitration and Conciliation Act 1996 or any statutory modification thereof and as provided in Procedure (Annexure-X). The Procedure (Annexure-X) together with its Formats will be treated as if the same is part and parcel hereof and shall be as effectual as if set out herein in this NIT.
- iii. The Contractor/ supplier hereby agrees that BHEL may make any amendments or modifications to the provisions stipulated in the Procedure (Annexure-X) from time to time and confirms that it shall be bound by such amended or modified provisions of the Procedure (Annexure-X) with effect from the date as intimated by BHEL to it.
- iv. The venue of conciliation shall be Delhi/ New Delhi.

dd) ARBITRATION:

Except as provided elsewhere in this Contract, in case amicable settlement is not reached between the Parties, in respect of any dispute or difference; arising out of the formation, breach, termination, validity of execution of the Contract; or, the respective rights and liabilities of the Parties; or, in relation to interpretation of any provision of the Contract; or, in any manner touching upon the contract, then, either Party may, by a notice in terms of Section 21 of Arbitration & Conciliation Act in writing to the other Party commence arbitration. The notice shall as far as possible contain the particulars of all claims to be referred to arbitration.

The arbitration shall be conducted by Sole Arbitrator to be appointed mutually by the Competent Authority of BHEL (purchaser) & Seller within the statutory period as applicable. As far as practicable, names of 2 or more persons shall be forwarded to the Seller for seeking consent of the Seller to one of the names proposed for appointment as arbitrator in the case. If the parties fail to agree on the name of Sole Arbitrator, then appointment shall be made as per the provisions of section 11 of the Arbitration & Conciliation Act.

The Arbitrator shall pass a reasoned award and the award of the Arbitrator shall be final and binding upon the Parties. The language of Arbitration shall be English.

Subject as aforesaid, the provisions of Arbitration of Conciliation Act 1996 (India) or statutory modification/ Amendments or re-enactments thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause. The seat and venue of arbitration shall be Delhi/ New Delhi.

The cost of arbitration shall be borne equally by the subject to the final apportionment of the cost of the arbitration as per the award/order of the arbitrator.

Subject to the arbitration in terms of Clause above, the Courts at Delhi-NCR/ (PO issuing agency city where PO has been issued by BHEL Power Sector Regional HQ) shall have exclusive jurisdiction over any matter arising out of or in connection with this contract.

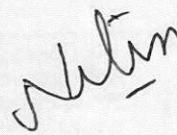
Notwithstanding the existence or any dispute or difference and/or reference for the arbitration, the Contractor shall proceed with and continue without hindrance the performance of its obligations under this Contract with due diligence and expedition in a professional manner except where the Contract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

ee) IN CASE OF CONTRACT WITH PUBLIC SECTOR ENTERPRISE (PSE) OR A GOVERNMENT DEPARTMENT & INSTITUTES, THE FOLLOWING SHALL BE APPLICABLE:

In the event of any dispute or difference relating to the interpretation and application of the provisions of the commercial contract between Central Public Sector Enterprises(CPSEs)/Port Trusts inter se and also between CPSEs and Government Departments/Organizations (excluding disputes concerning railways, Income Tax, Customs and Excise Departments) such dispute or difference shall be taken up by either party for resolution through Administrative Mechanism for Resolution of

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CPSEs Disputes(AMRCD) as mentioned in Department of Public Enterprises(DPE) office Memorandum No. 4 (1)/2013-DPE(GM)/FTS-1835 dated 22.05.2018 as amended from time to time.

A copy of the extant Department of Public Enterprises (DPE) Office Memorandum is available on Govt. of India website and the same shall apply with any amendments as made from time to time.

ff) JURISDICTION OF COURT

Courts at Delhi-NCR shall have exclusive jurisdiction to decide the dispute, if any, arising out of or in respect of the contract(s) to which these conditions are applicable.

gg) Bid should be free from correction, overwriting, using corrective fluid, etc. Any interlineation, cutting, erasure or overwriting shall be valid only if they are attested under full signature(s) of person(s) signing the bid else bid shall be liable for rejection. All overwriting/ cutting, etc. will be numbered by bid opening officials and announced during bid opening.

hh) For this procurement, Public Procurement (Preference to Make in India), Order 2017 dated 15.06.2017, 28.05.2018, 29.05.2019 and 04.06.2020 and subsequent Orders issued by the respective Nodal Ministry shall be applicable even if issued after issue of this NIT but before finalization of contract/ PO/ WO against this NIT.

In the event of any Nodal Ministry prescribing higher or lower percentage of purchase preference and/ or local content in respect of this procurement, same shall be applicable.

For this procurement, the local content to categorize a supplier as a Class I local supplier/ Class II local Supplier/ Non-Local supplier and purchase preference to Class I local supplier, is as defined in Public Procurement (Preference to Make in India), Order 2017 dated 04.06.2020 issued by DPIIT. In case of subsequent orders issued by the nodal ministry, changing the definition of local content for the items of the NIT, the same shall be applicable even if issued after issue of this NIT, but before opening of Part-II bids against this NIT

Institutions/Vendors are requested to go through the above mentioned orders and confirm the following:

The local supplier at the time of tender, bidding or solicitation shall be required to provide self-certification (in prescribed format) that the item offered meets the minimum local content as per above mentioned orders and shall give details of the location(s) at which the local value addition is made as per enclosed Annexure – III of NIT.

Bidders to ensure compliance to Ministry of Power (MoP) Order No. 25-11/6/2018-PG dt. 02/07/2020 & Order No. 11/05/2018-Coord. Dt.23/07/2020, if applicable.

Bidders to ensure compliance of Ministry of Finance (MoF) Order (Public Procurement No.1 & 2) F. No. 6/18/2019/PPD Dt. 23/07/2020.

Bidders to also submit "Model Certificate for Tenders" as per Annexure-III of above referred order of MoF.

ii) In the course of evaluation, if more than one bidder happens to occupy L-1 status, effective L-1 will be decided by soliciting discounts from the respective L-1 bidders. In case more than one bidder happens to occupy the L-1 status even after soliciting discounts, the L-1 bidder shall be decided by a toss / draw of lots, in the presence of the respective L-1 bidder(s) or their representative(s). Ranking will be done accordingly. BHEL's decision in such situations shall be final and binding.

jj) MSME/Start up Vendors to submit applicable documents along with their offer for availing the benefits as per GOI guidelines. Further BHEL-PEM is already registered with RXIL (TReDS) Platform. Bidders are requested to get registered with RXIL (TReDS) Platform to avail the facility as per GOI guidelines.

Ref Enquiry No.: PE/PG/RGM/E-6529/2020 dated 28.09.2020

kk) The Bidder along with its associate/ collaborators/ sub-contractors/ sub-vendors/ consultants/ service providers shall strictly adhere to BHEL Fraud Prevention Policy displayed on BHEL website www.bhel.com and shall immediately bring to the notice of BHEL Management about any fraud or suspected fraud as soon as it comes to their notice.

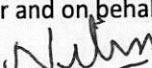
ll) MSE bidders are required to declare Udyog Aadhar Memorandum (UAM).

mm) The nature of package is "Non-divisible"

nn) Due to COVID-19 pandemic condition prevailing in the country, BHEL/PEM may go for Remote Inspection of Offered items, if required. Vendors are requested to be equipped with the facilities/gadgets as indicated in the guidelines attached to take up the inspection REMOTELY.

oo) Overall (%) variation in contract value: The variation on overall package value due to changes in the scope shall be limited 0% (NIL)

pp) In case of joint bidding, Bidders shall be required to furnish scope matrix which should be clearly defined between them along with the offer for the complete scope as per NIT.

Thanking You.
Yours faithfully,
For and on behalf of BHEL

Nitin Kumar
(Manager/PG-III)

Enclosures:

1. Enquiry Terms & Conditions
2. Technical Specification no. PE-TS-467-620-C001 Rev 00
3. SCC (Rev. 00) for the project.
4. Technical Pre-Qualifying Requirement (PQR)
5. Annexure-II to cost of withdrawal of Deviations.
6. Annexure-III to Format for self-certification regarding local content.



PROJECT ENGINEERING MANAGEMENT

GENERAL CONDITIONS OF CONTRACT (GCC)

ANNEXURES

Revision no. 07

ANNEXURE-II: DEVIATION SHEET (COST OF WITHDRAWAL)

PROJECT:

PACKAGE:-

TENDER ENQUIRY REFERENCE:-

NAME OF VENDOR:-

111

REASON FOR DATE

סימן מס' 1

SIGN 914

SIGN & DATE

DESIGNATIONS

NOTES:

1. Cost of withdrawal of deviation will be applicable on the basic price (i.e. excluding taxes, duties & freight) only.	2. All the bidders have to list out all their Technical & Commercial Deviations (if any) in detail in the above format.	3. Any deviation not mentioned above and shown separately (or) bundled in offer, will not be taken cognizance of.	4. Bidder shall submit duly filled unprinted copy of above format indicating "quoted in" cost of withdrawal of deviation" column of the schedule above along with their Techno-commercial offer, wherever applicable. In the absence of same, such deviation(s) shall not be considered and offer shall be considered in total compliance to NIT.	5. Bidder shall furnish price copy of above format along with price bid.	6. The final decision of acceptance/rejection of the deviations quoted by the bidder shall be at discretion of the Purchaser.	7. Bidder to note that any deviation (technical/commercial) not listed in above and asked after Part I - opening shall not be considered.	8. For deviations w.r.t. Credit Period, Liquidated damages, Firm prices, if a bidder chooses not to give any cost of withdrawal of deviation loading as per Annexure-VII, will apply. For any other deviation mentioned in unprinted copy of this format, the cost of withdrawal of deviation shall be taken as NIL.	9. Any deviation mentioned in printed copy of this format, but not mentioned in the unprinted copy, shall not be considered.	10. All techno-commercial terms and conditions of NIT shall be deemed to have been accepted by the bidder, other than those listed in unprinted copy of this format.	11. Cost of withdrawal is to be given separately for each deviation. In no event bidder should club cost of withdrawal of more than one deviation else cost of withdrawal of such deviations which have been clubbed together shall be considered as NIL.	12. In case nature of cost of withdrawal (positive/negative) is not specified it shall be assumed as positive.	13. In case of discrepancy in the nature of impact (positive/negative), cost will be considered for evaluation and negative for ordering.

Letter head of Company (<Rs. 10 Cr value)

Ref.....

Date.....

To,

Bharat Heavy Electricals Limited
PEM, PPEI Building, Plot No 25,
Sector -16A, Noida (U.P)-201301

Subject: - Certification regarding local content

Reference: Tender Enquiry No-.....

Name of Package:

Dear Sir,

We hereby certify that items offered by us of(package name).....for.....(Project Name/Rate contract)..... meets the requirement of minimum local content in line with Cl. No..... of NIT No..... dated..... and the Public Procurement (Preference to Make in India), Order 2017 dated-15.06.2017, 28.05.2018 & 29.05.2019.

We further confirms that details of location at which the local value addition is made will be our registered works at(address of the works)

Yours very truly

..... (authorized signatory of company)

..... (firm name)

authorized signatory
of company

DETAILS OF BHEL- PEM BANKERS14/08/2015

BHARAT HEAVY ELECTRICALS LIMITED	
Bank Name	HDFC Bank
Branch	KASTURBA GANDHI MARG
ADDRESS	209-214, KAILASH BUILDING, 26 K G MARG, Connaught Place, New Delhi-110001, India
RTGS /NEFT IFSC CODE	HDFC0000003
ACCOUNT NO	00030350015809

	PROJECT ENGINEERING MANAGEMENT	GENERAL CONDITIONS OF CONTRACT (GCC) Revision no. 07	ANNEXURES
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ANNEXURE-V

(RISK AND COST CLAUSE)

1. BHEL reserves the right to terminate the contract or withdraw portion of work and get it done through other agency, at the risk and cost of the contractor *after due notice of a period of 14 days* by BHEL in any of the following cases:
 - i) If the Seller/Contractor fails to deliver the goods or materials or any instalment thereof within the period(s) fixed for such delivery or the Seller's poor progress of the supply/ services vis-a-vis delivery/execution timeline as stipulated in the Contract, backlog attributable to seller including unexecuted portion of supply does not appear to be executable within balance available period;
 - ii) Delivers goods or materials not of the contracted quality and failing to adhere to the contract specifications;
 - iii) Withdrawal from or repudiation/ abandonment of the supply/ services by Seller before completion as per contract or if the Seller refuses or is unable to supply goods or materials covered by the Order/Contract either in whole or in part or otherwise fails to perform the Order/Contract;
 - iv) Non-supply by the Seller within scheduled completion/delivery period as per Contract or as extended from time to time, for the reasons attributable to the Seller;
 - v) Termination of Contract on account of any other reason (s) attributable to Seller.
 - vi) Assignment, transfer, subletting of Contract without BHEL's written permission resulting in termination of Contract or part thereof by BHEL.
 - vii) If the Seller be an individual or a sole proprietorship Firm, in the event of the death or insanity of the Seller;
 - viii) If the Seller/Contractor being an individual or if a firm on a partnership thereof, shall at any time, be adjudged insolvent or shall have a receiving order for administration of his estate made against him or shall take any proceeding for composition under any Insolvency Act for the time being in force or make any assignment of the Order/Contract or enter into any arrangement or composition with his creditors or suspend payment or if the firm dissolved under the Partnership Act;
 - ix) If the Seller/Contractor being a company is wound up voluntarily or by order of a Court or a Receiver, Liquidator or Manager on behalf of the debenture holders and creditors is appointed or circumstances shall have arisen which entitles the Court of debenture holder and creditors to appoint a receiver, liquidator or manager;
 - x) Non-compliance to any contractual condition or any other default attributable to Seller.

1.1 Risk & Cost Amount against Balance Work:

Risk & Cost amount against balance work shall be calculated as follows:

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

Where,

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

B= Value of Balance scope of Work (*) as per rates of old contract being paid to the contractor 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).

1.2 * Balance scope of work (in case of termination of contract):

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 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.

	PROJECT ENGINEERING MANAGEMENT	GENERAL CONDITIONS OF CONTRACT (GCC) Revision no. 07	ANNEXURES
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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 at risk & cost of contractor instead of termination of contract, contract quantities pertaining to portion of work withdrawn shall be considered as 'Balance scope of work' for calculating Risk & Cost amount.

1.3 LD against delay in executed work in case of Termination of Contract:

LD against delay in executed work shall be calculated in line with LD clause no. 16 of GCC, for the delay attributable to contractor. For limiting the maximum value of LD, contract value shall be taken as Executed Value of work till termination of contract.

Method for calculation of LD against delay in executed work in case of termination of contract" 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 = T1
- ii. Let the value of executed work till the time of termination of contract = X
- iii. Let the Total Executable Value of work for which inputs/fronts were made available to contractor and were planned for execution till termination of contract = Y
- iv. Delay in executed work attributable to contractor i.e. T2 = $[1-(X/Y)] \times T1$
- v. LD shall be calculated in line with LD clause (clause 16) of the Contract for the delay attributable to contractor taking "X" as Contract Value and "T2" as period of delay attributable to contractor.

2. Recoveries arising out of Risk & Cost and LD or any other recoveries due from Contractor

Without prejudice to the other means of recovery of such dues from the Seller recoveries from the Seller on whom risk & cost has been invoked shall be made from the following:

- a) Dues available in the form of Bills payable to seller, SD, BGs against the same contract.
- b) Dues payable to seller against other contracts in the same Region/Unit/ Division of BHEL.
- c) Dues payable to seller against other contracts in the different Region/Unit/ division of BHEL.

In-case recoveries are not possible with any of the above available options, Legal action shall be initiated for recovery against contractor.

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ANNEXURE X

BRIEF PROCEDURE FOR CONDUCT OF CONCILIATION PROCEEDINGS

1. The proceedings of Conciliation shall broadly be governed by Part-III of the Arbitration and Conciliation Act 1996 or any statutory modification thereof and as provided herein:
2. The party desirous of resorting to Conciliation shall send an invitation/notice in writing to the other party to conciliate specifying all points of Disputes with details of the amount claimed. The party concerned shall not raise any new issue thereafter. Parties shall also not claim any interest on claims/counter- claims from the date of notice invoking Conciliation till the conclusion of the Conciliation proceedings. If BHEL is to initiate Conciliation, then, the invitation to Conciliate shall be extended to the concerned Stakeholder in **Format 7** hereto. Where the stakeholder is to initiate the Conciliation, the notice for initiation of Conciliation shall be sent in **Format-8** hereto.
3. The party receiving the invitation/notice for Conciliation shall within 30 days of receipt of the notice of Conciliation intimate its consent for Conciliation along with its counter-claims, if any.
4. The Conciliation in a matter involving claim or counter-claim (whichever is higher) up to Rs 5 crores shall be carried out by sole Conciliator nominated by BHEL while in a matter involving claim or counter-claim (whichever is higher) of more than Rs 5 crores Conciliation shall be carried out by 3 Conciliators nominated by BHEL. The appointment of Conciliator(s) shall be completed and communicated by the concerned Department/Group of BHEL Unit/Division/Region/Business Group to the other party and the Conciliator(s) within 30 days from the date of acceptance of the invitation to conciliate by the concerned party in the **Format-9**. The details of the Claim, and counter-claim, if any, shall be intimated to the Conciliator(s) simultaneously in **Format-5**.
5. The Parties shall be represented by only their duly authorized in-house executives/officers and neither Party shall be represented by a Lawyer.
6. The first meeting of the IEC shall be convened by the IEC by sending appropriate communication/notice to both the parties as soon as possible but not later than 30 days from the date of his/their appointment. The hearings in the Conciliation proceeding shall ordinarily be concluded within two (2) months and, in exceptional cases where parties have expressed willingness to settle the matter or there exists possibility of settlement in the matter, the proceedings may be extended by the IEC by a maximum of further 2 months with the consent of the Parties subject to cogent reasons being recorded in writing.
7. The IEC shall thereafter formulate recommendations for settlement of the Disputes supported by reasons at the earliest but in any case within 15 days from the date of conclusion of the last hearing. The recommendations so formulated along with the reasons shall be furnished by the IEC to both the Parties at the earliest but in any case within 1 month from the date of conclusion of the last hearing.
8. Response/modifications/suggestions of the Parties on the recommendations of the IEC are to be submitted to the IEC within time limit stipulated by the IEC but not more than 15 days from the date of receipt of the recommendations from the IEC.
9. In the event, upon consideration, further review of the recommendations is considered necessary, whether by BHEL or by the other Party, then, the matter can be remitted back to the IEC with request to reconsider the same in light of the issues projected by either/both the Parties and to submit its recommendations thereon within the following 15 days from the date of remitting of the case by either of the Parties.

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10. Upon the recommendations by the Parties, with or without modifications, as considered necessary, the IEC shall be called upon to draw up the Draft Settlement Agreement in terms of the recommendations.
11. When a consensus can be arrived at between the parties only in regard to any one or some of the issues referred for Conciliation the draft Settlement Agreement shall be accordingly formulated in regard to the said Issue(s), and the said Settlement Agreement, if signed, by the parties, shall be valid only for the said issues. As regards the balance issues not settled, the parties may seek to resolve them further as per terms and conditions provided in the contract.
12. In case no settlement can be reached between the parties, the IEC shall by a written declaration, pronounce that the Conciliation between the parties has failed and is accordingly terminated.
13. Unless the Conciliation proceedings are terminated in terms of para 22 (b), (c) & (d) herein below, the IEC shall forward his/its recommendations as to possible terms of settlement within one (1) month from the date of last hearing. The date of first hearing of Conciliation shall be the starting date for calculating the period of 2 months.
14. In case of 3 members IEC, 2 members of IEC present will constitute a valid quorum for IEC and meeting can take place to proceed in the matter after seeking consent from the member who is not available. If necessary, videoconferencing may be arranged for facilitating participation of the members. However, the IEC recommendations will be signed by all members. Where there is more than one (1) Conciliator, as a general rule they shall act jointly. In the event of differences between the Members of IEC, the decision/recommendations of the majority of the Members of IEC shall prevail and be construed as the recommendation of the IEC.
15. The Draft Settlement Agreement prepared by the IEC in terms of the consensus arrived at during the Conciliation proceedings between the Parties shall be given by the IEC to both the parties for putting up for approval of their respective Competent Authority.
16. Before submitting the draft settlement agreement to BHEL's Competent Authority viz. the Board Level Committee on Alternative Dispute Resolution (BLCADR) for approval, concurrence of the other party's Competent Authority to the draft settlement agreement shall be obtained by the other party and informed to BHEL within 15 days of receipt of the final draft settlement agreement by it. Upon approval by the Competent Authority, the Settlement Agreement would thereafter be signed by the authorized representatives of both the Parties and authenticated by the members of the IEC.
17. In case the Draft Settlement Agreement is rejected by the Competent Authority of BHEL or the other Party, the Conciliation proceedings would stand terminated.
18. A Settlement Agreement shall contain a statement to the effect that each of the person(s) signing thereto (i) is fully authorized by the respective Party(ies) he/she represents, (ii) has fully understood the contents of the same and (iii) is signing on the same out of complete freewill and consent, without any pressure, undue influence.
19. The Settlement Agreement shall thereafter have the same legal status and effect as an arbitration award on agreed terms on the substance of the dispute rendered by an arbitral tribunal passed under section 30 of the Arbitration and Conciliation Act, 1996.
20. Acceptance of the Draft Settlement Agreement/recommendations of the Conciliator and/or signing of the Settlement Agreement by BHEL shall however, be subject to withdrawal/closure of any arbitral and/or judicial proceedings initiated by the concerned Party in regard to such settled issues.



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21. Unless otherwise provided for in the agreement, contract or the Memorandum of Understanding, as the case may be, in the event of likelihood of prolonged absence of the Conciliator or any member of IEC, for any reason/incapacity, the Competent Authority/Head of Unit/Division/Region/Business Group of BHEL may substitute the Conciliator or such member at any stage of the proceedings. Upon appointment of the substitute Conciliator(s), such reconstituted IEC may, with the consent of the Parties, proceed with further Conciliation into the matter either de-novo or from the stage already reached by the previous IEC before the substitution.

22. The proceedings of Conciliation under this Scheme may be terminated as follows:

- a. On the date of signing of the Settlement agreement by the Parties; or,
- b. By a written declaration of the IEC, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or,
- c. By a written declaration of the Parties addressed to the IEC to the effect that the Conciliation proceedings are terminated, on the date of the declaration; or,
- d. By a written declaration of a Party to the other Party and the IEC, if appointed, to the effect that the Conciliation proceedings are terminated, on the date of the declaration; or,
- e. On rejection of the Draft Settlement Agreement by the Competent Authority of BHEL or the other Party.

23. The Conciliator(s) shall be entitled to following fees and facilities:

SI No	Particulars	Amount
1	Sitting fees	Each Member shall be paid a Lump Sum fee of Rs 75,000/- for the whole case payable in terms of paragraph No.27 herein below.
2	Towards drafting of settlement agreement	In cases involving claim and/or counter-claim of up to Rs 5crores. Rs 50,000/- (Sole Conciliator) In cases involving claim and/or counter-claim of exceeding Rs 5 crores but less than Rs 10 crores.
SI No	Particulars	Amount
		Rs 75,000 (per Conciliator) In cases involving claim and/or counter-claim of more than Rs 10 crores. Rs 1,00,000/- (per Conciliator) Note: The aforesaid fees for the drafting of the Settlement Agreement shall be paid on the, Signing of the Settlement Agreement after approval of the Competent Authority or

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		<p>Rejection of the proposed Settlement Agreement by the Competent Authority of BHEL.</p> <p>3 Secretarial expenses Rs 10,000/- (one time) for the whole case for Conciliation by a Sole Member IEC. Where Conciliation is by multi member Conciliators —Rs 30,000/- (one time)- to be paid to the IEC</p> <p>4 Travel and transportation and stay at outstation Retired Senior Officials of other Public Sector Undertakings (pay scale wise equivalent to or more than E-8 level of BHEL) As per entitlement of the equivalent officer (pay scale wise) in BHEL.</p> <p>5 Others As per the extant entitlement of whole time Functional Directors in BHEL. Ordinarily, the IEC Member(s) would be entitled to travel by air Economy Class.</p> <p>SI No Particulars Amount</p> <p>concerned Unit / Division / Region / Business Group of BHEL. Without prejudice to the seat/venue of the Conciliation being at the location of concerned BHEL Unit / Division / Region / Business Group, the IEC after consulting the Parties may decide to hold the proceedings at any other place/venue to facilitate the proceedings. Unless, Parties agree to conduct Conciliation at BHEL premises, the venue is to be arranged by either Party alternately.</p>	
		<p>24. The parties will bear their own costs including cost of presenting their cases/evidence/witness(es)/expert(s) on their behalf. The parties agree to rely upon documentary evidence in support of their claims and not to bring any oral evidence in IEC proceedings.</p> <p>25. If any witness(es) or expert(s) is/are, with the consent of the parties, called upon to appear at the instance of the IEC in connection with the matter, then, the costs towards such witness(es)/expert(s) shall be determined by the IEC with the consent of the Parties and the cost so determined shall be borne equally by the Parties.</p> <p>26. The other expenditures/costs in connection with the Conciliation proceedings as well as the IEC's fees and expenses shall be shared by the Parties equally.</p>	

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27. Out of the lump sum fees of Rs 75,000/- for Sitting Fees, 50% shall be payable after the first meeting of the IEC and the remaining 50% of the Sitting Fees shall be payable only after termination of the conciliation proceedings in terms of para 22 hereinabove.

28. The travelling, transportation and stay at outstation shall be arranged by concerned Unit as per entitlements as per Serial No. 4 of the Table at para 23 above, and in case such arrangements are not made by the BHEL Unit, the same shall be reimbursed to the IEC on actuals limited to their entitlement as per Serial No. 4 of the Table at Para 23 above against supporting documents. The IEC Member(s) shall submit necessary invoice for claiming the fees/reimbursements.

29. The Parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of its implementation and enforcement or as required by or under a law or as per directions of a Court/Governmental authority/ regulatory body, as the case may be.

30. The Parties shall not rely upon or introduce as evidence in any further arbitral or judicial proceedings, whether or not such proceedings relate to the Disputes that is the subject of the Conciliation proceedings:

- Views expressed or suggestions made by the other party in respect of a possible settlement of the Disputes;
- admissions made by the other party in the course of the Conciliator proceedings;
- proposals made by the Conciliator;
- The fact that the other Party had indicated his willingness to accept a proposal for settlement made by the Conciliator.

31. The Parties shall not present the Conciliator(s) as witness in any Alternative Dispute Resolution or Judicial proceedings in respect of a Disputes that is/was the subject of that particular Conciliation proceeding.

32. None of the Conciliators shall act as an arbitrator or as a representative or counsel of a Party in any arbitral or judicial proceeding in respect of a Disputes that is/was the subject of that particular Conciliation proceeding.

33. The Parties shall not initiate, during the Conciliation proceedings, any arbitral or judicial proceedings in respect of a Disputes that is the subject matter of the Conciliation proceedings except that a Party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights including for preventing expiry of period of limitation. Unless terminated as per the provisions of this Scheme, the Conciliation proceedings shall continue notwithstanding the commencement of the arbitral or judicial proceedings and the arbitral or judicial proceedings shall be primarily for the purpose of preserving rights including preventing expiry of period of limitation.

34. The official language of Conciliation proceedings under this Scheme shall be English unless the Parties agree to some other language.

Format 5 to BHEL Conciliation Scheme, 2018 STATEMENT OF CLAIMS/COUNTER CLAIMS TO BE SUBMITTED TO THE IEC BY BOTH THE PARTIES

1. Chronology of the Disputes
2. Brief of the Contract/MoU/Agreement/LOI/LOA
3. Brief history of the Disputes:
4. Issues:
5. Details of Claim(s)/Counter Claim(s):



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Sl. No.	Description of claim(s)/Counter Claim	Amount (in INR) or currency applicable in the contract	Relevant contract clause	

6. Basis/Ground of claim(s)/counter claim(s) (along with relevant clause of contract)

Note— The Statement of Claims/Counter Claims may ideally be restricted to maximum limit of 20 pages. Relevant documents may be compiled and submitted along with the statement of Claims/Counter Claims. The statement of Claims/Counter Claims is to be submitted to all IEC members and to the other party by post as well as by email.

FORMAT-7

FORMAT FOR NOTICE INVOKING CONCILIATION CLAUSE BY BHEL FOR REFERRING THE DISPUTES TO CONCILIATION THROUGH IEC

To,

M/s. (Stakeholder's name)

Subject: **NOTICE FOR INVOCATION OF THE CONCILIATION CLAUSE OF THE CONTRACT BY BHEL**

Ref: ContractNo/MoU/Agreement/LOI/LOA& date _____.

Dear Sir/Madam,

As you are aware, with reference to above referred Contract/MoU/Agreement/LOI/LOA, certain disputes have arisen, which, in-spite of several rounds of mutual discussions and various correspondences have remained unresolved. The brief particulars of our claims which arise out of the above- referred Contract/MoU/Agreement/LOI/LOA are reproduced hereunder:

Sl. No.	Claim description	Amount involved

As you are aware, there is a provision in the captioned Contract/MoU/Agreement/LOI/ LOA for referring disputes to conciliation.

In terms of Clause -----of Procedure i.e., Annexure ----- to the Contract/MoU /Agreement / LOI / LOA, we hereby seek your consent to refer the matter to Conciliation by Independent Experts Committee to be appointed by BHEL. You are invited to provide your consent in writing to proceed with conciliation into the above mentioned disputes within a period of 30 days from the date of this letter along with details of counter-claims, if any, which you might have with regard to the subject Contract/ MoU/ Agreement/ LOI/ LOA.

Please note that upon receipt of your consent in writing within 30 days of the date of receipt of this letter by you, BHEL shall appoint suitable person(s) from the BHEL Panel of Conciliators.

This letter is being issued without prejudice to our rights and contentions available under the contract and law.

Thanking you Yours faithfully

Representative of BHEL

Note: The Format may be suitably modified, as required, based on facts and circumstances of the case.



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**FORMAT-8 FORMAT FOR NOTICE INVOKING CONCILIATION CLAUSE BY A STAKEHOLDER FOR REFERRING THE
DISPUTES TO CONCILIATION THROUGH IEC**

To,

BHEL (Head of the Unit/Division/Region/Business Group)

Subject: **NOTICE FOR INVOCATION OF THE CONCILIATION CLAUSE OF THE CONTRACT BY A STAKEHOLDER**

Ref: ContractNo/MoU/Agreement/LOI/LOA& date _____.

Dear Sir/Madam,

As you are aware, with reference to above referred Contract/MoU/Agreement/LOI/LOA, certain disputes have arisen, which, in-spite of several rounds of mutual discussions and various correspondences have remained unresolved. The brief particulars of our claims which have arisen out of the above- referred Contract/MoU/Agreement/LOI/LOA are enumerated hereunder:

Sl.No.	Claim description	Amount involved

As you are aware, there is a provision in the captioned Contract/MoU/Agreement/LOI/ LOA for referring inter-se disputes of the Parties to conciliation.

We wish to refer the above-said disputes to Conciliation as per the said Clause of the captioned Contract/MoU/Agreement/LOI/ LOA. In terms of Clause -----of Procedure i.e., Annexure ----- to the Contract/MoU /Agreement / LOI / LOA, we hereby invite BHEL to provide its consent in writing to proceed with conciliation into the above mentioned disputes within a period of 30 days from the date of this letter along with details of counter-claims, if any, which it might have with regard to the subject Contract/ MoU/ Agreement/ LOI/ LOA and to appoint suitable person(s) as Conciliator(s) from the BHEL Panel of Conciliators.

This letter is being issued without prejudice to our rights and contentions available under the contract and law.

Thanking you Yours faithfully
Representative of the Stakeholder

Note: The Format may be suitably modified, as required, based on facts and circumstances of the case.

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FORMAT-9

FORMAT FOR INTIMATION TO THE STAKEHOLDER ABOUT APPOINTMENT OF CONCILIATOR/IEC

To,

M/s. (Stakeholder's name)

Subject: **INTIMATION BY BHEL TO THE STAKEHOLDER AND CONCILIATOR(S) ABOUT APPOINTMENT OF CONCILIATOR/IEC**

Ref: ContractNo/MoU/Agreement/LOI/LOA& date _____ Sir,

This is with reference to letter dated ----- regarding reference of the disputes arising in connection with the subject Contract No /MoU/Agreement/LOI/LOA to conciliation and appointment of Conciliator(s).

In pursuance of the said letter, the said disputes are assigned to conciliation and the following persons are nominated as Conciliator(s) for conciliating and assisting the Parties to amicably resolve the disputes in terms of the Arbitration & Conciliation Act, 1996 and the Procedure ---- to the subject Contract/MoU/Agreement/LOI/LOA, if possible. Name and contact details of Conciliator(s)

a)

b)

c)

You are requested to submit the Statement of Claims or Counter-Claims (strike off whichever is inapplicable) before the Conciliator(s) in Format 5 (enclosed herewith) as per the time limit as prescribed by the Conciliator(s).

Yours faithfully,

Representative of BHEL

CC: To Conciliator(s)... for Kind Information please. Encl: As above

Note: The Format may be suitably modified, as required, based on facts and circumstances of the case.



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ANNEXURE XI

STATE WISE GST REGISTRATION CODE OF BHEL

Sl.No	State	Nodal Unit Registered as Supplier of Goods/Services in GST	GSTIN of Nodal Unit
1	Andhra Pradesh	HPVP	37AAACB4146P7Z8
2	Assam	PSER	18AAACB4146P1ZE
3	Bihar	PSER	10AAACB4146P1ZU
4	Chandigarh	PSNR	04AAACB4146P1ZN
5	Chattishgarh	PSWR	22AAACB4146P1ZP
6	Daman & Diu	EDN	25AAACB4146P1ZJ
7	Delhi	TBG	07AAACB4146P1ZH
8	Gujarat	PSWR	24AAACB4146P1ZL
9	Haryana	PSNR	06AAACB4146P1ZJ
10	Himachal Pradesh	PSNR	02AAACB4146P1ZR
11	Jharkhand	PSER	20AAACB4146P5ZP
12	Karnataka	EDN	29AAACB4146P1ZB
13	Kerala	PSSR	32AAACB4146P1ZO
14	Maharashtra	PSWR	27AAACB4146P1ZF
15	Madhya Pradesh	BPL	23AAACB4146P1ZN
16	Punjab	IVP	03AAACB4146P2ZO
17	Rajasthan	PSNR	08AAACB4146P1ZF
18	Tamil Nadu	TRY	33AAACB4146P2ZL
19	Telangana	Hyd	36AAACB4146P1ZG
20	Tripura	PSER	16AAACB4146P1ZI
21	Uttar Pradesh	PSNR	09AAACB4146P2ZC
22	Uttarakhand	HWR	05AAACB4146P1ZL
23	West Bengal	PSER	19AAACB4146P1ZC
24	Mizoram	PSER	15AAACB4146P1ZK
25	Orissa	PSSR	21AAACB4146P1ZR
26	Arunachal Pradesh	PSER	12AAACB4146P1ZQ



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APPENDIX

APPENDIX - I

(CERTIFICATE BY CHARTERED ACCOUNTANT ON LETTER HEAD)

This is to Certify that M/S (hereinafter referred to as 'company') having its registered office at is registered under MSMED Act 2006, (Entrepreneur Memorandum No (Part II) dtd: , Category: (Micro/Small)). (copy enclosed).

Further verified from the Books of Accounts that the investment of the company as per the latest audited financial year as per MSMED Act 2006 is as follows:

1. **For Manufacturing Enterprises:** investment in plant and machinery (i.e. original cost excluding land and building and the items specified by the Ministry of Small Scale Industries vide its notification No. S.O.1722 (E) dated October 5, 2006:
Rs Lacs
2. **For Service Enterprises:** Investment in equipment (original cost excluding land and building and furniture, fittings and other items not directly related to the service rendered or as may be notified under the MSMED Act, 2006:
Rs Lacs

(STIKE OFF WHICHEVER IS NOT APPLICABLE)

The above investment of Rs Lacs is within permissible limit of Rs Lacs for Micro/ Small (Strike off which is not applicable) Category under MSMED Act 2006.

Or

The company has been graduated from its original category (Micro/Small) (strike off which is not applicable) and the date of graduation of such enterprise from its original category is (dd/mm/yyyy) which is within the period of 3 years from the date of graduation of such enterprise from its original category as notified vide S.O.No. 3322(E) dated 01.11.2013 published in the gazette notification dated 04.11.2013 by Ministry of MSME.

Date:

(Signature)

Name-

Membership Number-

Seal of Chartered Accountant-