

## ANNEXURE – A

### TERMS AND CONDITIONS OF THE ENQUIRY

#### **(A) SCOPE OF SUPPLY :**

- i) Supply shall be made strictly as per the technical specifications mentioned in the Enquiry and WCPS.
- ii) All documents and certificates as per WCPS shall be submitted during order execution.
- iii) Deviation, if any, shall be clearly mentioned in your offer.
- iv) Quantity variation up to - 5% is acceptable. Supply of extra quantity is not permissible.

#### **(B) SUBMISSION OF OFFER :**

- i) Your Offers should be submitted in Two part Bid System (Techno-commercial bid + Price bid) in our E-Procurement portal only. No other mode of offer submission is acceptable

#### **(C) OFFER VALIDITY :**

Validity of offer should be minimum 60 days from the date of Tender opening. The quoted / finalized prices shall be Firm till completion of the supplies

#### **(D) DELIVERY TERMS :**

- i) **For Indian Bidders :**
  - o The prices are to be quoted on F.O.R. BHEL Trichy Stores basis (Inclusive of Packing & Forwarding Charges). Freight and Insurance Charges shall be quoted extra in %. All the items should be supplied at BHEL Stores at your own cost. Offers with any other delivery conditions will be rejected
  - o Delivery condition like Ex-works / Ex - godown / Transportation of materials through transport carriers from your works up to the transport carrier's office and taking delivery of goods by BHEL from such office of transport carriers is not acceptable to us.
- ii) **For Foreign Bidders :**
  - o Bidders should submit their offer for CFR / Chennai Seaport basis with freight break up details and Place of delivery – INTVT6 – CONCOR ICD.
  - o PORT OF LOADING SHOULD BE INDICATED WITHOUT FAIL.
  - o PORT OF DISCHARGE should be CHENNAI and PLACE OF DELIVERY - INTVT6 – CONCOR ICD

#### **CONTAINERIZED CARGO**

- o For CFR terms, moved through CONTAINERS (Suppliers should clearly specify this in their offer) it would be presumed by BHEL that the freight charges quoted is on LILO (LINER IN LINER OUT) basis including extra charges, if any, like Container Imbalance Charges, Trade Imbalance charges or any other charges payable to the Liner. No other charges other than the quoted Freight rate will be paid by BHEL excepting applicable Terminal Handling Charges, Container cleaning Charges, DO charges to Shipping Liner at Discharge Port. 14 FREE DAYS FOR Container detention shall be provided. If any deviation is taken by Tenderer, a loading of 22% on the freight rate per MT shall be considered by BHEL for arriving at the Total landed Cost.
- o In case of shipment through Containers on CFR basis, the BL should bear the endorsement that "14 free days for Container Detention is applicable".
- o Place of delivery – INTVT6 – CONCOR ICD should be clearly specified in the Bill of Lading.

#### **BREAKBULK CARGO**

- o For CFR terms, moved through BREAK BULK BASIS (Suppliers should clearly specify this in their offer) it would be presumed by BHEL that the freight charges quoted is on LILO (LINER IN LINER OUT) basis.
- o Place of delivery – INTVT6 – CONCOR ICD should be clearly specified in the Bill of Lading.

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*In case, BHEL decides to airlift the material through its Air Console agent, the delivery terms will be changed to Ex-Works and freight charges will be reduced from the order value.*

**(E) PAYMENT TERMS :**

**i) For Indian Bidders :**

- Payment term is “100% direct EFT payment after 45 days from the date of receipt and acceptance of materials at BHEL Stores”.
- The duplicate copy of the invoice meant for the transporters should accompany the material as stipulated under C.E. rules 52a and 173c (or) 57gg. A Photostat copy of the above invoice for each Delivery Chelan should be submitted along with the original bills routed through bank or submitted directly to BHEL finance department.
- Any deviation in the above payment term will attract loading as mentioned below. “Base rate of SBI (as applicable on the date of bid opening. Techno-commercial bid opening in case of two part bids) + 6% shall be considered for loading for the period of relaxation sought by bidders.
- Payment through bank is not preferred. In case of payment through bank is opted by supplier, BHEL prefers documents submission through bank with copy of LR and door delivery of goods to site/stores with consignee copy attached. In this case loading will be 3% on the offered value.
- Offers of indigenous Suppliers with payment terms as LC / Advance Payment etc. will be rejected.

**ii) For Foreign Bidders :**

- BHEL Payment term is 100% payment on CAD basis after 45 days from the date of receipt of documents, specified in PO, at BHEL bank. Respective bank charges to respective account.
- Any deviation in the above payment term will attract loading as mentioned below :  
“Base rate of SBI (as applicable on the date of bid opening. Techno Commercial bid opening in case of two part bids) + 6% shall be considered for loading for the period of relaxation sought by bidders.
- If the LC payment is insisted, TWO sets of original TCs to be submitted prior to dispatch and a certificate to that effect from BHEL should form a part of the documents to be negotiated. If this condition is not complied by the vendor, the offer is liable for rejection.
- In the case of Usance LCs the loading will be considered @ 1.5% on the offered Value.
- For LC at sight the loading will be considered @ 3.5% on the offered Value.
- Offers with payment terms as Advance payment, CAD at sight and Confirmed LCs will be rejected.

**(F) LIQUIDITY DAMAGES / PENALTY :**

The delivery of the goods specified in the purchase order should be made within the time prescribed. Where the seller supplies or despatches the goods beyond the delivery period, Liquidity damages will be applicable as mentioned below:

- i) Liquidated damages shall be 0.5% of the total order value per week or part thereof subject to a maximum of 10% of the total order value
- ii) For staggered delivery schedule, LD shall be 0.5% of the undelivered portion per week of the delay or part there of subject to a maximum of 10% of the total order value.
- iii) Any deviation from the above LD clause, loading will be applied to the extent to which it is not agreed by the bidder (at offered value)
- iv) IMPORT: For CFR terms, BL date will be considered for LD calculation.
- v) INDIGENOUS: For “FOR Delivery terms”, Lorry way bill date will be taken for LD calculation.

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**(G) RISK PURCHASE CLAUSE :**

Alternatively the purchaser at his option will be entitled to terminate the contract and to purchase elsewhere at the risk and cost of the seller either the whole of the goods or any part which the supplier has failed to deliver or dispatch within the time stipulated as aforesaid or if the same were not available, the best and the nearest available substitutes therefore. The supplier shall be liable for any loss, which the purchaser may sustain by reason of such risk purchases in addition to penalty at the rate mentioned in our LD clause.

**(H) TENDER EVALUATION :**

- i) Tender evaluation will be carried out on the basis of Technical Specifications and Commercial Terms and Conditions specified in the tender documents and changes thereof (if any) will be communicated to all bidders before Price Bid Opening.
- ii) The Tender will be evaluated on total package basis.

**(I) COST EVALUATION :**

- i) Evaluation will be done on the basis of "Total landed cost to BHEL".
- ii) For evaluation, the exchange rate (TT selling rate of SBI) on the date of Part-I bid opening shall be considered. If the relevant day happens to be a bank holiday, then the forex rate as on the previous working day shall be considered.
- iii) BHEL will consider the ranking after the loading is applied as referred above, wherever deviations are observed
- iv) Ranking (L-1, L-2 etc.) will be done only for the Techno-Commercially acceptable offers.
- v) In the event of more than one vendor becoming L-1, the enquiry quantity will be shared equally among all the L1 vendors.

**(J) GST FOR INDIGENEOUS SUPPLIERS :**

- 1) Response to Tenders for Indigenous supplier will be entertained only if the vendor has a valid GST registration no which should clearly have mentioned in the offer. If any specific exemption is available, a declaration with due supporting documents need to be furnished for considering the offer.
- 2) Supplier shall mention their GSTN registration number in all their invoices and invoices shall be in the format as specified/prescribed under GST laws. Invoices shall necessarily contain Invoice number (in case of multiple numbering system is being followed for billing like SAP invoice no, commercial invoice no etc., then the Invoice No which is linked/uploaded in GSTN network shall be clearly indicated), item description as per PO, Quantity, Rate, Value, applicable taxes with nomenclature (like IGST, SGST, CGST & UTGST) separately, HSN/ SAC Code, etc.
- 3) All invoices shall bear the HSN Code for each item separately (Harmonized System of Nomenclature)/ SAC code (Services Accounting Code).
- 4) A declaration to the effect that all invoice particulars are/were uploaded in the GSTN network/ portal & all tax liability as per GST rules and regulations have been and will be discharged, shall be mentioned in the invoice. If not mentioned in the invoice, a separate declaration shall be submitted as per the requirement of BHEL.
- 5) All documents like Mill Test Certificate, LR copy, Guarantee/Warranty certificate, work completion certificate, any other document mentioned in PO, shall be sent along with the vehicle/consignment. For all consignments received within the calendar month, input credit will be availed within that month in line with monthly returns filing cycle. In case of any discrepancy in the document or non-submission of documents mentioned in the PO, then BHEL will not be able to accept or account the material, in such case availing of tax credit will be deferred to next month or so.
- 6) In case of discrepancy in the data uploaded by supplier in the GSTN portal or in case of any shortages or rejection in the supply, then BHEL will not be able to avail the tax credit and will notify the supplier of the same. Supplier has to rectify the data discrepancy in the GSTN portal

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or issue credit note (details to be uploaded in GSTN portal) for the shortages or rejections in the suppliers, within the calendar month notified by BHEL.

- 7) For any such delay in availing of tax credit for reasons attributable to supplier (as mentioned above), interest (calculated @ SBI Base Rate + 6%) along with penalty if any will be deducted for the delayed period i.e. from the month of receipt till the month tax credit is availed, from the running bills.

**(K) DOCUMENTS SUBMISSION FOR FOREIGN SUPPLIERS:**

The Original Documents (Bill of Lading, Invoice, Packing List, Certificate of Origin & Test Certificate) shall reach BHEL well in advance before the vessel arrival. The soft copies of the above shall be forwarded to BHEL immediately after shipment.

- i) In the event of delay in negotiating / submitting the document by the Supplier, any demurrage charges arising out of the same shall be to the account of the Supplier.
- ii) In such cases, the Supplier shall authorize the Steamer / Shipping agent / transporter to freely release the consignment to BHEL by providing a "Surrender Bill of Lading".
- iii) Otherwise, No-objection Certificate shall be issued to the Liner, authorizing BHEL to get the Delivery Order without producing the Original Bill of Lading.
- iv) This is required to ensure avoidance of incidence of demurrage at Chennai Seaport that may arise in case of delayed presentation of documents by the Seller.

**(L) INDIAN AGENTS OF FOREIGN SUPPLIERS :**

- i) BHEL shall deal directly with foreign vendors, wherever required, for procurement of goods. However, if the foreign principal desires to avail of the services of an Indian agent, then the foreign principal should ensure compliance to regulatory guidelines - which require mandatory submission of an Agency Agreement
- ii) It shall be incumbent on the Indian agent and the foreign principal to adhere to the relevant guidelines of Government of India, issued from time to time.
- iii) If the offer is submitted by Agents, duly signed agency agreement shall be submitted along with the offer in Techno-Commercial bid. The Agency Agreement should specify the precise relationship between the foreign OEM / foreign principal and their Indian agent and their mutual interest in the business. All services to be rendered by agent/ associate, whether of general nature or in relation to the particular contract, must be clearly stated by the foreign supplier/ Indian agent. Any payment, which the agent or associate receives in India or abroad from the OEM, whether as commission or as a general retainer fee should be brought on record in the Agreement and be made explicit in order to ensure compliance to laws of the country.
- iv) Any agency commission to be paid by BHEL to the Indian agent shall be in Indian currency only.
- v) Tax deduction at source is applicable to the agency commission paid to the Indian agent as per the prevailing rules.
- vi) In the absence of any agency agreement, BHEL shall not deal with any Indian agent (authorized representatives / associate / consultant, or by whatever name called) and shall deal directly with the foreign principal only for all correspondence and business purposes.
- vii) The supply and execution of the Purchase Order (including indigenous supplies/ service) shall be in the scope of the OEM/ foreign principal. The OEM/ foreign principal should submit their offer inclusive of all indigenous supplies/ services and evaluation will be based on 'total cost to BHEL'. In case OEM/ foreign principal recommends placement of order(s) on Indian supplier(s)/ agent on their behalf, the credentials/ capacity/ capability of the Indian supplier(s)/ agent to make the supplies/ services will be checked by BHEL, before opening of price bids. It will be the responsibility of the OEM/ foreign principal to get acquainted with the evaluation requirements of Indian supplier/ agent as per SEARP available on [www.bhel.com](http://www.bhel.com). The responsibility for successful execution of the contract lies with the OEM/ foreign principal.
- viii) Either the Indian agent on behalf of the Principal/OEM or Principal/OEM itself can bid but both cannot bid simultaneously for the same item in the same tender. If offer is received by both Indian agent and Principal/OEM, then the offer from Principal/OEM only will be considered.

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- ix) If an agent submits bid on behalf of the Principal/OEM, the same agent shall not submit bid on behalf of another Principal/OEM for the same item. If an agent submits bid on behalf of more than one Principal/OEM for a single item, his offer will be completely rejected for the concerned item.

**(M) Comprehensive Economic Partnership Agreement (CEPA):**

Foreign suppliers shall ensure that the benefits as applicable under comprehensive economic partnership agreement (CEPA) with government of India are disclosed in the bid and relevant documents such as certificate of country of origin, issued by the appropriate authority in the country of exports, is provided by the vendor along with dispatch documents. Bids shall be evaluated with such applicable benefits. In the event of seller failing to provide appropriate documents for purchasers to avail disclosed concessional duty benefits in India, financial loss, so incurred, will be to the seller's account.

**(N) PACKING AND MARKING :**

The supplier shall arrange for securely protecting and packing the material to avoid loss or damages during transit.

**(O) ARBITRATION :**

All disputes or differences whatsoever which may arise at any time during execution of the Contract shall be mutually settled by BHEL Trichy and Vendor as per provision of the Contract. However, in the event such disputes cannot be settled mutually, such disputes shall be settled as per the Arbitration and reconciliation Act, 1996 of the Govt. of India and its subsequent amendments. In case of disputes with the Central PSUs, the same shall be settled at Tiruchirapalli Jurisdiction as per the Guidelines of the Govt. of India. However, during the period such disputes are settled either by mutual discussions between the parties or by legal means, Vendor shall continue to do the work as per terms & conditions of Contract.

**(P) FRAUD PREVENTION POLICY :**

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 <http://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

**(Q) IN THE EVENT OF FORCE MAJEURE :**

- i) Notwithstanding the provisions contained in other clauses, the supplier shall not be liable for imposition of any such sanction so long the delay and/or failure of the supplier in fulfilling its obligations under the contract is the result of an event of Force Majeure. For purposes of this clause, Force Majeure means an event beyond the control of the supplier and not involving the supplier's fault or negligence and which is not foreseeable and not brought about at the instance of the party claiming to be affected by such event and which has caused the non – performance or delay in performance. Such events may include, but are not restricted to, wars or revolutions, hostility, acts of public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restrictions, strikes excluding by its employees , lockouts excluding by its management, freight embargoes and Acts of GOD.
- ii) If a Force Majeure situation arises, the supplier shall promptly notify the Purchaser/Consignee in writing of such conditions and the cause thereof within twenty one days of occurrence of such event. Unless otherwise directed by the Purchaser/Consignee in writing, the supplier shall continue to perform its obligations under the contract as far as reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.
- iii) If the performance in whole or in part or any obligation under this contract is prevented or delayed by any reason of Force Majeure for a period exceeding sixty days, either party may at its option terminate the contract without any financial repercussion on either side.

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- iv) In case due to a Force Majeure event the Purchaser/Consignee is unable to fulfil its contractual commitment and responsibility, the Purchaser/Consignee will notify the supplier accordingly and subsequent actions taken on similar lines described in above sub-paragraphs

**(R) OTHER TERMS AND CONDITIONS :**

- i) No revision of prices will be entertained at any circumstances after tenders are opened.
- ii) On the due date of tender opening, only the Techno-commercial bids will be opened. Techno-commercial bids will be evaluated by us and clarifications required, if any, will be called from the bidders on technical and commercial points.
- iii) If any difference is found in the terms in the Techno-commercial bid and price bid, the terms mentioned in the Techno-Commercial Bid will be considered.
- iv) BHEL reserves the right to negotiate or refloat the tender opened, if L1 price is not the lowest acceptable price to BHEL due to inter-alia other reasons.
- v) The correspondence between the bidder and BHEL through Email is considered as valid document Legally though not signed. It is treated as valid confirmations made on behalf of the respective company and comes under the legal ambit of the business transaction and hence binding on both the parties.
- vi) If The Due Date Of Tender Opening Happens to be a Holiday, those tenders Will Be Opened On Next Working Day.
- vii) The quality of the supplies should strictly conform to WCPI applicable for the item. The offer should specifically confirm this.
- viii) If any quality problem is pointed out by BHEL w.r.t. supplied material, the same shall be settled and corrected immediately by the supplier. If the material cannot be accepted by BHEL, supplier has to replace the material with no extra cost. Collection of rejected material will be sole responsibility of the supplier.
- ix) BHEL reserves the right to cancel the tender at any stage without giving any reasons.
- x) For any clarifications, you may contact to the following Email IDs :
  - a. mpraja@bhel.in
  - b. shrivastava@bhel.in