

Bharat Heavy Electricals Limited



Digital Transformation Group
BHEL, Bhopal

Comprehensive Maintenance Contract for IT Equipments Installed at BHEL, Bhopal for Two Years

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1. KEY ACTIVITIES AND DATES OF TENDER:

S. No.	Key Activity	Date
1	Issue of Tender	06.07.2020
2	Pre-Bid meeting	13.07.2020
3	Last Date & Time of Bid Submission	20.07.2020 11:00 AM
4	Techno-Commercial Bid opening (PART-I)	20.07.2020 02:00 PM
5	Price Bid opening	will be intimated later.

2. TENDER NOTICE:

Ref. No.: BPL/DTG/RC/CMC/2020/01
Date: 06.07.2020

Subject: Comprehensive Maintenance Contract (CMC) for IT Equipments installed at BHEL, Bhopal for Two Years on service basis.

Quotations are invited for the above work as per scope of work and Terms & Conditions as enclosed. Firm offers should be submitted in **TWO PARTS, PART-I (EMD, Techno-Commercial Bid) & PART-II (PRICE Bid)** as detailed in relevant sections.

General Instructions for the bidders

1. Tender documents will be available at BHEL corporate website www.bhel.com.
2. Two bids of tenders shall be mailed to the TENDER E-MAIL ID – “mmtender.bpl@bhel.in” as two different files mentioning Techno-commercial and Price Bid separately up to 11:00 Hrs. of due date.
3. PART-I of tender (EMD, Techno-Commercial Bid) shall be opened on the due date at 14:00 Hrs.
4. Before preparing the bid, please see the details in various Annexures.
5. BHEL reserves the right to accept or reject any or part of the tender without assigning any reason thereof.

Tender should be addressed to undersigned.

With regards

For & on behalf of **BHEL Bhopal.**

Satish Asnani

Dy. General Manager (DTG),
Computer Building (IFX),
Bharat Heavy Electricals Limited,
Piplani, BHEL, Bhopal, M.P. – 462022
Tel No.: 0755-2502464;
Email: satish.asnani@bhel.in

3. REQUEST FOR PROPOSAL

3.1. GENERAL

Bharat Heavy Electricals Ltd., Bhopal (A Govt. of India Undertaking) invites tenders from bidders who qualify as per criteria below. The tender is invited in **TWO PARTS, PART-I (EMD, Tender Fees, Techno-Commercial) & PART-II (PRICE BID)** for CMC for IT Equipments installed at BHEL, Bhopal for Two Years. The Qualification criteria for the bidders are as follows:

3.2. QUALIFICATION CRITERIA

Bidder should meet the qualification criteria and furnish the details as mentioned below:

S. No.	Qualification Criteria	Documents to be Provided
1	Bidder should have PF no. and ESI No./Medical Policy for executing the contract.	Letter from authority for PF No. and ESI No./Medical Policy to be provided.
2	Experience of having successfully completed similar works during last 7 years ending 30.06.2020 should be the either of the followings:	Three similar completed works costing more than Rs. 42.65 lakhs each or Two similar completed works costing more than Rs. 53.32 lakhs each or One similar completed works costing more than Rs. 85.31 lakhs.
3	Average Annual financial turnover during the last 3 years, ending 31 st March 2019, should be at least Rs. 31.99 lakhs.	Audited balance sheet, P/L accounts for F.Y. 2016-17, 2017-18 & 2018-19 to be enclosed.

The meaning of similar work is 'supply & installation' or maintenance of at least following items (not necessarily of same configuration) among the items mentioned in Annexure-I:

- Item at sl. no. 1 and,
- Any one of the items at sl. nos. 4-11 and,
- Any one of the items at sl. nos. 13-17, 20-22.

Note: The technical offer shall be evaluated only for those bidders who will be complying qualifying criteria.

4. INSTRUCTIONS AND GUIDELINES TO BIDDERS

4.1. INTRODUCTION

M/s Bharat Heavy Electricals Limited (A Govt. of India Undertaking) incorporated under the Companies Act 1956 having registered office at BHEL House, Siri Fort, New Delhi-110049 through its office at New Delhi (hereinafter referred to as "BHEL", which expression shall include its successors and assigns), invites offer for CMC for IT Equipments installed at BHEL, Bhopal for Two Years as per Scope of Work and Terms and Conditions detailed in the tender documents.

4.2. BIDDER TO INFORM HIMSELF FULLY:

- 4.2.1. The Bidder shall closely pursue all the clauses, specifications, requirements etc. indicated in the tender documents, before quoting. Should the Bidder have any doubt about the meaning of any portion of the tender specifications or find discrepancies or omissions in the specifications or if the tender documents are found to be incomplete or require clarifications

on any of the technical aspects, scope of work etc., he shall at once contact the official inviting the tender, for pre-bid discussions/ clarifications, before submission of the tender.

- 4.2.2. Bidders are advised to study all the tender documents carefully. Any submission of tender by the Bidder shall be deemed to have been done after careful study and examination of the tender documents and with the full understanding of the implications thereof. The specifications and terms and conditions shall be deemed to have been accepted unless otherwise specifically commented upon by the Bidder in his offer.

4.3. PROCEDURE FOR SUBMISSION & OPENING OF BIDS

Bids shall be accepted by the official inviting the tenders, **in TWO parts**, as described below, on or before the due date & time indicated in the Tender Notice.

PART-I: EMD, Tender Fee, Techno-Commercial BID & No Deviation Certificate

This part shall consist of the following:

1. Copy of deposit slip of Tender Fee of Rs. 1,000/- (GST extra) and EMD of Rs. 4,26,538/- which can be deposited on line through following link as mentioned below:
<https://bpl.bhel.com/qcins/iccs.htm>

In the absence of submission of same, the offer will be summarily rejected.

2. 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).
 - iii) Banker's cheque/ Pay order/ Demand draft, in favour of BHEL (along with offer).
 - iv) Fixed Deposit Receipt (FDR) 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) In addition to above, The EMD amount in excess of Rs. Two (02) lakh may also be accepted in the form of Bank Guarantee from scheduled bank. The Bank Guarantee in such cases shall be valid for at least six months.
3. All Annexures filled with seal & sign as mentioned as per the checklist of documents without Price Bid.
4. Signed copy of the tender document.
5. Documents against Qualification Criteria of this tender clause.

The bidder should offer only as per Specification. The un-priced copy of the Price bid format shall be the same as the Price bid but without the Prices. BHEL Bhopal reserves the right to accept or reject the technical offer. Price bids of only technically suitable Bidders will be opened.

PART-II: PRICE BID

- **Price Format** containing PRICES only (to be furnished in the enclosed Price Schedule format only).
- Prices shall be quoted in Indian Rupees only.
- Price Bid should not contain any technical details and/or Commercial Terms & Conditions as the same are supposed to be contained in PART-I only so that the same can be evaluated before opening of Price Bid(s).

4.4. SUBJECT AND ATTACHMENT OF EMAIL

Bid will be submitted through two separate mails (one for techno-commercial bid including all relevant documents and annexures and second for Price Bid) should be sent to email ID mmtender.bpl@bhel.in only. The e-mail subject shall be clearly mentioned as “Part 1 Bid for Enquiry No. BPL/DTG/RC/CMC/2020/01 for CMC of IT Equipments for 2 years” for Techno Commercial Bid and “Part 2 Bid for Enquiry No. BPL/DTG/RC/CMC/2020/01 for CMC of IT Equipments for 2 years” for Price Bid.

Mail for Techno Commercial Bid with subject “Part 1 Bid for Enquiry No. BPL/DTG/RC/CMC/2020/01 for CMC of IT Equipments for 2 years” shall have following documents-

- PART-I:**
1. Tender Enquiry No. and Description
 2. Due Date of Part-1 Opening
 3. Tender Fee Deposit Slip
 4. EMD Deposit Slip
 5. Techno-Commercial & Un-Price Bid
 6. No Deviation Certificate

Mail for Price Bid with subject “Part 2 Bid for Enquiry No. BPL/DTG/RC/CMC/2020/1 for CMC of IT Equipments for 2 years” shall have following documents-

- PART II:**
1. Tender Enquiry No. and Description
 2. Due Date of Part-1 Opening
 3. "Price Bid".

4.5. BID SUBMISSION

Bids must be submitted through email on email ID mmtender.bpl@bhel.in and shall be posted with due allowance for any delay. Bids shall be submitted latest by 11:00 Hrs. of the due date. Bids received after the Due Date and Time shall be rejected.

The price bid should not be submitted in Technical Bid e-mail. Mails with wrong subject will be liable to be rejected.

The online Bid shall be sent only to email ID mmtender.bpl@bhel.in only. It should not be sent on other e-mail ids (also shall not be sent on Cc/BCC to any other E- mails). The tender sent on other e-mail ids shall be rejected.

4.6. BID OPENING

- 4.6.1. PART-I (EMD, Tender Fee, Techno-Commercial Bid & No Deviation Certificate) is to be opened on the due date and time as specified in the NIT/RFQ, or extension thereof, in the presence of bidders who may like to attend. Part-II (Price Bid) shall be opened subsequently.
- 4.6.2. Date and time of Price Bid (Part-II) opening shall be intimated to the technically and commercially acceptable bidders only.
- 4.6.3. Not more than two representatives will be permitted to be present for the tender opening.
- 4.6.4. No correspondence shall be entertained from the bidders after the opening of Price bid(s).
- 4.6.5. Standard pre-printed conditions of the bidders attached to the offer will not be accepted and only those mentioned in the body of his offer will be considered.
- 4.6.6. Unsolicited bids shall not be entertained. Unsolicited revised Price Bids also, shall not be entertained at any stage of the tendering process.

- 4.6.7. No Literature, Pamphlets is to be enclosed. All such enclosures shall be considered as unread and also will not be considered as part of the quotation.
- 4.6.8. Bidder not submitting PART-I (EMD, Tender Fee, Techno-Commercial Bid & No Deviation Certificate), their offer's PART II will not be opened (Rejection of Bidder's Offer).

4.7. VALIDITY OF OFFER

Offer shall be valid for four (04) months from the date of part-I opening.

4.8. DEVIATIONS

Bids shall be submitted strictly in accordance with the Technical scope of work and Terms & Conditions of the Tender Enquiry. **"No-Deviation Certificate" has to be submitted along with Part – I.**

4.9. LANGUAGE & CORRECTIONS

- 4.9.1. The bidder shall quote the rates in English language and international numerals only. The metric system of units shall be used, for the purpose of tender.
- 4.9.2. Bidder shall fill the ORIGINAL tender documents issued by BHEL. Each page of the bid shall be signed and stamped using official seal of the company by the bidder.
- 4.9.3. All entries shall be filled in neat and legible handwriting. No over-writings erasures and corrections are permitted and may render such bids liable for rejection.
- 4.9.4. However, if any cancellations, corrections and insertions are in the bid, the bidder shall duly attest the same.
- 4.9.5. 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.

4.10. REJECTION OF BID AND OTHER CONDITIONS

- 4.10.1. Any format not properly filled, partially filled or not filled will make the bid liable for rejection. Bidders are requested to note that all columns, rows and spaces provided to fill up the data must be filled with relevant data without fail. In case, any bidder fails to do so or fills up irrelevant data, BHEL is not bound to seek clarifications on such items and will be free to reject the tender summarily.
- 4.10.2. Bidder may visit the site at BHEL, Bhopal between 9AM to 4PM on working days before bid submission date.
- 4.10.3. Canvassing in any way concerning this tender, wrong declaration, incorrect information, misleading or incorrect certifications, etc. shall be viewed seriously and suitable action will be taken as per company norms.
- 4.10.4. The BHEL reserves to itself, full rights for the following without assigning any reasons, whatsoever:
- i. To reject any or all the bids.
 - ii. To increase or decrease the quantities.

- 4.10.5. The offer is liable to be rejected, if it is found after the Price Bid Opening that the Price Bid submitted by the bidder is different from the un-priced bid.
- 4.10.6. If the bidder deliberately gives wrong information in his bid, BHEL reserves the right to reject such a bid at any stage or to cancel the Order/Contract, if awarded and forfeit the security deposit/ Bank Guarantee.
- 4.10.7. If the Prices/Rates of one or more of the enquired items have not been quoted, the offer is liable to be rejected.
- 4.10.8. Bids lower than the minimum statutory amount, i.e. minimum wages, PF, ESI, etc., as may be declared by HR-CLC, shall be rejected.

4.11. TENDER EVALUATION

Tender will be evaluated on the basis of total price (exclusive of taxes) quoted by bidder as per the price Bid.

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 L-1 status even after soliciting discounts, the L-1 bidder shall be decided by 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.

4.12. PRICE DISCREPANCY

Totals/ Gross Total of Prices should be indicated both in words as well as in figures. Following shall be considered for evaluation and ordering for non-conformities/errors/ discrepancies in price bid:

- a) 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 BHEL 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.
- b) 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.

5. TECHNICAL TERMS AND CONDITIONS

5.1. SCOPE OF WORK

- 1) Onsite Comprehensive Maintenance Contract (CMC) for IT Equipments installed at BHEL Bhopal (details as per Annexure-I & II) for two (02) years.
- 2) Comprehensive maintenance of all the hardware and software for the entire contract period. For all hardware and software like OS, CALs, backup software the vendor must provide onsite support.
- 3) Support to users for installation, reinstallation, trouble shooting and other problems/issues related to commonly used software like OS, email clients (Microsoft Outlook, Thunderbird), MS office, Antivirus, Adobe Acrobat, Add-ons, upgrades etc. should be provided by the resident Engineer(s) during contract period.

- 4) Sharing of Desktop, printers and configuration on network should be provided by the resident Engineer(s) during contract period.
- 5) Dismantling, assembling and data transfer in case of shifting of system from one user to another within premises should be provided by the resident Engineer(s) during contract period.
- 6) Vendor shall ensure the data protection by degaussing the storage devices before taking out of BHEL for repair/replacement. The licence cost of degaussing software will be borne by the vendor and all records of the same are to be maintained and approved by BHEL assigned authority at respective locations.
- 7) In case any item is found defective during the contract, vendor has to repair/replace it with same OEM and same or higher configuration device for desired functioning of the system. Any Equipment replaced/provided to BHEL during this contract shall be retained by BHEL at the end of contract and will be property of BHEL.
- 8) Back to back support is required from OEM for following items:

Sl. No.	Item Code	Item Description	Qty	Serial Nos.
1	UP11H	2x60 KVA Online UPS	1	UL-C15-731A UL-C15-731B
2	ST01H	SAN Storage High End	1	SX50602786
3	ST03H	NAS Storage High End	1	SGH511YMAD
4	SR01H	Server 2-Way	6	SGH510YAFP SGH510YAFS SGH510YAFK SGH510YAFX SGH510YAFV SGH510YAH0
5	SR02H	Blade Server	9	SGH510YAD9 SGH510YACF SGH510YAD1 SGH510YAD5 SGH510YAD7 SGH510YADL SGH510YADF SGH510YADJ SGH510YACN
6	SR03C	Blade Server Chassis	1	SGH511YL83 SGH511YL84
7	TL01H	Tape Library	1	MXA502Z0HK
8	MS09L	KVM Switch	1	KVM SWITCH: HKJ5350009 17" LED KVM Console: QLB4900041
9	MS06H (A1)	Tape Library (With Fibre Ports)	1	Add on for Tape Library TL01H, Please refer Technical Specification for detailed specification.

- 9) If any activity or component is required for the completeness or successful functioning of any item, the same shall be part of the scope of work.
- 10) Technical Specification is listed under Annexure-VIII.

5.2. DOWNTIME CALCULATION

Vendor shall be responsible for running the Equipment at the uptime of 98% per month.

Sl. No	Item Code	Support Level required
1	Server, SAN, NAS, UPS , Network Equipment	24 x 7
2.	All Other items	8 x 6

The deduction for downtime shall be as follows:

Downtime	Deduction factor
0 to 2%	Zero
2 to 5%	1.00
>5 to 10%	1.25
Above 10%	1.50

Working calculation for deduction:

Let downtime in a month = A hours

Downtime percentage

Server, SAN, NAS, UPS, Network Equipment = $A \times 100 / (24 \times 30) = B$

PC's & Peripherals = $A \times 100 / (8 \times 30) = B$

Deduction factor according to the table = D

Monthly equipment Maintenance charges = Quarterly Maintenance Charges/3 = M Rupees

Amount of deduction = $M \times B \times D / 100$ Rupees

If the uptime for equipment/system falls below 95% continuously for 3 months, the system/equipment shall have to be replaced by the Vendor within 30 days without any extra charge. If the faulty equipment is not replaced, then no quarterly payments will be made for the entire range of equipment's at the respective unit/region.

5.3. MAINTENANCE

Maintenance service shall cover services, repairs and replacements necessary to keep the equipment in good working order on reasonable use of the equipment during the contract period. Preventive maintenance, wherever required, should be carried out to keep the equipment in good working condition. Maintenance shall include, but not limited to, all plastic and/or rubber parts, adapters and printer heads. However it will not include inkjet cartridges, toner cartridges and ribbons. Maintenance will include replacement of faulty batteries of UPS.

The consumable parts toner, cartridge, ribbon only are excluded from the CMC and all other parts within the scope of this contract which are required for proper functioning of the equipment are included in CMC. For eg. Power cords, connecting cables, RAM, Hard disk, Motherboard, CPU, Scanner-Bulb, Fuser, Tray etc. and peripherals like mouse, keyboard UPS/laptop batteries, plastic/rubber parts etc. all are covered in the scope of CMC. CMC includes 2 year license for Items at sl. no. 15, 21, 26 & 27 of Annexure-I. CMC shall not include damages due to rodents and natural disaster or theft.

5.4. MANPOWER REQUIREMENT

- a) The successful bidder shall post minimum five (05) Resident Engineers (REs) at BHEL Bhopal for the whole contract period during office hours of BHEL, Bhopal from 8:00 AM to 5:00 PM. Out of five REs, atleast one person should be of Project Manager level having qualification of B.E./B.Tech or Equivalent and Project experience of Hardware Maintenance of atleast 100 PCs in a single project for two years.
- b) The resident engineers (other than Project Manager) should have the following minimum qualification and experience:

3 years diploma (or higher degree) in electronics / computers/ hardware.

OR

Graduate having at least 2 years' experience in maintenance of PCs, Printers, Servers etc.

- c) Before posting engineers to BHEL Bhopal, the vendor shall submit the CV of engineers to BHEL for vetting and acceptance. BHEL may interview the candidate for acceptance/rejection before they are actually posted.
- d) All the maintenance persons shall work according to BHEL working rules and regulations and they shall be available to work on holidays & extended hours if required by BHEL. In general, REs have to work in normal working hours of BHEL Bhopal i.e. from 08:00 AM to 05:00 PM. If any RE is absent, vendor has to depute another RE of equivalent or higher qualification.
- e) In case the RE resigns, the same has to be intimated to BHEL Bhopal and alternative resource has to be deployed prior to the relieving of the RE.
- f) Responsibility of safety and security of the REs and deputed/visiting persons (including unskilled workers) within BHEL premises shall lie with the vendor. Any damage made by these persons within BHEL Premises shall be restored by vendor. Vendor is required to ensure the use of proper Safety Equipments/methods by their REs/Employees/visiting persons while working in BHEL Premises. Vendor has to provide Uniform, Helmet, Safety Shoes, Gloves & any other safety equipments (if required) to the resident persons posted at BHEL/Visiting experts.

6. COMMERCIAL TERMS AND CONDITIONS

6.1. GENERAL

The words incorporating singular shall include plural and vice-versa, in the words importing masculine gender shall include feminine and vice-versa and the words importing persons shall include bodies; corporate, limited liability companies, partnership and other legal entities.

6.2. EXPECTATIONS FROM BIDDER

Bidder is required to give a total solution & services as per scope of Work of tender. The full working of all IT Equipment and Services is the responsibility of the Bidder.

6.3. WORK SCHEDULE

CMC Contract shall start within two weeks from the date of acceptance of work order. The duration of the contract will be Two years from the CMC start date.

BHEL may foreclose this contract at its own discretion without assigning any reason for the same with advance notice period of minimum one (01) month. However, minimum period of CMC Contract shall be for one year from CMC Start date.

6.4. RATES

Rates are to be quoted as per Price Bid Format. Rates shall remain FIRM without any variation throughout the contract period. PVC/ORC is not applicable. Details of prevailing rates of taxes should be indicated separately. Bidders, in their own interest, are requested to check up and indicate the applicable taxes (name & percentage). Taxes not mentioned by the bidder in their bid will not be entertained at later date. However, during the execution of the contract any increase or decrease in the above taxes/imposition of new taxes will be entertained against documentary proof.

6.5. PAYMENT TERMS

The payment will be made on quarterly basis after completion of each quarter and submission of invoice(s) in triplicate (clearly indicating taxes applicable on verified invoices) along with all statutory documents like PF, ESI & salary details of Resident engineers after deduction of downtime (if any). Payment will be released within 60 days (45 days for MSME Vendor) of submission of verified invoices. MSME Bidder has to submit the MSME Certificate along with Techno-commercial Bid.

GST shall be extra as applicable. Any loss of tax credit or additional liability on BHEL due to the reason attributable to the vendor shall be recovered from them along with interest.

6.6. BANK CHARGES

Unless otherwise specified, the Bank charges, if any, shall be to the account of vendor.

6.7. SECURITY DEPOSIT

Security Deposit shall be collected from the successful Tenderer. 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 may be accepted in the following forms:

- (i) Electronic fund transfer in favour of BHEL and can be deposited on line through following link as mentioned below :
<https://bpl.bhel.com/qcins/iccs.htm>
- (ii) Bank Guarantee from Scheduled Banks/ Public Financial Institutions as defined in the Companies Act. The Bank Guarantee format should have the approval of BHEL
- (iii) 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)
- (iv) 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)

Collection of Security:

- a) At least 50% of the required Security Deposit, including the EMD, shall be deposited before start of the work. Balance of the Security Deposit can be collected 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.
- b) 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.
- c) 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, with the approval of the authority competent to award the work.

Note: 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.

6.8. PENALTY

- a) **For delay in start of Work:** If the Contract work has not been started within specified time period, penalty shall be levied at 0.5% per week, subject to maximum of 5% of the total work order value. In case the penalty amount to be deducted is more than the first quarter charges, the same will be adjusted from the consecutive quarters.
- b) **For delay in any work related to Scope of tender:** will be as per Downtime clause of this tender.
- c) **Penalty for absence of Resident Engineer:** In case of absence of RE (without substitute), Rs. 500/- shall be deducted per day per RE from the Bills.

GST on penalty shall be charged extra.

6.9. STATUTORY COMPLIANCE

- a) Vendors to comply with all statutory provisions as may be applicable during the execution of contract. Any additional financial liability to BHEL on account of non-compliance by vendors shall be borne by them and shall be adjusted / recovered from the vendors. BHEL reserves the right to review the existing offers / contracts for any revision in terms, which may arise due to change in any statutory provisions to ensure that the benefit accrues to BHEL.
- b) Vendor has to ensure payment of statutory minimum wages as prescribed by BHEL/Central/State Government (whichever is higher). All persons under this contract shall be considered as skilled persons for calculation of minimum wages. As per BHEL Bhopal Contract Labor Cell Data, Minimum wages for skilled persons under scheduled employments of minimum wages Act, 1948 is Rs. 474.94 w.e.f. 01.04.2020.
- c) Any change in minimum wages during contract period as declared by CLC or in statutory components shall be borne by contractor. The contractor shall ensure payment of statutory prescribed wages as recommended by BHEL/Central/State Government (whichever is higher) time to time.
- d) The bidder has to abide by the rules & regulations of the Contract Labour Cell of BHEL Bhopal. The bidder has to submit the PF/ESI documents before posting the REs at BHEL Bhopal.
- e) Payment of bonus under the Payment of Bonus Act and Payment of gratuity under the payment of Gratuity Act will be the sole responsibility of the contractor.
- f) Bidder is to comply with all Industrial/Labor/Govt. laws including amendments from time to time.
- g) In addition to above, statutory compliances to be ensured by Contractor & Instruction to Contractors are detailed as per Annexure-VII.

6.10. INDEMNITY

Bidder shall fully indemnify and keep indemnified the BHEL against all claims;

- a) Which may be made in respect of the use of Item(s)/services supplied/rendered by the Bidder, for infringement of any rights protected by patent, registration of designs or trademarks and legality of the Software.
- b) For injury or damage caused by his negligence or the negligence of his employees or arising

from any defect in the goods supplied or any work carried out by him.

- c) For injury to his employees or employees of his agent(s), whilst on BHEL's premises.
- d) Any other claims of whatsoever nature arising during the course and out of the execution of this Order/Contract.

All such claims in this regard will be settled as per Indian Laws. In the event of any such claims being made against the BHEL, will inform the Bidder who shall at his own risk and cost either settle any such dispute or conduct any litigation that may arise there from.

6.11. COMPENSATION

BHEL shall recover the amount of compensation paid to victim(s) by BHEL towards loss of life/permanent disability due to an accident which is attributable to the negligence of contractor, agency or firm or any of its employees as detailed below.

- a. Victim: Any person who suffers permanent disablement or dies in an accident as defined below:
- b. Accident: Any death or permanent disability resulting solely and directly from any unintended and unforeseen injurious occurrences caused during the manufacturing/Operation and works incidental thereto at BHEL Factories/ Offices and precincts thereof, Project execution, erection & commissioning, services, repairs and maintenance, troubleshooting, serving overhaul, renovation and retrofitting, trial operation, performance guarantee testing undertaken by the company or during any works/during working at BHEL Units/ offices/ townships and premises/ Project Sites.
- c. Compensation in respect of each of the victims:
 - i) In the event of death or permanent disability resulting from Loss of both Limbs: Rs. 10,00,000/- (Rs. Ten Lakh).
 - ii) In the event of other permanent disability: Rs. 7,00,000/- (Rs. Seven Lakh).
- d. Permanent disablement: A disablement that is classified as a permanent total disablement under the provision to section 2(I) of the Employee's Compensation Act, 1923.

6.12. CONFIDENTIALITY

Bidder shall, at all times, undertake to maintain complete confidentiality of all data, information, software, drawings & documents, etc. belonging to the BHEL and also of the Systems, procedures, reports, input documents, manuals, results and any other company documents discussed and/or finalized during the course of execution of the order/contract.

6.13. FORCE MAJEURE

Bidder shall not be responsible for delay in delivery resulting from acts/events beyond his control provided notice of the happening of any such act/event is given by the Bidder to the BHEL within 15 days from the date of its occurrence. Such acts/events shall include but not be limited to acts of God, war, floods, earthquakes, strikes, lockouts, epidemics, riots, fire or Governmental regulations superimposed after the date of order/contract.

6.14. RISK PURCHASE

Purchaser shall reserve the right to terminate the order/ contract and purchase from elsewhere at the risk and cost of the Vendor, either the whole or part of the Systems/ goods, which the Vendor has failed to deliver within the stipulated delivery period or if the same were not available, the best and the nearest available substitute(s) thereof. The Vendor would be liable to

compensate the Purchaser for any loss, which the Purchaser may sustain by reason of such purchase. This clause will be operated only after completion of delivery period including extended period with penalty.

6.15. SUB-CONTRACTING

Order/contract or any part thereof shall not be sub-contracted, assigned or otherwise transferred without prior written consent of BHEL.

6.16. TERMINATION OF THE CONTRACT & ITS CONSEQUENCES

- a) BHEL may foreclose this contract at its own discretion without assigning any reason for the same with advance notice period of minimum one (01) month. However, minimum period of CMC Contract shall be for one year from CMC Start date.
- b) BHEL reserves the right to terminate the order/contract, either wholly or in part, upon situations arising due to non-compliance of stipulations of the Order/contract by the Bidder, or non-performance of the equipment/system continuously at the risk and cost of the Bidder. However, Bidder shall continue the performance of the order/contract under all circumstances, to the extent not cancelled.
- c) Bidder shall continue the performance of the order/contract under all circumstances, to the extent not cancelled.
- d) BHEL reserves the rights to cancel the contract in case the services are not found to be satisfactory.
- e) Consequences: As soon as the contract is cancelled / terminated by BHEL, no payment will be payable to the Bidder.

6.17. 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 BHEL, subject to written appeal by the Bidder to BHEL, whose decision shall be final to the parties hereto.
- b) Any disputes or differences shall be to the extent possible settled amicably between the parties hereto, failing which the disputed issues shall be settled through arbitration.
- c) However, the Bidder shall continue to perform the Order/Contract, pending settlement of dispute(s).

6.18. CONCILIATION

The Parties agree that 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 or the Memorandum of Understanding (delete whichever is inapplicable), 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 to be appointed by competent authority of BHEL from the BHEL Panel of Conciliators.

Note:

- 1) No serving or a retired employee of BHEL/Administrative Ministry of BHEL shall be included in the BHEL Panel of Conciliators.
- 2) 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.

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 Annexure VIII.

6.19. ARBITRATION

In all cases of disputes emanating from and in references to this agreement the matter shall be referred to the arbitration of the sole arbitration of the Executive Director/ GM of BHEL, Bhopal or any other person (including an employee of BHEL, even though he had to deal with the matter relating to this agreement in any manner) nominated by the said Executive Director /GM to act as sole arbitrator. The arbitration shall be under 'THE ARBITRATION AND CONCILIATION ACT OF 1996' and the rules there under. The arbitrator may from time to times with the consent of the parties enlarge the time for making and publishing the award.

6.20. ACCEPTANCE OF ORDER

After finalization of the tender, BHEL will award the Work Order to the successful bidder and the bidder has to acknowledge it within one week of date of issue otherwise it will be deemed as acknowledged & accepted.

6.21. PROVISION OF CONTRACT EXTENSION

BHEL reserves the right to extend the contract after expiry of initial period. The extension will be decided on mutually agreed terms and conditions and will be valid only after written communication to this effect.

During the contract period, if expansion of the network is required then Bidder shall carryout the work as per rates given in the Work Order on pro-rata basis.

6.22. AMENDMENT OF TENDER DOCUMENT:

BHEL may at its sole discretion amend the Bidding Documents at any time prior to the deadline for submission of bids. However in case of such amendment, the bid submission date may be extended at the discretion of BHEL.

Amendments made prior to submission of bid will be provided in the form of Addenda /Corrigendum to the Bidding Documents and will be posted on the BHEL website (<http://www.bhel.com>) in Tender Notification section under the **original tender enquiry number**.

7. ISMS COMPLIANCE:

- 1) The successful bidder shall comply with the Information Security Management System of BHEL and work within the framework of ISMS as applicable in BHEL from time-to time.
- 2) All the material / information sent to the successful bidder shall be treated as confidential and should not be disclosed in any matter to any unauthorized person under any circumstances. The successful bidder has to furnish a Non- Disclosure Agreement (NDA) as per Annexure-VI in line with the Owner's Information Security Management System (ISMS).

8. CONTRACT AGREEMENT:

Based on this tender terms and conditions, BHEL will consider signing of contract Agreement with bidder after placement of Work Order. Thereafter, BHEL shall issue the draft contract agreement within one week of acceptance of work order.

9. CHECKLIST OF DOCUMENT:

S No	Annexure to be attached	Format attached as Annexure	Attached (Yes / No)
1	Price Bid Format	Annexure-I	Yes / NO
2	GST Clause	Annexure-II	Yes / NO
3	No Deviation Certificate	Annexure-III	Yes / NO
4	Details of Project(s) Executed	Annexure-IV	Yes / NO
5	EMD deposited details	Annexure-V	Yes / NO
6	Non- Disclosure Agreement (NDA)	Annexure-VI	Yes / NO
7	Instructions to Contractors	Annexure-VII	Yes / NO
8	Annexure to Conciliation clause	Annexure-VIII	Yes / NO
9	Declaration by Vendor	Annexure-IX	Yes / NO
10	Technical Specification	Annexure-X	Yes / NO

(TO BE ATTACHED WITH TECHNO-COMMERCIAL BID DULY FILLED BY THE BIDDER)

ANNEXURE –I

Price Format for CMC of IT Equipments										
<i>All prices are in INR.</i>										
Sl. No.	Item Code	Item Name	Qty.	Charges Per Qtr.		Charges for Two Years				
				CMC Charges Per Qtr. for Unit Qty. (Excl. GST)	CMC Charges Per Qtr. for Total Qty. (Excl. GST)	CMC Charges for Unit Qty for Two years (Excl. GST)	CMC Charges for two years for Total Qty. (Excl. GST)	GST @ (in %)	GST value for total Qty.	CMC Charges for Two years for Total Qty. (Incl. GST)
			A	B	C=A*B	D=B*8	E=D*A	F	G=E*F%	H= E+G
1	PC01L	PC - General	1,400							
2	TS01	Touch screen Monitor in lieu of Normal Monitor PC01L	100							
3	LD01	LED Projectors	2							
4	LJ02L	Laserjet Printer - A4 Mono General	80							
5	LJ03H	Laserjet Printer - A4 Mono High End	20							
6	LJ04L	Laserjet Printer - A3 Mono Low End	20							
7	LJ05L	Laserjet Printer - A4 Color Low End	20							
8	LJ07L	Laserjet Printer - A3 Color	1							
9	PL02L	Plotter - MFS	2							
10	SC03L	Scanner - A3 Color	25							
11	SC04H	Scanner - A4 Color High End	100							
12	UP01L	Small UPS	1,400							
13	UP11H	2x60 KVA Online UPS	1							

14	ST01H	SAN Storage High End	1							
15	ST03H	NAS Storage High End (including software assurance of Windows Storage Server for 2 years)	1							
16	SR01H	Server 2-Way	6							
17	SR02H	Blade Server	9							
18	RS01L	42U Server Rack	2							
19	MS02L	42U Network Rack	2							
20	SR03C	Blade Server Chassis	1							
21	TL01H	Tape Library (Including existing license of backup software HP Data Protector)	1							
22	MS09L	KVM Switch	1							
23	PD01	IP Based Power Distribution Panel for Racks	4							
24	BR01	Barcode Reader	10							
25	MS06H (A1)	Tape Library (With Fibre Ports)	1							

26	SW02H	Red Hat Enterprise Linux Server v5 or latest with 2 years subscription and support (for updates & upgrades, telephonic / web support) from the Principal OEM (with media)	3							
27	SW03H	Microsoft Windows Server Standard Edition Lic/SA or Equivalent Product (Latest Version) with 2 years subscription and support (with media)	12							
28	PC01L (A1)	PC - General (Higher RAM)	300							
		Total								
Total Value Including GST (in words):										

ANNEXURE-II

GST CLAUSE

1. Wherever bidders are required to supply services at project site Party has to submit GST registration no. of the State in which project site is located along with copy of registration certificate at the time of submission of Bid. In case the same is not available at the time of submission of bid, the contractor has to give an undertaking that the same will be arranged before award of work order.
2. HSN Code/SAC, rate of tax under GST and applicable GST (IGST, CGST/SGST/UTGST) and GSTIN shall be clearly mentioned by the Bidder.
3. GST portion of the invoice shall be released only upon:-
 - a) All invoices raised by contractors/vendors must be GST compliant Tax invoices as per GST invoice rules.
 - b) Contractor declaring such invoice in his GSTR-1 or any modified return as notified by government
 - c) Receipt of goods/services and Tax Invoice by BHEL and
 - d) Confirmation of payment of GST thereon by contractor on GSTN portal
 - e) Alternatively, Contractor has to submit BG of appropriate value which shall be valid at least one month after the confirmation of date of payment of GST by contractor on GSTN portal and receipt of Tax invoice and receipt of services, whichever is later. Contractor has to give an undertaking in this regard.
 - f) Contractor has to give an undertaking to BHEL that they have declared invoice in his return and paying GST within timeline prescribed for availing ITC by BHEL. Payment to Contractor for GST portion will be released only after completion of above activity and on availment of ITC by BHEL.
4. In case GST credit is delayed/denied to BHEL due to non/delayed receipt of services/goods and /or tax invoice or expiry of the timeline prescribed in GST Law for availing such ITC, or any other reasons not attributable to BHEL, GST amount shall be recoverable from the contractor along with interest levied/ leviable on BHEL.
- 5. Reverse Charge under GST**
 - a) In respect of services, reverse charge liability shall arise at the earliest of date of payment to service provider or 60 days from the date of issue of invoice by service provider. Contractor has to submit bill for payment within 30days from the date of invoice. Any interest or penalty implications attributable to the contractor shall be recovered from them.
 - b) Any GST liability arising on BHEL under reverse charge before actual receipt of goods and/or invoice thereof would be subject to recovery of interest leviable for the period between the date of such liability and actual date of eligibility of ITC based on receipt of goods, receipt of invoices and other condition specified in GST Law.
- 6. Liquidated Damage/Penalty**

Liquidated damage (LD) or Penalty if chargeable from suppliers/contractors as per NIT, applicable GST will be charged in addition to the same.
- 7. Tax Deduction at source**

TDS as per extent provisions of the GST Law and Income Tax Act shall be deducted from supplier/contractor bill.

ANNEXURE-III

**FORMAT FOR
“NO DEVIATION CERTIFICATE”**

Ref. Tender Enquiry No: BPL/DTG/RC/CMC/2020/01 Dtd: 06.07.2020

This is to certify that our offer is exactly in line with above referred tender enquiry. This is to certify that our offer contains **no deviation** either Technical or Commercial in either direct or indirect form.

Signed By:

Name: _____

Designation: _____

Organization: _____

Date & Place: _____

Phone/Fax/Mobile/Email: _____

Stamp & Seal: _____

Place:

Date:

Signature with seal

ANNEXURE-IV

DETAILS OF MAJOR PROJECTS EXECUTED
(As per Qualification Criteria)

Tender Enquiry No: BPL/DTG/RC/CMC/2020/01 Dtd: 06.07.2020

Sl. No.	Project Title & Place	Value of Project	Project Date
1			
2			
3			

- Order copies of the above mentioned project are to be provided.

Place:
Date:

Signature with seal

ANNEXURE-V

EMD DEPOSIT DETAILS


Tender Enquiry No: BPL/DTG/RC/CMC/2020/01 Dtd: 06.07.2020

Sl. No.	EMD amount	EMD Details (Cheque no)
1		

Place:
Date:

Signature with seal

ANNEXURE-VI

 BHEL - BHOPAL	THIRD PARTY NON-DISCLOSURE AGREEMENT	Doc. No. : BPL-ISMS-04-NDA
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THIRD PARTY NON-DISCLOSURE AGREEMENT

I, _____, on behalf of the _____ (Name of Company)

acknowledge that the information received or generated, directly or indirectly, while working with BHEL, Bhopal on contract is confidential and that the nature of the business of the BHEL, Bhopal is such that the following conditions are reasonable, and therefore:

I warrant and agree as follows:

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

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

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

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

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

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

Dated at _____ this _____ day of _____, 20__.

Name

Company

Signature

ANNEXURE-VII

INSTRUCTIONS TO CONTRACTORS

STATUTORY COMPLIANCES TO BE ENSURED BY VENDORS UNDER WORKS CONTRACT

- BHEL shall have the privity of the contract with the contractor only and will give instructions to the contractor or his authorized representative. BHEL will have nothing to do or be concerned with the employment of employees working for the contractor. The relationship between BHEL and the Contractor will be that of independent entities and nothing herein contained will amount to joint venture, partnership or an employer-employee relationship.
- The contractor shall maintain regular contact with the designated employee(s) of BHEL and will interact on matters relating to the work awarded under this contract.
- Contractor will ensure that the job is executed through his employees on his rolls and under no circumstances, the contractor will deploy any casual employee to carry out the job nor shall sub-contract the job without prior written permission.
- Contractor shall observe Provisions of the Factories Act in respect of working hours, holidays, rest intervals, leave and overtime to his employee. No work shall be done on second/third shift, overtime, Sundays or on other declared holidays without written permission.
- Contractor shall obtain Police Verification of all his workers.
- Contractor shall submit following Certificate for each contract separately.

“It is certified that PF/ESI challans of the amount ----- (in words -----
-----) pertains to my workers, whose names are appearing in the wage sheet
of the month _____20____ and these workers are engaged in

_____ (type of work) against work order no. _____
in _____ (name of department).

Signature of Contractor

PAYMENT OF WAGES

- Contractor shall be responsible for making payment of wages through Bank/Cheque before expiry of 7 days from the last day of wage period. No other mode of payment shall be acceptable.
- In case contractor fails to make payment of wages to his employees or remittance of contribution to the concerned authorities, the security deposit /other dues under the contract can be utilized by BHEL to discharge the liability of the contractor.

SAFETY AND DISCIPLINARY ACTION

- Contractor shall ensure that his employee do not indulge in any unsafe or hazardous practices. They use safety equipment such as safety belts, safety shoes, goggles, helmet and masks where use of such equipment is required in day-to-day operations. All such safety gadgets will be provided by the contractor failing which the contract operating division will provide safety equipment to such employee of the contractor at the cost of the contractor to be

recovered from his bills. Contractor shall fully indemnify BHEL against any claim for damages for injury to person or property resulting from such accidents.

- Contractor to ensure that employee deployed in the premises is physically and mentally fit and do not have any criminal record.
- Contractor will be responsible for good conduct of his employees. In case of misconduct, contractor shall take prompt disciplinary action as per "Model Standing Orders" on the advise of Contracting officer.
- The contractor has to provide a distinct uniform different from BHEL employees. The Uniform should have logo of the Contractors firm / company. The uniform shall be kept in neat, tidy and wearable condition. Wherever necessary, the Cap shall be integral part of the uniform
- Contract awarded is liable for termination for any contravention of statutory provisions or any other reasons without assigning any explanation or notice to the contractor.
- Contractor shall fully comply provisions of various applicable labour laws

RECORDS & INFORMATION TO BE FURNISHED BY CONTRACTOR

- Contractor shall maintain neatly, completely and legibly registers, records, reports and returns for inspection by various authorities.
- Contractor shall provide information as required in respect of all his employees employed by him to enable the contract operating division to monitor compliance of PF/ESI and also to enable him to furnish information to Ministry and Labour deptt. as may be required.
- Contractor shall provide full particulars of each employee employed by him before start of the work and from time to time. He will also endorse a copy of returns furnished by him to the Labour Department under the Contract Labour (Regulation and Abolition) Act 1970.

COMPLIANCE OF STATUTORY PROVISIONS

- Contractor shall fully comply provisions of various applicable labour laws provisions of the following enactments and other enactments as applicable for such contracts.
 - .. Contract Labour (R&A) Act 1970 and rules 1971.
 - .. Payment of Wages Act.
 - .. Minimum Wages act 1948, M.P. Rules 1958
 - .. Employees State Insurance Act 1948, Rules and regulations 1950
 - .. Employees Provident Fund Act 1952 and Pension Scheme 1995
 - .. Workmen's Compensation Act 1923
 - .. Factory Act 1948
 - .. Maternity Benefit Act 1961
 - .. Equal Emolument Act 1976
 - .. M.P. Shram Kalyan Nidhi Adhiniyam 1982
 - .. Payment of Bonus Act 1963
 - Shop & establishment Act 1958
 - .. Inter State Migrant Act

STATUTORY INSTRUCTIONS TO CONTRACTOR

(To be ensured by contracting deptt.)

1.0 STATUTORY REGISTRATIONS AND CLEARANCES

Contractor shall commence the work only after obtaining:

- i) Labour Licence

- ii) Provident fund code no.
- iii) ESI code no
- iv) Registration no.
- v) Notice of commencement in Form 6-A & Maintain Register of workers in form 13

2.0 CONTRACTOR SHALL ENSURE FOLLOWING WHILE EXECUTING CONTRACT

- i) Employment card as per rule no 76 of Contract Labour (Regulation & Abolition) MP rules,1973
- ii) Appointment letter to his employees.
- iii) Annual leave with wages including EL, CL, National Holiday & Festival holiday.
- iv) Leave record register.
- v) Shall engage only adult workers who have attained the age of 18.
- vi) Work to be done on second/third shift, overtime, Sundays or on other declared holidays with written permission.
- vii) Obtain insurance cover for his employees/equipments, tools etc & third party insurance coverage at his own cost.
- viii) Remit Provident fund contributions in prescribed 3A & 6A forms
- ix) ESI contributions in Form 6
- x) Submit challans of PF & ESI contributions every month.
- xi) Provide Personal protective equipments for his employees
- xii) Distribute wage slip each month to his employees
- xiii) Ensure payment of Statutory Minimum Wages as well as additional wages recommended by BHEL through bank account only.
- xiv) Submit employee and employer contribution as per Shram Kalyan Nidhi Adhiniyam 1982.

3.0 PAYMENT OF WAGES ACT

- i) Those engaging 100 or more workman, should submit or copy of standing orders.
- ii) Shall comply with the provisions of Factories Act.

4.0 ON COMPLETION OF WORK

Submit PF & inspection report

ANNEXURE-VIII

ANNEXURE TO CONCILIATION CLAUSE FOR CONDUCT OF CONCILIATION UNDER THE BHEL CONCILIATION SCHEME, 2018

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.
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.
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 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.

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.
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.
 - 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:

Sl. 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.

Sl. No.	Particulars	Amount
2	Towards drafting of settlement agreement	<p>In cases involving claim and/or counter-claim of up to Rs 5crores. Rs 50,000/- (Sole Conciliator)</p> <p>In cases involving claim and/or counter-claim of exceeding Rs 5 crores but less than Rs 10 crores. Rs 75,000 (per Conciliator)</p> <p>In cases involving claim and/or counter-claim of more than Rs 10 crores. Rs 1,00,000/- (per Conciliator)</p> <p>Note: The aforesaid fees for the drafting of the Settlement Agreement shall be paid on Signing of the Settlement Agreement after approval of the Competent Authority or Rejection of the proposed Settlement Agreement by the Competent Authority of BHEL.</p>
3	Secretarial expenses	<p>Rs 10,000/- (one time) for the whole case for Conciliation by a Sole Member IEC.</p> <p>Where Conciliation is by multi member Conciliators –Rs 30,000/- (one time)- to be paid to the IEC</p>
4	Travel and transportation and stay at outstation i) 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.
	Others	<p>As per the extant entitlement of whole time Functional Directors in BHEL.</p> <p>Ordinarily, the IEC Member(s) would be entitled to travel by air Economy Class.</p>
5	Venue for meeting	<p>Unless otherwise agreed in the agreement, contract or the Memorandum of Understanding, as the case may be, the venue/seat of proceedings shall be the location of the 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>

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.
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.
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.
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. 3 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:
 - a. Views expressed or suggestions made by the other party in respect of a possible settlement of the Disputes;
 - b. admissions made by the other party in the course of the Conciliator proceedings;
 - c. proposals made by the Conciliator;
 - d. 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 FOR SEEKING CONSENT FOR REFERRING THE DISPUTES TO
CONCILIATION THROUGH IEC**

To,

M/s. (Stakeholder's name)

Sub: Resolution of the Disputes through conciliation by Independent Expert Committee (IEC).

Ref: Contract No/MoU/Agreement/LOI/LOA& date _____.

Sir,

With reference to above referred Contract/MoU/Agreement/LOI/LOA, you have raised certain Disputes/claims. Vide your letter dated _____ you have requested BHEL to refer the Disputes/claims to IEC for Conciliation.

We are enclosing herewith Format (3) for giving consent and the terms and conditions of BHEL Conciliation Scheme, 2018 governing conciliation through IEC. You are requested to give your unconditional consent to the said terms and conditions of the Scheme by returning the same duly sealed and signed on each page. On receipt of your consent, matter will be put to the Competent Authority for consideration and decision.

Please note that BHEL has also certain claims against you (if applicable). BHEL reserves its right to agree or not to agree conciliation of the said disputes through BHEL and this letter is being issued without prejudice to BHEL's rights and contentions available under the contract and law.

Yours faithfully,

Representative of BHEL

Format 3 to BHEL Conciliation Scheme, 2018

**FORMAT FOR GIVING CONSENT BY
CONTRACTOR/VENDOR/CUSTOMER/COLLABORATOR/CONSORTIUM PARTNERS
FOR REFERRING THE DISPUTES TO CONCILIATION THROUGH IEC**

To,

BHEL

.....

Sub: Resolution of Disputes through Conciliation by Independent Expert Committee (IEC).

Ref: Contract/MoU/Agreement/LOI/LOA No _____ & date _____

With reference to above referred contract, our following bills/invoices/claims submitted to BHEL are still unpaid giving rise to Disputes:

Sl. No.	Claim Description	Bill submitted to BHEL (no. and date)	Amount of the bill/claim	Amount received from BHEL	Outstanding Amount

Accordingly, we request you to kindly refer the Disputes in respect of above claims to IEC for Conciliation.

We hereby agree and give our unconditional consent to the terms and conditions of BHEL Conciliation Scheme, 2018 governing conciliation through IEC. We have signed the same on each page and enclosed it for your consideration.

Yours faithfully,

(Signature with stamp)

**Authorized Representative of Contractor Name, with
designation Date**

**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):

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.*

ANNEXURE-IX

DECLARATION BY VENDOR

We declare that following Family Firms or sister concern affiliates / Subsidiary firms are participating in the Tender No.:

1.0

2.0

3.0

.....

I, hereby declare on behalf of M/s
and the family firms or sister concern affiliates / subsidiary firms listed above that we are not indulging in cartel formation for Enquiry No.

(.....)

For M/s

(Seal & Sign)