



# भारत हेवी इलेक्ट्रिकल्स लिमिटेड

( भारत सरकार का उपक्रम )

## BHARAT HEAVY ELECTRICALS LIMITED

(A Govt. of India Undertaking)

TCN – 05

Ref: PSER:SCT: MUZ-M1709:TCN-05

Date: 06-01-2016

Sub	Tender change notice (TCN) 05	
Job	Design, engineering, manufacturing, supply, erection, commissioning etc of Hydrogen Generation Plant Package for 2x195 MW KBUNL Muzaffarpur TPS, Bihar.	
Ref	1.0	Tender No PSER:SCT:MUZ-M1709:15.
	2.0	BHEL's NIT, vide reference no PSER:SCT: MUZ-M1709:15:4771, dated 03-12-15
	3.0	BHEL's TCN-01 ref : PSER:SCT: MUZ-M1709:TCN-01 dated 17-12-2015
	4.0	BHEL's TCN-02 ref : PSER:SCT: MUZ-M1709:TCN-02 dated 19-12-2015
	5.0	BHEL's TCN-03, ref : PSER:SCT:MUZ-M1709:TCN-03, dated 21-12-2015
	6.0	BHEL's TCN-04, ref : PSER:SCT:MUZ-M1709:TCN-04, dated 31-12-2015
	7.0	All other pertinent issues till date.

With reference to above, following points/ documents, relevant to tender, may please be noted and complied with while submitting offer.

- 1.0 Revised Annexure-A (R-02) attached herewith, superseding earlier Annexure-A(R01) issued alongwith TCN-02
- 2.0 Modification/Amendment /Addition to tender terms as per Annexure-B.
- 3.0 Revised 'No deviation certificate' as per enclosed Annexure-2. Bidder shall submit no deviation certificate as per enclosed format only.
- 4.0 All other terms & conditions shall remain unchanged.

Thanking you,

Yours faithfully,  
for BHARAT HEAVY ELECTRICALS LTD

DY MGR (SCT)

Encl

- 1.0 Annexure-A
- 2.0 Annexure-B
- 3.0 Annexure-C

पावर सेक्टर पूर्वी क्षेत्र ( मुख्यालय )

POWER SECTOR EASTERN REGION, DJ-9/1, SECTOR-II, SALT LAKE CITY, KOLKATA - 700 091

फैक्स/Fax : (033) 23211960

फोन/Phone : बोर्ड/EPABX : 23211691, 23211798, 23211796

**FORMAT FOR NO DEVIATION CERTIFICATE**  
**(To be submitted in the bidder's letter head)**

BHARAT HEAVY ELECTRICALS LIMITED,  
 Power Sector - Eastern Region,  
 Plot no 9/1, DJ Block, Sector – II, Salt Lake City,  
 Kolkata – 700 091

Sub	No Deviation Certificate.	
Job	Design, engineering, manufacturing, supply, erection, commissioning etc of Hydrogen Generation Plant Package for 2x195 MW KBUNL Muzaffarpur TPS, Bihar.	
Ref	1.0	Tender no : PSER:SCT: MUZ-M1709:15
	2.0	BHEL's NIT, vide reference no PSER:SCT: MUZ-M1709:15:4771, dated 03/12/15
	3.0	BHEL's TCN-01, vide reference no PSER:SCT: MUZ-M1709:TCN-01, dated 17/12/15
	4.0	BHEL's TCN-02, vide reference no PSER:SCT: MUZ-M1709:TCN-02, dated 19/12/15
	5.0	BHEL's TCN-03, vide reference no PSER:SCT: MUZ-M1709:TCN-03, dated 21/12/15
	6.0	BHEL's TCN-04, vide reference no PSER:SCT: MUZ-M1709:TCN-04, dated 31/12/15
	7.0	BHEL's TCN-05, vide reference no PSER:SCT: MUZ-M1709:TCN-05, dated 06/01/16
	8.0	All other pertinent issues till date.

Dear Sirs,

With reference to above, this is to confirm that as per tender conditions, we have visited site before submission of our offer and noted the job content & site conditions etc. We also confirm that we have not changed/ modified the tender documents as appeared in the website/ issued by you and in case of such observance at any stage, it shall be treated as null and void.

We hereby confirm that we have not taken any deviation from tender clauses together with other references as enumerated in the above referred NIT. We hereby confirm our unqualified acceptance to all terms & conditions, unqualified compliance to technical specification, integrity pact (if applicable) and acceptance to reverse auctioning process.

In the event of observance of any deviation in any part of our offer at a later date whether implicit or explicit, the deviations shall stand null & void.

We confirm to have submitted offer in accordance with tender instructions and as per aforesaid references.

Thanking you,

Yours faithfully,

(Signature, date & seal of authorized  
representative of the bidder)

पावर सेक्टर पूर्वी क्षेत्र (मुख्यालय)

POWER SECTOR EASTERN REGION DJ-9/1, SECTOR-II, SALTLAKE CITY, KOLKATA - 700 091

फैक्स/Fax : (033) 23211960

फोन/Phone : बोर्ड/EPABX : 23211691, 23211798, 23211796

**ANNEXURE-A TO TCN-05**

**TENDER NO : PSER:SCT:MUZ-M1709:15**

Introduction of following Clauses of GCC as below:

- 1.0 Additional security deposit (SD) has to be submitted by the successful bidder with value as follows:

“If the final price of successful bidder is lesser by ‘more than 30%’ of BHEL’s estimate and the difference between the price of L-1 & L-2 is more than 10% of BHEL’s estimate then only, ‘Additional Security Deposit’ will be required to be submitted by the successful bidder with value as follows:

**Additional Security Deposit** = “30 % of (A-B)” limited to minimum 5% & maximum 10% of the ‘Total Price/Contract Value’, where,

A = 80% of BHEL estimate

B = The final offered price of successful bidder through RA (In case of RA)

**OR**

Sealed paper price bid of successful bidder (in case of paper bid)

This ‘Additional Security Deposit’ shall have the same validity as that of the ‘Security Deposit’ and shall be revalidated/released in the manner as spelt out for the ‘Security Deposit’ as per relevant clause of GCC.

The BHEL’s estimated value shall be disclosed to the successful bidder (on their request) at appropriate juncture in case ‘Additional Security Deposit’ is applicable.”

- 2.0 Clause no. 6.5.1 of GCC-1B shall be read as below:

Time and scope are the essence of the Contract. If the contractor fails to maintain the required progress of work as per contract or to complete the work and clear the site within the time prescribed by the Contract (Contractual Completion period), he shall without prejudice to any other right or remedy of BHEL on account of such breach, the contractor agrees to pay compensation (penalty) to BHEL. The above agreed compensation shall be a penalty equivalent to 1/4 % (one fourth percent) of the total contract price (irrespective of lump sum or item-rate contract or others) per week or part thereof of the delay subject to a maximum of 10% (ten percent) of the total executed contract price including elements of taxes, duties etc. complete.

- 3.0 Clause no. 12.2.1 of GCC-1A shall be read as below:

Recover from the contractor, as agreed liquidated damages a sum equivalent to half percent (1/2%) of the order /contract price for the delayed portion, excluding elements of taxes, duties freights etc., per week or part thereof subject to a maximum of ten percent (10%) of total order/contract price of the complete order if the contractor has failed to deliver any part of equipment /item within the period fixed for delivery of the same.

NOTE (applicable for supply of the Main Equipment only): Since this is a turnkey BOP package, LD shall be leviable if erection, commissioning & handing over of the package/system (under the total scope of supply & service part as per completion schedule indicated in the service part, Vol-1D) is delayed due to delay in completion of the supply.

However, Liquidated Damages shall be levied on the total contract value of both Supply and E&C orders (excluding taxes, duties and freight) if E&C completion of the package is delayed beyond the contractual completion date due to reasons attributable to the contractor.

**ANNEXURE-A TO TCN-05**

**TENDER NO : PSER:SCT:MUZ-M1709:15**

- 4.0 Clause 34.0 of GCC,Vol-1A and Clause no. 24.0 of GCC,Vol-1B for " **SETTLEMENT OF DISPUTE AND ARBITRATION** " shall be replaced by following:
1. If any dispute or differences of any kind whatsoever shall arise between BHEL and the contractor, arising out of the contract for the performance of the work whether during the progress of termination, abandonment or breach of the contract, it shall in the first place be referred to and settled by the Designated Engineer (nominated by BHEL for settlement of the disputes arising out of this contract) who within a reasonable period after being requested shall give written notice of his decision to the contractor. Save as hereinafter provided, such decision in respect of every matter so referred shall forthwith be given effect to by the contractor who shall proceed with the work with all due diligence, whether he or BHEL required arbitration as hereinafter provided or not.
  2. If after the Designated Engineer has given written notice of this decision to the party, no claim to arbitration has been communicated to him by the party within 30 days from the receipt of such notice, the said decision shall become final and binding on the parties. In the event the contractor being dissatisfied with any such decision or if amicable settlement can not be reached then all such disputed issues shall be referred to the sole arbitration of the person appointed by BHEL.
  3. Except as provided elsewhere in this Contract, in case amicable settlement is not reached between the Parties, in respect of any dispute or difference; arising out of the formation, breach, termination, validity or execution of the Contract; or, the respective rights and liabilities of the Parties; or, in relation to interpretation of any provision of the Contract; or, in any manner touching upon the Contract, then, either Party may, by a notice in writing to the other Party refer such dispute or difference to the sole arbitration of an arbitrator appointed by Head of the BHEL Power Sector Region issuing the Contract. It shall not be open to the Contractor to object to such arbitrator only on the ground that such arbitrator is an employee/ex-employee of BHEL or has dealt with or has expressed any opinion on any issue touching upon the Contract.

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

Subject as aforesaid, the provisions of Arbitration and Conciliation Act 1996 (India) or statutory modifications or re-enactments thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause. The seat of arbitration shall be Kolkata (the place from where the contract is issued)

4. In case of Contract with Public Sector Enterprise (PSE) or a Government Department, the following shall be applicable:

In the event of any dispute or difference relating to the interpretation and application of the provisions of the Contract, such dispute or difference shall be referred by either Party for arbitration to the sole arbitrator in the Department of Public Enterprises to be nominated by the Secretary to the Government of India in-charge of the Department of Public Enterprises. The Arbitration and Conciliation Act, 1996 shall not be applicable to arbitration under this clause. The award of the arbitrator shall be binding upon the Parties to the dispute, provided, however, any Party aggrieved by such award may make further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law and Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary or Additional Secretary when so authorized by the Law Secretary, whose decision shall bind the Parties hereto finally and conclusively.

**ANNEXURE-A TO TCN-05**

**TENDER NO : PSER:SCT:MUZ-M1709:15**

5. The cost of arbitration shall be borne equally by the Parties.
6. Notwithstanding the existence or any dispute or differences and/or reference for the arbitration, the Contractor shall proceed with and continue without hindrance the performance of its obligations under this Contract with due diligence and expedition in a professional manner.

<b>ANNEXURE-B TO TCN-05</b>			
<b>TENDER NO. PSER:SCT:MUZ-1709:15</b>			
<b>Design, engineering, manufacturing, supply, erection, commissioning etc of Hydrogen Generation Plant Package for 2x195 MW KBUNL Muzaffarpur TPS, Bihar.</b>			
<b>Sr. No.</b>	<b>Reference clause of tender document</b>	<b>EXISTING PROVISION</b>	<b>MODIFIED /ADDITIONAL CLAUSE</b>
1	<b>VOLUME-ID, Page 13/24, CI.20.0</b>	Subject to force majeure, if contractor fails to complete the job as per completion periods referred above, BHEL shall have the right to recover as liquidated damages (LD) a sum equivalent to 0.5 % (half percent) of the contract price, including taxes delay of each week or part thereof for respective unit. The liability for delay shall not in any case exceed 5 % (five percent) of the contract price (Service part), including taxes of respective unit, where the contract price (Service part of the Price schedule).	Shall be as per GCC-1B with a ceiling limit of 5%
2	<b>Cl. No. 19.1 of Vol-1C of tender (refer TCN-01)</b>	Subject to force majeure, if contractor fails to supply all required materials/ equipments (stores) of the Hydrogen Generation Plant package as per Completion Period under above Clause No. 10 above, BHEL shall have the right to recover as Liquidated damages (LD) a sum equivalent to <b>0.5% (half percent)</b> of the contract price, excluding taxes and duties, (Supply part of the Price Schedule) for delay of each week or part thereof. The liability for delay shall not in any case exceed <b>5 % (Five percent)</b> of the contract price, excluding taxes and duties (Supply part of the Price Schedule).  <b>NOTE (applicable for supply of the Main Equipment):</b> Since this is a turnkey BOP package, LD shall be leviable in case of erection,commissioning & handing over of the package/system (under the total scope of supply & service part) as per completion schedule indicated in the service part(Vol-1D) is delayed due to delay in completion of the supply.  BHEL shall deduct the amount of such compensation from any money due or which may become due to the contractor and/or recover such compensation from the bank guarantees / security deposit of the contractor. To be entitled to impose such compensation, BHEL will not be required to prove that he has incurred such amount as actual damage	Shall be applicable as per sl. no. 3.0 of Annexure-A to this TCN-05 with a ceiling limit of 5%.  BHEL shall deduct the amount of such compensation from any money due or which may become due to the contractor and/or recover such compensation from the bank guarantees / security deposit of the contractor. To be entitled to impose such compensation, BHEL will not be required to prove that he has incurred such amount as actual damage
3	<b>INTRODUCTION OF ADDITIONAL CLAUSE NO 27.1 OF NIT</b>	NA	Foreign bidders quoting along with their authorized Indian associates to comply BHEL guidelines attached at Annexure-C with this TCN-05 .
4	<b>INTRODUCTION OF ADDITIONAL CLAUSE NO 27.2 OF NIT</b>	NA	If the bidder is not OEM(Original Equipment Manufacturer) and submits offer based on collaboration/joint venture or licensing agreement with an OEM, the bidder shall obtain & submit additional SD BG for 5% from OEM*.  In such case the bidder shall submit an undertaking or consent letter from the OEM for furnishing this additional SD BG as per format enclosed with the tender.

**FOREIGN SUPPLIERS & INDIAN AGENTS OF FOREIGN SUPPLIERS**

1. BHEL shall deal directly with foreign vendors, wherever required, for procurement of goods/ services. However, if the foreign Principal desires to avail the services of an Indian Agent, then the foreign Principal should ensure compliance to regulatory guidelines – which require mandatory submission of an Agency Agreement.
2. 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.
3. An Indian Agent of foreign Origin Equipment Manufacturer (OEM)/ Principal is an individual, a partnership, an association of persons, a private or public company, that carries out specific obligation(s) towards processing of BHEL tender or finalization or execution of BHEL's contract on behalf of the foreign supplier.
4. The Agency Agreement should specify the precise relationship between the foreign OEM/ Principal and their Indian Agent, and their mutual interest in the business. All services to be rendered by the 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/ Principal, whether as commission or as 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.
5. Any agency commission to be paid by BHEL to the Indian Agent shall be in Indian currency only.
6. Tax deduction at source is applicable to the agency commission paid to the Indian Agent as per the prevailing rules.
7. In absence of any Agency Agreement, BHEL shall not deal with any Indian Agent (authorized representative/ associate/ consultant, or by whatever name called) and shall deal directly with the foreign OEM/ Principal only for all correspondence and business purposes.
8. In a tender, either the Indian Agent on behalf of the foreign OEM/ Principal or foreign OEM/ Principal itself can bid but both cannot bid simultaneously for the same item/ product in the same tender.
9. If an Agent submits bid on behalf of one OEM/ Principal, the same Agent shall not submit a bid on behalf of another OEM/ Principal in the same tender for the same item/ product.
10. The "Guidelines for Indian Agents of Foreign Suppliers" at Annexure–A shall apply in all such cases.

11. The supply and execution of Purchase Order/ Contract (including indigenous supplies/ services) shall be in the scope of foreign OEM/ Principal. The foreign OEM/ Principal should submit their offer inclusive of all indigenous supplies/ services and evaluation will be based on the 'Total Cost to BHEL'. In case foreign OEM/ Principal recommends placement of order(s) towards indigenous portion of supplies/ services on Indian supplier(s)/ agent on their behalf, the credentials/ capacity/ capability of the Indian supplier(s)/ agent to make the supplies/ services shall be checked by BHEL as per its extant guidelines of Supplier Evaluation, Approval & Review Procedure (SEARP) before opening of price bids. In this regard, details may be checked as per Annexure–B. It will be responsibility of the foreign OEM/ 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 (including indigenous supplies/ services) lies with the foreign OEM/ Principal. All bank guarantees to this effect shall be in the scope of the foreign OEM/ Principal.

**Guidelines for Indian Agents of Foreign Suppliers**

- 1.0 There shall be compulsory registration of agents for all Global (Open) Tenders and Limited Tenders. An agent who is not registered with BHEL shall apply for registration in the registration form in line with SEARP.
- 1.1 Registered agents will file an authenticated photocopy duly attested by a Notary Public/ Original certificate of the Principal confirming the Agency Agreement and giving the status being enjoyed by the Agent and the commission/ remuneration/ salary/ retainership being paid by the Principal to the Agent before placement of order by BHEL.
- 1.2 Wherever the Indian representatives have communicated on behalf of their Principals and the foreign parties have stated that they are not paying any commission to the Indian agents, and the Indian representative is working on the basis of salary or as retainer, a written declaration to this effect should be submitted by the party (i.e. Principal) before finalizing the order.

**2.0 Disclosure of particulars of agents/ representatives in India (if any)**

- 2.1 Tenderers of Foreign nationality shall furnish the following details in their offers:
  - 2.1.1 The Bidder(s)/ Contractor(s) of foreign origin shall disclose the name and address of the agents/ representatives in India, if any, and the extent of authorization and authority given to commit the Principals. In case the agent/ representative be a foreign Company, it shall be confirmed whether it is existing Company and details of the same shall be furnished.
  - 2.1.2 The amount of commission/ remuneration included in the quoted price(s) for such agents/ representatives in India.
  - 2.1.3 Confirmation of the Tenderer that the commission/ remuneration, if any, payable to his agents/ representatives in India, may be paid by BHEL in Indian Rupees only.
- 2.2 Tenderers of Indian Nationality shall furnish the following details in their offers:
  - 2.2.1 The Bidder(s)/ Contractor(s) of Indian Nationality shall furnish the name and address of the foreign Principals, if any, indicating their nationality as well as their status, i.e. whether manufacturer or agents of manufacturer holding the Letter of Authority of the Principal specifically authorizing the agent to make an offer in India in response to tender either directly or through the agents/ representatives.
  - 2.2.2 The amount of commission/ remuneration included in the price (s) quoted by the Tenderer for himself.

- 2.2.3 Confirmation of the foreign principals of the Tenderer that the commission/ remuneration, if any, reserved for the Tenderer in the quoted price(s), may be paid by BHEL in India in equivalent Indian Rupees on satisfactory completion of the Project or supplies of Stores and Spares in case of operation items.
- 2.3 In either case, in the event of contract materializing, the terms of payment will provide for payment of the commission/ remuneration, if any payable to the agents/ representatives in India in Indian Rupees, on expiry of 90 days after the discharge of the obligations under the contract.
- 2.4 Failure to furnish correct and detailed information as called for in paragraph 2.0 above will render the concerned tender liable to rejection or in the event of a contract materializing, the same liable to termination by BHEL. Besides this, there would be a penalty of banning business dealings with BHEL or damage or payment of a named sum.

## Annexure–B

This format is applicable only to Indian Suppliers/ Agents supplying indigenous portion of Foreign Purchases.

In all other cases, extant guidelines of SEARP, 2010 are to be followed.

SEARP (SRF) Clause No.	Detail
	<b>Name &amp; address of the firm</b>
<b>1.0</b>	<b>Products/ Systems / Services being considered for</b>
<b>2.0</b>	<b>General Information</b>
2.2	Name of Chief Executive
2.3	Details of authorized signatory
<b>3.0</b>	<b>Ownership Information</b>
3.1	Type of Firm
3.2	Nature of Business <ul style="list-style-type: none"> <li>• <i>Attach <b>authorization letter</b> and <b>agency agreement</b> from Principal (from whom capital equipment is procured)</i></li> <li>• <i>Attach copy of declaration from Foreign Principal for <b>total guarantee/ warranty of indigenous supplies</b></i></li> </ul>
3.3	Year of establishment
3.4	Year of commencement of business
<b>4.0</b>	<b>Registration particulars</b>
4.1	Permanent Account No.
4.2 / 4.3	Sales Tax / TIN No.
4.6	Service Tax No. (in case of Erection & Commissioning)
<b>5.0</b>	<b>Organisational strength</b>
<b>6.0</b>	<b>Other particulars</b>
6.1	If the company is already registered with other BHEL Units
6.2	Directors/ Partners, if related to any BHEL employee
6.9	If any Ex-BHEL personnel employed by the Company
6.12	Details of pending legal issues with BHEL
6.13	Bank Account information
<b>9.0</b>	<b>Financial information</b>
9.6	Sales/ Turnover details of last 3 years (or from the date of incorporation, whichever is less)