

Arbitration Clause in case of Contract with contractors/vendors /consultants when they are a Public Sector Enterprise (PSE) or a Government Department:

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. The Parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator.”

From: प्रवीन कुमार जैन / P K Jain <mmpkj@bhel.in>
Sent: Wednesday, March 4, 2020 3:44 PM
To: rakesh.singh@bhel.in; prawat@bhel.in; skbaveja@bhel.in; adarsh@bhel.in; parthas@bhel.in; mohan.k@bhel.in; gans@bhel.in; pravi@bhel.in; bhaskar.rao@bhel.in; rcd@bhel.in; rbabu@bhel.in; kumarrakesh@bhel.in; atul.pandey@bhel.in; ashvani@bhel.in; rksaxena@bhel.in; virender.gupta@bhel.in; subrata.sen@bhel.in; prchiwarkar@bhel.in; ev@bhel.in; bsandipan@bhel.in; sprabhu@bhel.in; indra.pal.singh@bhel.in; mandvi@bhel.in; minocha@bhel.in; rprabha@bhel.in; nalini@bhel.in; avnaga@bhel.in; dvkrsd@bhel.in; sunilhaldia@bhel.in; singh.bk@bhel.in; krl@bhel.in; mgarg@bhel.in; snair@bhel.in; finss@bhel.in; pjain@bhel.in; kkcoari@bhel.in; drgbhatla@bhel.in; amreshkumar.singh@bhel.in; rp@bhel.in; mmukundan@bhel.in; anjuarora@bhel.in; ashwanib@bhel.in; baskar@bhel.in; rlnagar@bhel.in; pksaxena@bhel.in; misador@bhel.in; tanan@bhel.in; rkalra@bhel.in; amalviya@bhel.in; cmishra@bhel.in; jp@bhel.in; rajesh.kohli@bhel.in
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Subject: Revision of 'Guidelines for Reverse Auction' - Circular No. 53 of 2019-20
Attachments: Guidelines for Reverse Auction - 2020.pdf

Circular No. 53 of 2019-20

Sub: Guidelines for Reverse Auction – 2020 (applicable for all NITs issued on or after 04.05.2020)

Guidelines for Reverse Auction were last revised in Sept'16. Based on best practices of other CPSEs/ Institutions, implementation feedback from Units/ Regions/ Divisions and deliberation with various agencies, the competent authority has approved the revised guidelines as per the attachment.

Following are the major changes:

1. Upfront declaration in NIT to go for RA.
2. RA shall be conducted with minimum three techno-commercially qualified bidders.
3. Sealed envelope price bids of all techno-commercially qualified bidders shall be opened and same shall be considered as initial bid of bidders in RA.
4. Start Price shall be lower of estimate or L1 of e-bid/ sealed envelope price bid.

- You are requested to circulate it to all the concerned of your Unit/ Region/ Division.

सादर / With kind regards,
प्रवीन कुमार जैन / Pk jain

- All Unit/ Region/ Division/ Corporate Function Heads
- All MM Heads of Units/ Regions/ Divisions

- CVO
- Director(Fin)/(IS&P)/(Power)/(E, R&D)/(HR) }

- for kind information

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GUIDELINES FOR REVERSE AUCTION - 2020

(AA:SSP:RA:04)
revised as on 04.03.2020

(applicable for all NITs issued on or after 04.05.2020)

**SOURCING STRATEGY POLICY
CORPORATE OPERATIONS MANAGEMENT**

BHARAT HEAVY ELECTRICALS LIMITED

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CIN: L74 DL1 64GOI0042 1

1.0 Scope

This document describes the guidelines to be followed by each Unit/ Division/ Region for conducting Reverse Auction (RA) for procurement of material/ works/ services. These guidelines will be applicable for all purchases/ contracts to be awarded under Purchase/ Works policy and the RA shall follow the philosophy of English Reverse (No ties). Based on these guidelines, Units/ Divisions/ Regions (hereinafter referred as 'units') may issue their own Departmental Procedures without changing the intent and spirit of the guidelines contained in this document. These guidelines will supersede earlier guidelines issued vide AA:SSP:RA:03 dated 26.09.2016.

English Reverse (No ties) is a type of auction where the starting price and bid decrement are announced before start of online reverse auction. The interested bidders can thereupon start bidding in an iterative process wherein the lowest bidder at any given moment can be displaced by an even lower bid of a competing bidder, within a given time frame. The bidding is with reference to the current lowest bid in the reverse auction. All bidders will see the current lowest quoted price and their rank. The term 'No ties' is used since more than one bidder cannot give an identical price, at a given instant, during the reverse auction. In other words, there shall never be a tie in the bids.

2.0 Intent of Reverse Auction

To derive maximum benefit in cost savings through competitive bidding.

3.0 Upfront declaration in NIT

Wherever it is felt that procurement may be done through Reverse Auction, the bids shall be invited in two parts/ three parts or single part bid (Price Bid) where Techno-Commercial MoU already exists. Wherever, the evaluation is done for individual line item, separate sealed envelope price bid for each line item shall be taken.

Decision to go for RA would be taken before floating of the tender. In case it is decided to go for RA, same shall be declared upfront in NIT by inserting the following **clause**:

"BHEL shall be resorting to Reverse Auction (RA) (Guidelines as available on www.bhel.com) for this tender. RA shall be conducted among all the

techno-commercially qualified bidders.

Price bids of all techno-commercially qualified bidders shall be opened and same shall be considered as initial bids of bidders in RA. In case any bidder(s) do(es) not participate in online Reverse Auction, their sealed envelope price bid along with applicable loading, if any, shall be considered for ranking."

4.0 Aspects to be considered for RA

Following aspects may be considered by the competent authority (empowered to approve the ordering) to decide before floating of the tender if RA is to be conducted for that particular tender:

- a) Number of techno-commercially qualified bidders in previous tender for same/ similar class of item
- b) Price volatility of the item(s) under consideration
- c) Past purchase experience of similar item(s)
- d) Tender Value of the item(s) under procurement
- e) Any other aspect which may be specific to tender

Note: Decision to go for RA or not will be on case to case basis with recorded reasons.

5.0 RA Committee

Purchase/ Tender committee, if already in place, shall also act as RA committee. Purchase representative will be the convener. In case Purchase/ Tender committee has not been formed, the Product Manager/ MM Head/ Department Head, shall constitute RA committee consisting of representatives (rank as per DoP of tender/ negotiation committee) from departments of Engineering/ Indenter/ User, Purchase and Finance. This committee will work for a specific tender. The role of RA committee shall be as below:

- To vet the statement comprising sealed envelope price bids received, MSE status, qualification against Public Procurement (Preference to Make in India), Order 2017 (PPP-MII, Order 2017) of all techno-commercially qualified bidders before sending it to the service provider for RA.
- To decide and record the 'Start-Price' and 'Bid Decrement'.
- To observe the RA process and declare RA as successful or failed.

6.0 Business rules for RA

Model Business rules (annexure -I) and other annexures II to VI are attached. MM shall prepare and fill in the required details in the annexures at appropriate places like:

- Enquiry/ Request For Quotation (RFQ) number
- Name and Addresses of the bidders
- Items description, quantities/ weight, Specification
- Date and time of opening and closing of RA
- Extension conditions
- Loading Criteria/ Formulae
- Foreign Exchange (FE) rates for evaluation
- Taxes & Duties
- Freight & Insurance
- Bidders' training, if required, etc.

The calculation sheet e.g. excel sheet (which will help to arrive at 'Total Cost to BHEL') which is communicated to respective bidders of RA, will be prepared by MM and vetted by Finance. This calculation sheet will be finalized based on the evaluation criteria specified in the NIT and will be same based on which sealed envelope price bids have been evaluated.

MM shall issue a mandate (annexure II) to the service provider covering business rules etc. and inform about event, calculation sheet etc. to all techno-commercially accepted bidders.

7.0 Role of Service Provider

- Acknowledge the receipt of mandate from BHEL.
- Contact the bidders, provide business rules and train them, as required.
- Get the process compliance form (annexure III) signed by all the participating bidders before RA event.
- Conduct the event as per the contract and business rules.
- Submit the Login Reports, Results, History sheet and authorized final bid from the bidders.
- To obtain price breakup from successful bidder and submit the same to BHEL.

8.0 Start price for RA shall be lower of:

- a) Lowest sealed envelope price bid
&
- b) Estimate

Note: Wherever more than one lowest sealed envelope price bids are identical and lower than the estimate, RA committee shall declare the start price by reducing the lowest sealed envelope price bid by maximum of one decrement.

9.0 Witnessing Auction

Access to witness the RA shall be available to the concerned officials of BHEL (Indenter/ Finance Officials/ Purchase Officials), nominated by Head MM/ Purchase/ Contracts.

10.0 Reverse Auction Process

10.1 Reverse Auction will be conducted if three or more bidders are techno-commercially qualified. In case of more than four techno-commercially qualified bidders, H1 bidder (whose quote is highest in sealed envelope price bid) shall not be allowed to participate in RA. However, there will be no H1 removal in case H1 happens to be MSE or qualifying under PPP-MII, Order 2017 irrespective of the number of bidders qualifying techno-commercially.

In case of multiple H1 bidders, all H1 bidders (excluding MSEs and bidders qualifying under PPP-MII, Order 2017) shall be removed provided minimum three bidders remain in fray, else no H1 removal.

10.2 If the lowest sealed envelope price bid is the starting price, then the lowest bidder in sealed envelope price bid shall be shown as current L1 automatically by the system. System shall have the provision to indicate this bid as current L1 for further bidding.

If the start price is lower than the lowest sealed envelope price bid (in line with clause 8.0), on acceptance of such start price by any bidder this bid would be indicated as current L1 for further bidding.

In case of no further bidding, RA will be deemed to have been successful with current L1 bidder.

During RA, all bidders will see their rank and current L1 price and their ranking L1, L2 etc. on the screen. Once the RA is done, the ranking status would be based on the last quoted price of the bidder(s) irrespective of the quote received in RA or sealed envelope price bid.

- 10.3 No bidder shall be allowed to lower its bid below the current L1 by more than 5 decrements at one go.

11.0 Failure of RA/ Tender

- a) In cases where the start price is (a) estimate or (b) one decrement (maximum) lower than the lowest of the sealed envelope price bid and no bidder accepts the start price.
- b) In case less than three techno-commercially qualified bids received in the tender.

Wherever, the evaluation is done for individual line items, RA/ Tender shall be treated as failed only for those line item(s) for which any of the above satisfies.

12.0 Treatment of failed scenarios

In cases of failure of RA/ Tender, re-tendering shall be resorted to without conducting RA in the subsequent tender.

13.0 Processing of case after RA

- 13.1 Wherever the evaluation is done on total cost basis, after Reverse Auction, prices of individual line items shall be reduced on pro-rata basis.
- 13.2 In case of splitting requirement, H1 bidder(s) who were removed from participation in RA may also be considered for counter offer if the pre-stated (NIT) numbers of suppliers do not accept the counter offer. However, principle of splitting to N-1 bidder shall be maintained in line with extant Purchase Policy/ Work Policy.

14.0 Payment to the Service Provider

Payment shall be made as per the agreed terms of the Framework Agreement with the service provider based on the mandate issued and service provider's invoice certified by the respective MM.

If the RA event is conducted as per the mandate given by BHEL and agreed procedure, payment shall be made to the service provider irrespective of the auction outcome.

15.0 Others

- 15.1 If RA is being conducted for multiple line items and L1 is to be decided for individual items, number of items in single screen be restricted to 10 (ten) to avoid scrolling by the bidders.
- 15.2 In case of enquiry through e-Procurement, the sealed electronic price bid (e-bid) is to be treated as sealed envelope price bid.
- 15.3 BHEL will inform bidders the details of service provider who will provide business rules, all necessary training and assistance before commencement of online bidding.
- 15.4 Bidders are advised to read the 'Business Rules' indicating details of RA event carefully, before reverse auction event.
- 15.5 Model annexures are enclosed. However, to suit specific requirement of the Units changes in the annexures may be done with the approval of respective MM Head of Unit. Such changes shall specifically be communicated to the service provider before the RA event.

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