



- iv. Experience of the sister concerns from all International office locations of the bidder shall also be acceptable in case of global project references under Clause 4.2.1/B(i) subject to Clause 6.3.
- v. For various evaluation parameters as mentioned in Section 4.2 and its sub-sections, only completed works (works starting and, 90% or more scope completing during the said period) shall be considered as consulting engagements.
- vi. For evaluation under Clause 4.2.1/C, if one or more consultants have worked on the same project, these will be considered as separate for the individual consultants/specialists.
- vii. Evaluation of Clause 4.2.1/D(i)-(ii) will be through a presentation by the bidder to a committee of senior BHEL officials. The draft presentation shall be submitted by the bidder along with the technical bid. The marks awarded by BHEL shall be final and no representation made by any bidder shall be entertained.
- viii. The bidder would be called for a technical presentation tentatively within 3 days of bid opening (without prejudice to BHEL rights to disqualify on grounds of non-fulfilment of PQR) or at a later date with a notice of minimum of 3 working days. The presentation should be made by the proposed lead partner, working with BHEL on this project, who can be preferably accompanied by the proposed team. A signed copy of the final presentation needs to be submitted for evaluation purposes immediately after the presentation.
- ix. Bidder may further be called for a Q&A session after a few days.
- x. Bidder shall submit the CVs of all the team members proposed to be deployed for this project (Annexure-9)
- xi. The team members considered for claiming experience under evaluation criteria, and to be deployed for this project should be full-time employees of the consulting firm.
- xii. At least one partner "Lead Partner" should lead this exercise and should spend significant time (at least once a week) with BHEL along with the consulting firm team on this project & should be available for BHEL on need basis.
- xiii. The team proposed to be deployed shall remain unchanged, unless under unavoidable circumstances. In such a situation, whether during the contract execution period or during the bidding process, the change will only be permitted with the prior written consent of BHEL, based on credentials of new members furnished. The new member/s proposed to be deployed shall also meet the minimum experience as defined above.
- xiv. BHEL reserves the right to seek changes in the team during the course of the assignment.
- xv. Notwithstanding any other condition/provision in the RFP document, in case of ambiguity or incomplete documents pertaining to techno-commercial evaluation, BHEL may give the bidders only one opportunity with a fixed deadline after bid opening to provide complete & unambiguous documents/ withdrawal of deviations in support of meeting the technical criteria. In case, the bidder fails to submit any document or submits incomplete documents within the given time, the bid will be rejected.



- xvi. Tie Breaker: In case, combined Technical & Price bid score of two (2) or more bidders are the same, then the bidder scoring higher Technical score would be considered as the successful bidder. However, in case of the same Technical score also, then the bidder scoring higher score in 4.2.1/B of Technical evaluation criteria would be considered as the successful bidder.

4.2.2 Price Bid evaluation

The formula for determining Financial Score (S_f) is:

The bid with the lowest cost (F_m) shall be given a Financial score (S_f) of 100. The Financial scores of all other bidders will then be computed as follows:

$$S_f = 100 \times F_m / F$$

where F = the amount indicated in the respective financial bid

Combined technical and price bid evaluation

A combined technical and price bid evaluation will be done as per the QCBS method.

A combined, Score (S) will be calculated according to the following formula:

$$S = 70\% \text{ of } S_T + 30\% \text{ of } S_f$$

Subsequent to the ranking of all the bidders based on their combined score, the bidder with the highest combined score (S) will be declared successful and shall be recommended for the award of the contract.

After the identification of the successful bidder, BHEL will follow the internal procedure for necessary approvals and thereafter proceed with notification of award of the contract. Techno-commercial and price bid evaluation process has been illustrated below:

N	Bidder	Tech. Score	Price bid, Lacs	Combine score, S	Result
1	ABC	95	600	$70\% \times (95 \times 100 / 95) + 30\% \times (300 \times 100 / 600) = 85.00$	-
2 ³	DEF	84	300	$70\% \times (84 \times 100 / 95) + 30\% \times (300 \times 100 / 300) = 91.89$	H-1
3	GHI	75	450	$70\% \times (75 \times 100 / 95) + 30\% \times (300 \times 100 / 450) = 65.26$	-
4 ⁴	XYZ	65	NA	NA	-

³ Lowest price bid

⁴ Not considered since Tech. score is less than 70

5 GENERAL CONDITIONS OF CONTRACT

5.1 Contract

The terms and conditions of the RFP document, any pre-bid minutes published and LOA / WO placed shall constitute the entire agreement between the parties hereto. Contract agreement as specified by BHEL needs to be executed upon acceptance of LOA / WO. Until a formal contract is signed, the Work Order and acceptance of the same will constitute a binding contract.

5.2 Authorized signatory

The selected bidder shall submit at the time of signing the contract, authorization from Proprietor/ Country Head / Board (certified copy of Board resolution, authenticated by Company Secretary), authorizing an official or officials of the company to discuss, sign agreements/contracts with BHEL, raise invoice and accept payments and also to correspond.

5.3 Work timings

The selected bidder and the team deployed for this assignment shall consider normal working hours of BHEL (0900-1730 hrs at Delhi NCR; 0800-1630 hrs, or as applicable at other manufacturing locations) while planning their resources and performance commitments.

5.4 Engagement of experts

If need be, BHEL may seek expert opinion for validation of recommendations or any other work under the subject scope by the third party at any time.

5.5 Rights of BHEL

BHEL reserves the following rights in respect of this contract during the original contract period or its extensions if any.

To terminate the contract or withdraw a portion of work and get it done through other consulting firms, the consulting firm shall pay the complete/balance/excess cost to be incurred for the completion of the contract at the risk and cost of the contractor after 14 days' notice by BHEL in any of the following cases:

- i. Poor progress of the work vis-à-vis execution timeline as stipulated in the contract
- ii. Backlog attributable to the selected bidder including the unexecuted portion of work does not appear to be executable within a balance available period considering its performance of execution.
- iii. Withdrawal from or abandonment of the work by the selected bidder before completion of the work as per contract.





- iv. Non-completion of work by the selected bidder within the scheduled completion period as per contract or as extended from time to time, for the reasons attributable to the selected bidder.
- v. Termination of contract on account of any other reason/s attributable to the selected bidder.
- vi. Assignment, transfer, subletting of contract without prior permission.
- vii. Non-compliance to any contractual condition or any other default attributable to the selected bidder
- viii. If the successful bidder becomes insolvent or bankrupt
- ix. If the successful bidder, in the judgment of BHEL has engaged in corrupt or fraudulent practices in competing for or in executing the contract
- x. Upon termination of this contract, BHEL shall settle the payment/s only for the deliverables actually executed prior to the date of such termination. No further payment shall be made on termination.

5.6 Corrupt or fraudulent practices

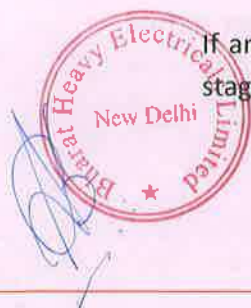
The bidder along with its associates/ collaborators/ sub-contractors/sub-vendors/ consultants/ service providers shall strictly adhere to BHEL Fraud Prevention Policy hosted on the BHEL website <http://www.bhel.com> and shall immediately bring to the BHEL about any fraud or suspected fraud as soon as it comes to their notice.

5.7 Integrity commitment, performance of the contract and punitive action

Commitment by BHEL: BHEL commits to take all measures necessary to prevent corruption in connection with the bidding process and execution of the contract. BHEL will during this process treat all bidder(s) in a transparent and fair manner, and with equity.

Commitment by bidder: The bidder commits to take all measures to prevent corruption and will not directly or indirectly influence any decision or benefit which he is not legally entitled to nor will act or omit in any manner which tantamount to an offence punishable under any provision of the Indian Penal Code, 1860 or any other law in force in India. The bidder will, when presenting his bid, disclose any and all payments he has made, and is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract and shall adhere to relevant guidelines issued from time to time by Govt. of India/ BHEL. The bidder will perform/ execute the contract as per the contract terms & conditions and will not default without any reasonable cause, which causes loss of business/ money/ reputation, to BHEL.

If any bidder during pre-bid/ bidding/ post-bidding/ award/ execution/ post-execution stage indulges in malpractices, cheating, bribery, fraud or and other misconduct or





formation of cartel so as to influence the bidding process or influence the price or acts or omits in any manner which tantamount to an offence punishable under any provision of the Indian Penal Code, 1860 or any other law in force in India, then, action may be taken against such bidder/ supplier/ contractor as per extant guidelines of the company available on www. bhel.com and/or under applicable legal provisions”.

5.8 Not Banned / Holiday listed / Blacklisted

The bidder should not have been banned from participating in tenders or on holiday list/ blacklist at the time of bidding by BHEL or its Administrative Ministry (Ministry of Heavy Industries & Public Enterprises). Bidder to submit a declaration as part of General Declaration Certificate-Declaration (Annexure-3).

5.9 Conflict of interest

- a. In case the Proprietor, Partner or Director of the bidder, or any of the team members proposed to be deployed have any relative or relation employed in BHEL, the authority inviting the bid shall be informed of the fact as and when the bidder/ consultant become aware of them. Failing to do so, BHEL may, at its sole discretion, reject the bid or cancel the contract and forfeit any money due.
- b. The term 'relative' for this purpose would be as defined in Section 2(77) of the Companies Act, 2013.
- c. The consulting firm shall not engage, either directly or indirectly, during the term of this contract, in any business or professional activities that would conflict with the activities assigned to them under this contract.
- d. The remuneration of the consulting firm pursuant to this contract shall constitute the consulting firm's sole remuneration in connection with this contract or the services and the consulting firm shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Agreement
- e. The Consulting firm agrees that during the term of this Agreement and after its termination, the Consulting firm, or any of its affiliates, shall be disqualified from providing goods, works or services related to the initial assignment (other than the services specifically mentioned in this RFP).

5.10 Force Majeure

“Force Majeure” shall mean any event beyond the reasonable control of the parties including but not limited to fire, flood, earthquake or other acts of God, war, riots, civil war and restraints of Governing States, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected.

If either party is prevented, hindered or delayed from or in performing any of its obligations under the contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within 7 (seven)





days after the occurrence of such event. The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered or delayed. The time for completion shall be extended by a period of time equal to the period of delay caused due to such Force Majeure event.

Delay or non-performance by either party hereto caused by the occurrence of any event of Force Majeure shall not constitute a default or breach of the Contract or give rise to any claim for damages or additional cost or expense occasioned thereby.

In case of delays lasting over one month notwithstanding force majeure, BHEL reserves the right to terminate the contract and, the provisions governing termination as given in this document shall apply.

5.11 Conciliation & Arbitration

Conciliation: If at any time 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 Contract/Order, which the Parties are unable to settle mutually), arise inter-se the Parties, the same may be referred by either Party to Conciliation to be conducted through Independent Experts Committee (IEC) to be appointed by competent authority of the Buyer from the BHEL Panel of Conciliators.

- a. No serving or a retired employee of the BHEL/ Administrative Ministry of BHEL shall be included in the BHEL Panel of Conciliators.
- b. 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.
- c. The proceedings of Conciliation shall broadly be governed by Part-III of the Arbitration & Conciliation Act, 1996 or any statutory modification thereof and as provided in the BHEL Conciliation Scheme (available on www.bhel.com).

Arbitration: Except as provided elsewhere in this Contract, in case Parties are unable to reach amicable settlement (whether by Conciliation or otherwise) 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 (hereinafter referred to as the 'Dispute'), then, either Party may, commence arbitration in respect of such Dispute by a notice in writing to the other party under the provisions of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the 'Notice'). The Notice shall contain the particulars of all claims to be referred to arbitration in sufficient detail and shall also indicate the monetary amount of such claim.





The arbitration shall be conducted by a sole arbitrator to be appointed by BHEL Unit/ Division/ Business Group issuing the Contract within 45 days of receipt of the complete Notice in terms of this Clause.

- a. The language of the arbitration shall be English. The Arbitrator/Arbitral Tribunal shall pass a reasoned award
- b. The cost of arbitration shall initially be borne equally by the Parties subject to the final apportionment of the cost of the arbitration in the award of the Arbitrator(s).
- c. Subject as aforesaid, the provisions of Arbitration and Conciliation Act 1996 (India) or statutory modifications or re-enactments thereof and the rules made thereunder as in force from time to time shall apply to the arbitration proceedings under this clause. The seat of arbitration shall be the place from where the contract is Issued.
- d. Notwithstanding the existence of 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 except where the Contract has been terminated by either Party in terms of this Contract.

5.12 Applicable law & jurisdiction of the court

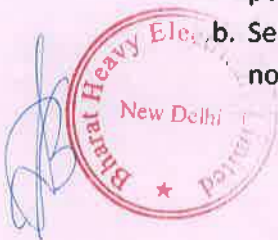
The contract including all matters connected with this contract, its meaning and interpretation, and the relation between the parties shall be governed by and construed in accordance with the applicable Indian Law and shall be subject to the exclusive jurisdiction of Indian Courts at New Delhi (India).

5.13 Compliance to regulations and bye-laws

The successful bidder shall conform to the provisions of any statute relating to the work and regulations and bye-laws of the statutory authority. The successful bidder shall be bound to give all notices required by statutory regulations or by-laws as aforesaid and to pay all fees and taxes payable to any authority in respect thereof. The successful bidder shall be responsible for all statutory obligations and any other laws in above regard in force from time to time regarding employment or condition of service of bidder's workmen or employees.

5.14 Accidents/ damages/ claims liabilities

- a. In event of any accident or damages while on BHEL's duty, BHEL shall be completely free from any liability of any nature connected with the accident/ damage(s). Selected bidder himself will be fully and exclusively responsible for any personal injury to the deployed personnel or any other person in employment or damage to any property or person, including any third party claims.
- b. Selected bidder may safeguard his interest through insurance at his own cost. Under no circumstances, BHEL will take any liability arising out of or due to the action of the





deployed manpower, including third-party claims. Selected bidder will have the sole liability of the damages/injuries caused to the deployed manpower or due to the action of the deployed manpower (including accidents and third-party claims)

- c. Arrangement of alternative/substitute is the responsibility of selected bidder unless otherwise exempted for reasons beyond Service Provider's control.

5.15 Safety and statutory requirements

The team deployed by the selected consulting firm shall abide by all Safety Rules and Guidelines of BHEL and ensure the usage of proper Personal Protection Equipment (PPEs) while visiting the manufacturing units/ sites. The consulting firm shall also be responsible for compliance to statutory and government regulations as applicable as well as the safety & welfare of all employees deployed at BHEL and payment of salaries to their employees and statutory deductions if any.

5.16 Liabilities

The selected bidder shall be responsible for any financial losses, damages, liabilities arising out of any breach of contract or any other event attributable to the bidder's management of the contract. BHEL can recover all such losses from the unpaid invoices of the selected bidder or by invoking the available bank guarantees.

5.17 Guarantees

The bidder will indemnify, protect BHEL against all claims, losses, costs, damages, expenses, action suits and other proceedings resulting from infringement of any patent, trademarks, copyrights, etc. in respect of the items or services supplied by them. The bidder will be required to bear all the costs in such cases.

5.18 Professional liability

- a. The consulting firm is expected to carry out its assignment with due diligence and in accordance with the prevailing standards of the profession. The consulting firm shall provide detailed reports / presentations in line with deliverables. The reports/ presentations shall be reviewed by BHEL for validation of the suggestions/ progress made. BHEL may also at times engage any other party for validation of the recommendations made by the consulting firm.
- b. In case, any deficiency is observed or the recommendations suggested by the consulting firm is not appropriate, the report/presentations shall not be accepted and the consulting firm would be required to make a fresh report/presentations. Such delays in the final acceptance of the consulting firm's report/presentation after every stage shall be considered as deficiency in service. To avoid deficiency in service and delays arising out of such events, it shall be the endeavor of the consulting firm to hold





mutual discussions with BHEL at every stage in order to complete the activities as scheduled.

5.19 Change in character of the bidder

In the event, wherein there is any change in the character of the consulting firm by means of changes in structure or the transfer of ownership of the firm, the consulting firm will have to inform BHEL at least three months in advance in writing with proper documentation that the new entity shall be contractually accountable to BHEL for the contract signed by the original firm.

5.20 Non-Disclosure Agreement

The selected bidder after placement of work order and prior to commencement of work must sign the Non-Disclosure Agreement (NDA) as per the format specified by BHEL (Annexure-15) or any other as mutually agreed.

5.21 Use of contract documents, specifications, design

The consulting firm shall not, without BHEL's prior written consent, disclose the contract or any provision thereof or any data, findings etc. or information furnished by or on behalf of BHEL in connection or to any person other than a person employed by the consulting firm in the performance of the work order/ contract. Disclosure to any such employed person shall be made in confidence and shall extend only so as may be necessary for the purpose of such performance. The bidder will bind such employees to the secrecy of information.

5.22 Documents/ reports/ deliverables

Reports & documents submitted by the successful bidder shall become and remain the property of BHEL. BHEL will be authorized to use the intellectual property contained in the report for its own purposes in accordance with the contract. BHEL can download, make copies, distribute, modify and create derivate works of the reports.

5.23 Right to implementation

BHEL shall be at its liberty to modify/implement the suggestions/strategies arising out of the engagement of the selected bidder either directly or through any other party.

5.24 Modification

Modification of the terms and conditions of this contract, including any modification in the scope or price of the contract, may only be made by written agreement between BHEL and the selected bidder.





5.25 Sub-contracting and assignment

This contract shall not be assigned or subcontracted by the consulting firm to any third party without the prior written consent of BHEL.

5.26 Registration

Bidder must be registered on the date of bid submission under relevant applicable Indian/Foreign Laws and in case of foreign business entity, it must be authorized by the global principal to operate in India through its branch office in India.

Bidder must submit copies of Registration Certificate, Permanent Account No. (PAN), Provident Fund (PF) Registration and GST Registration.

