

BEML LIMITED

(A Govt. of India Mini Rathna Company under Ministry of Defence)
BEML Soudha, 23/1, 4th Main Road, SR Nagar, Bangalore 560 027.
Phone 080-22963179 email: tirthabharati.samal@bemlltd.in

Tender Ref: BEML/CMRM/2GT31135

Date: 15/10/2024

Quotation in e-mode through mail is invited from steel suppliers for the items as shown at table below:

Sl. No.	BEML Stock Nos.	Spec. Detail	Tender Qty	Plant
			MTR	
1	2GT31135	SPEC. : SAE4130H VD OD : DIA 311 +0/ +3 mm ID : DIA 240 +0/ -2 mm LENGTH : 4800 0/ +10 mm	13.000	H&P - KGF

The Bidder supplies should comply material to BEML Grade & dimensions should be as per QAP attached.

Tender publishing Date: 15/10/2024

Tender closing date: 22/10/2024 Time 3:00 PM (7 Days)

Subject Tender is in 2 Bid System and Technical Bid & Commercial Bid to be submitted in two different mail separately indicating the tender reference number: BEML/CMRM/2GT31135 Date: 15/10/2024 and the same should be sent to the mail address **cmtenderbox@beml.co.in**

1. **Technical Bid;** Technical bid should conform to BEML Specification as attached. Bidder to submit compliance to Mandatory Terms & Conditions (Annexure A) & Informative clauses and General terms & conditions (Annexure B) along with technical Bid. Filled Form MA to be enclosed in technical bid.

2. **Commercial bids:** Commercial bid in separate mail.

Bidder shall not send price bid in the technical bid; else bid will be disqualified.

3. This tender is bound by all Government guidelines attached in the Tender document.

For any clarification, point of contact is given below;

Purushothama G

Deputy General Manager – Corporate Materials

BEML Limited

Telephone: +91-80-22963179

Mail Id: purushothama.g@bemlltd.in

tirthabharati.samal@bemlltd.in

4. This tender is covered under guidelines of PPI Order vide F.No.6/18/2019-PPD (document attached)

Terms & Conditions Annexure-A

Sl. No.	Particulars	Terms	Bidder Confirmation (Yes/No)
Mandatory Terms & Conditions			
1	Material Grade	As per the material (TDC/STD) indicated at table above. Dimensions acceptable as indicated above. All the bidder shall submit the QAP for technical evaluation.	
2	Quote	Rate to be quoted as per tendering unit only,	
3	Delivery Terms	C.I.F Chennai /FOB/ F.o.R Beme K.G.F Shipment mode whether Break-Bulk or Container to be indicated. EXW is not acceptable.	
4	Delivery Schedule	March'2025 till November 2025	
5	Payment terms	Open credit or LC 60 days on receipt & acceptance. For MSME firms, as per MSME act. MSE vendors payment through TReDs. Advance payment terms is not acceptable.	
6	MOQ	Buyer may quote MOQ, however, final qty is on BEML discretion. BEML reserves right for reduction in qty post tender.	
7	Local content	Firm shall submit the local content 50% as per Make in India for Class I and 20% for Class II Supplier	
8	Supplier Mill TC/ NABL TC	Tender is invited only from OE/MILL Supplier. Stockist /Traders/ Re-sellers bids shall submit MAF certificate from OE/MILL or Manufacturer having BEML vendor code. In case agents are quoting mill authorisation is mandatory. Bidder should submit Mill /LAB/ NABL TC.	
9	Supply condition	Bidder should supply each size from one heat only and supply should be with both MILL and NABL TC. Mandatory. Developmental order will be placed for New Vendor. Vendors shall supply sample for evaluation by BEML. Bulk supplies will be after acceptance of Samples.	
10	Deferent Clause	PO is subject to deferment, re-scheduling, cancellation, Short / Pre-closure based on equipment sales order	
11	PBG	Successful bidder should submit Bank Guarantee @ 5% of PO/ contract Value.	
12	LD Clause	LD Applicable for late deliveries.	
13	NDA, Non-competition Agreement & Land border sharing declaration	Bidder should submit NDA, Non-competition Agreement & Land border sharing declaration.	
14	Offer validity	90 days from tender opening date	
15	CEPA	Bidder should disclose applicable custom duty at the time of submitting bid and any rebate/concession etc.	
16	PAST PERFORMANCE	Bidder Should be an OE MILL only. Stockist bids are not allowed. In case	

		agents are quoting mill authorisation is mandatory. Format MA is attached herewith.	
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Note: Invoice to be generated at delivery plant GST only.

Bidder's declaration

I hereby confirm to supply as per above terms & conditions.

Seal & Signature

Annexure B

Compliance certificate to Informative clauses and General terms & conditions

Sl. No.	Terms	Bidder Confirmation (Yes/No)
1	DEFINITIONS & INTERPRETATIONS	
2	AUTHORITY OF PERSONS SIGNING DOCUMENT	
3	ACCEPTANCE OF ORDER	
4	SECURITY DEPOSIT / PERFORMANCE GUARANTEE	
5	VALIDITY PERIOD	
6	QUALITY AND WORKMANSHIP	
7	GUARANTEE / WARRANTY	
8	SUPPLY OF SAMPLE	
9	PACKING AND DISPATCH	
10	RAW MATERIALS ARRANGEMENT	
11	IDENTIFYING OF ITEMS / PIECES	
12	DELIVERY	

13	PLANT & MACHINERY SUPPLY	
14	INSPECTION AND TESTING:	
15	QUALITY & CONDITION OF DELIVERY	
16	PAYMENT PROCEDURE	
17	APPROPRIATION	
18	CENTRAL EXCISE	
19	APPLICABLE LAWS AND JURISDICTION OF COURTS	
20	INTELLECTUAL PROPERTY RIGHTS; LICENSES	
21	BRIBES AND GIFTS	
22	JURISDICTION	
23	ARBITRATION	
24	FORCE MAJEURE CLAUSE	
25	DRAWINGS AND DOCUMENTS	
26	NON-DISCLOSURE AND INFORMATION OBLIGATIONS	

27	PRICE, INVOICING AND PAYMENT:	
28	FALL CLAUSE	
29	DURING ARBITRATION	
30	PROGRESS REPORT	
31	CONTRACT VARIATIONS: INCREASE OR DECREASE IN THE SCOPE OF SUPPLY	
32	PENALTY / LIQUIDATED DAMAGES:	
33	TRANSFER OF OWNERSHIP AND RISK	
34	SHORT SHIPMENT / WARRANTY / GUARANTEE REPLACEMENTS:	
35	EXPORT ADMINISTRATION REGULATIONS	
36	NON-WAIVER OF DEFAULTS	
37	ASSIGNMENT OF RIGHTS AND OBLIGATIONS; SUB- CONTRACTING	
38	INTEGRITY COMMITMENT IN THE EXECUTION OF CONTRACTS:	

Bidder Declaration.

I hereby confirm to supply as per above terms and conditions.

Bidder Seal & Signature.

Form-MA - Manufacturer's Authorization Form

[The Bidder shall require the Manufacturer to fill in this Form in accordance with the instructions indicated. This letter of authorization should be on the letterhead of the Manufacturer and should be signed by a person with the proper authority to sign documents that are legally binding on the Manufacturer.]

Date: *[insert date (as day, month and year) of Bid Submission]*

BID No.: *[insert number of bidding process]*

Alternative No.: *[insert identification No if this is a Bid for an alternative]*

To:

[insert complete name of Purchaser]

WHEREAS

We *[insert complete name of Manufacturer]*, who are official manufacturers of *[insert type of goods manufactured]*, having factories at *[insert full address of Manufacturer's factories]*, do hereby authorize *[insert complete name of Bidder]* to submit a bid the purpose of which is to provide the following Goods, manufactured by us *[insert name and or brief description of the Goods]*, and to subsequently negotiate and sign the Contract against the Bid Document.

We hereby extend our full guarantee and warranty in accordance with Warrant Clause of the terms & Conditions of Contract, with respect to the Goods offered by the above firm against this BID. We as a manufacturer of *[insert type of goods manufactured]* confirm to provide the spare & service support for a minimum period of 5 years after commissioning

Signed: *[insert signature(s) of authorized representative(s) of the Manufacturer]*

Name: *[insert complete name(s) of authorized representative(s) of the Manufacturer]*

Title: *[insert title]*

Duly authorized to sign this Authorization on behalf of: *[insert complete name of Bidder]*

Dated on _____ day of _____, _____ *[insert date of signing]*

Note – Modify this format suitably in cases where manufacturer's warranty and guarantee are not applicable for the items for which bids are invited. If the supply consists of number of items, indicate the specific item (s) for which alone the above authorization is required.

Mandated Enclosure: UDYAM Certificate of Manufacturer/OEM/support document to be an OEM.

QUALITY PLAN FOR LW 4130H / SAE 4130H VD TUBES



DOC NO : HP-QH-REC-QP-RM-014 / Rev 00 Dtd 13.08.2024

Sl No	Description / Component	Characteristics / Parameters / Type of check	Quantum of Check	Testing Standards	Accepted standards / Specs	Format of Record	Inspection	
							M	BEML
1	Raw Material	Mill TC	100%	-	Ingot Cast / Continuous Cast and Hot Rolled, Hot finished or Forged Condition	Mill TC	P	V
2	Material Composition	Chemistry	1/Heat	Standard	LW 4130H / SAE 4130H VD	NABL Report / Mill TC	P	V / P
3	Delivery Condition	Heat Treatment	100%	Standard	Normalised Condition	Mill TC	P	V
4	Micro Examination	Jominy hardenability	1/Heat	ASTM A255	27~42 RC @ J 8/16	NABL Report / Mill TC	P	V
		Grain Size	1/Heat	standard	MCQuaid-EHN, Sixe 5~8 fine grain as per ASTM E112.	NABL Report / Mill TC	P	V
5	Surface condition	Visual Inspection	100%	Standard	Free from flaws, cracks, uncleaned patches, bends, burrs, sharp edges and any other visual defects.	Visual Report	P	V
6	Dimensions	Measure	100%	Standard	Size Tolerance: $\pm 2\text{mm}$ on OD Wall Thickness: $\pm 10\%$	Check sheet	P	P
7	Preservation	Surface Coating	100%	Standard	Tubes should supply along with rust preventive oil at inner and outer surface and tube ends should be closed with suitable end caps to prevent ingress of foreign material	-	P	V
8	Identification Marks	Visual Inspection	100%	-	Part number, Heat Number, Material, Vendor code shall be provided on item.	-	P	V

LEGEND - M -Manufacturer, P - Perform, V- Verification of documents, A- Audit checking, *- If applicable

TABLE 1 (Ref: IS 2500-Part 1:2000)

LOT SIZE	Inspection level I	SAMPLE SIZE
2 ~ 90	C	5
91~150	D	8
151~280	E	13
281~500	F	20
501~1200	G	32
1201~3200	H	50
3201~10000	J	80

Note:

1) This Quality plan will applicable only for all LW4130H / SAE 4130H VD tubes only

2) Warranty /Guarantee certificate shall be provided as per terms & conditions of Purchase order

Prepared by
Harika Reddy A
13/08/2024

Reviewed by
Dinesh G

Approved by
Gopinath M
Asst. General Manager
QA Dept. H&P Division
BEML Limited
Kolar Gold Fields - 563 115

(14)

STEEL SPECIFICATION

LW 4130H
DASH 11

Product: Tubing — Hot finished, seamless, round, mechanical, alloy, H Grade, normalized or process annealed

Bars — Hot rolled, alloy, H Grade, annealed

Produced by open hearth, basic oxygen, or electric furnace process

Haulpak Designation: LW4130H

Steel Grade: AISI 4130H/UNS H41300

Scope: This specification covers a Cr-Mo through hardening alloy steel grade, hardenable to specified values in a standardized quench, and outlines general requirements for wrought steel deliveries to Haulpak Division and its suppliers, forgers, and fabricators.

Intended Application: Heat treated, oil or water quenched and tempered parts requiring controlled surface and core hardness and microstructure. Manufacturing operations include sawing, hot forging and upsetting, welding, machining, and heat treatment.

Mechanical Properties: Mechanical properties are waived.

Technical Requirements:

- a) Product can be made from ingot cast material, or it can also be made from continuous cast material if it has a minimum reduction ratio of 18 to 1 of original as-cast cross-sectional area to the cross-sectional area of the final mill product.
- b) Hot finished tubing tolerances for outside diameter and wall shall be per ASTM A519 for tubes with outside diameter of 10.75 inches or less. Tubes with outside diameter above 10.75 inches shall have outside diameter and wall tolerances as shown below:

OUTSIDE DIAMETER	O.D. TOL	WALL THICKNESS TOL
10.751 - 13.999	±.080	±10%
14.000 - 14.375	±.090	±10%
14.376 - 16.000	±.090	±10%

DATE ISSUED	DECEMBER 1992
REVISED FROM	JUNE 1991

Komatsu Dresser Company
Haulpak Division
Peoria, Illinois

STEEL SPECIFICATION

LW 4130H
DASH 11

Chemical Composition:
(Heat)

The material supplied shall be reported and shall conform to the following analysis unless otherwise specified:

C	Mn	Si	Cr	Mo	P
.27-.33	.30-.70	.15-.35	.75-1.20	.15-.25	.040 max.
S					
.040 max.					

The composition supplied may be other than the above as agreed upon by the supplier and Haulpak Division.

Grain Size:

McQuaid-EHN, Size 5-8 fine grain reported.

Hardenability:

The material supplied shall be reported and must conform to the following on a rolled, forged or cast end quench test specimen:

27-42 Rc @ J 8/16

Applicable Standards:

Haulpak Div.:

Issuance 6.01.125 covering quality, testing, packaging, and reporting shall apply.

Foreign:

ASTM A29 - General requirements for bars
ASTM A255 - End-quench hardenability test
ASTM A304 - Bars - Subject to hardenability requirements
ASTM A519 - Tubing, seamless mechanical to hardenability requirements
ASTM E112 - Grain size determination

Color Marking:

Green and purple, one end only, except sizes under 50mm (2 in.) cross section shall be painted in two stripes on bundled end.

Data for Haulpak Div.
Internal Use:

Steel stamp code number is: 34

DATE ISSUED	DECEMBER 1992
REVISED FROM	JUNE 1991

Annexure III

Compliance certificate

Bidders having beneficial ownership in countries which share land border with India

- I. Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the competent Authority.
- II. “ Bidder “ (including the term ‘ tenderer ‘ , consultant ‘ or service provider ‘ in certain contexts) means any person or firm or company , including any member of a consortium or joint venture (that is an association of several persons, or firms or companies) every artificial juridical person not falling in any of the descriptions of bidders stated here in before , including any agency branch or office controlled by such person , participating in a process.
- III. “Bidder from a country which shares a land border with India “ for the purpose of this order means : -
 - a. An entity incorporated , established or registered in such country ;or
 - b. A subsidiary of an entity incorporated, established or registered in such a country ;or
 - c. An entity substantially controlled through entities incorporated, established or registered in such a country ; or
 - d. An entity whose beneficial owner is situated in such a country ; or
 - e. An Indian (or other) agent of such an entity ; or
 - f. A natural person who is a citizen of such a country ; or
 - g. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above.
- IV. The beneficial owner for the purpose of (iii) above will be as under :
 1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s) , who , whether acting alone or together , or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.
 - a. “ Controlling ownership interest “ means ownership of or entitlement to more than twenty-five per cent of shares or capital or profits of the company
 - b. “ Control “ shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreement s or voting agreements;
 2. In case of a partnership firm , the beneficial owner is the natural person(s) who , whether acting alone or together , or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
 3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who , whether acting alone or together , or through one or more juridical person , has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;

4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official.
5. In case of a trust , the identification of beneficial owner(s) shall include identification of the author of the trust , the trustee , the beneficiaries with fifteen percent or more interest in the trust an any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

V An agent is a person employed to do any act for another, or to represent another in dealings with third person.

VI The successful bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the competent Authority.

I/we have read the clause regarding above terms and conditions regarding restrictions on procurement whether goods, services (including consultancy service and non consultancy services) or works (including turn key projects)

I / We M/s(Name of the bidder) are not from a country which shares land border with India and as per the above terms and conditions are eligible to participate in this tender.

Or

I / We M/s(Name of the bidder) are from a country which shares land border with India and as per the above terms and conditions ,we are registered with Competent authority with Registration noare eligible to participate in this tender.

[Format for seeking registration for bidders having beneficial ownership in countries which share land border with India and further details refer Notification no P-45021/112/2020-PP (BE-II) (E-43780) dated 14.10.2020 Department of promotion of industry and internal trade , Ministry of Commerce and Industry , Govt. of India .]

(Signature of authorized signatory of the tenderer)

Name:

Designation:

Place

Seal :

Date:

No. DPE/7(4)/2017-Fin.(Part-I)
Government of India
Ministry of Heavy Industries & Public Enterprises
Department of Public Enterprises

Public Enterprises Bhawan
Block No.14, CGO Complex
New Delhi – 110003

Date: 30th July, 2020

OFFICE MEMORANDUM

**Subject: Restrictions under Rule 144(xi) of the General Financial Rules (GFRs), 2017-
Dept. of Expenditure OM No.6/18/2019-PPD dated 23rd July, 2020 -
regarding**

The undersigned is directed to enclose Department of Expenditure's (DoE) OMs No. 6/18/2019-PPD dated 23rd July, 2020 & 24th July, 2020 imposing restrictions under Rule 144(xi) of the General Financial Rules (GFRs), 2017 on the grounds of Defence of India and National Security for information and compliance.

2. All the administrative Ministries/ Departments of CPSEs are requested to ensure compliance of the directions issued by DoE by CPSEs under their administrative control.
3. This issues with the approval of competent authority.



(Kalyani Mishra)
Director
Tel.24362061

Encl.: (DoE's OMs No. 6/18/2019-PPD dated 23rd July, 2020
6/18/2019-PPD dated 23rd July, 2020 &
6/18/2019-PPD dated 24th July, 2020)

To

- i) All the Secretaries to the Administrative Ministries/Departments of CPSEs
- ii) Chief Executives of CPSEs

Copy for information to:

Secretary, D/o Expenditure, North Block, New Delhi

डा. टी. वी. सोमनाथन, आई.ए.एस.

सचिव (व्यय)

Dr. T. V. Somanathan, I.A.S.

Secretary (Expenditure)



एक कदम स्वच्छता की ओर



भारत सरकार
वित्त मंत्रालय
व्यय विभाग

Government of India
Ministry of Finance
Department of Expenditure
नार्थ ब्लॉक, नई दिल्ली-110001
Tel. : 23092929, 23092663
Fax : 23092546
E-mail : secyexp@nic.in
Website : www.finmin.nic.in

D.O.F.No.6/18/2019- PPD

28th July, 2020

Dear Shri Sailesh,

As you are aware the General Financial Rules (GFRs), 2017 have been amended inserting Rule 144 (xi) which empowers Department of Expenditure to impose restrictions, including prior registration or screening on procurement from bidders from a country or countries on grounds of Defence of India and National Security. The amended Rule provides that no public procurement shall be made in violation of such restrictions. Pursuant to the above, Order (Public Procurement No. 1) and Order (Public Procurement No. 2) were issued vide F.No.6/18/2019-PPD dated 23.7.2020. A clarification was issued in Order (Public Procurement No. 3).

2. Though the GFRs ordinarily do not apply to public sector enterprises, in this instance, as they relate to national security, the orders have consciously been made applicable to all Central Public Sector Enterprises as well. It is, therefore, requested that necessary instructions may be issued by your Department reiterating the applicability of orders stated in Paragraph 1 of this letter to all Central Public Sector Enterprises.

3. Copies of the Orders are attached for ease of reference.

With regards,

Encl: As above

Shri Sailesh, IAS

Secretary,

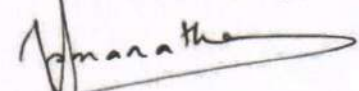
Department of Public Enterprises,

160, Udyog Bhawan,

New Delhi: 110011

Copy to: Cabinet Secretary – for information

Yours sincerely,


(T.V. Somanathan)

We may issue instructions today
S
29/7

ASCRKC

F.No.6/18/2019-PPD
Ministry of Finance
Department of Expenditure
Public Procurement Division

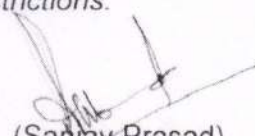
161, North Block,
New Delhi
23rd July, 2020

Office Memorandum

Subject: Insertion of Rule 144 (xi) in the General Financial Rules (GFRs), 2017

Rule 144 of the General Financial Rules 2017 entitled 'Fundamental principles of public buying', has been amended by inserting sub-rule (xi) as under:

Notwithstanding anything contained in these Rules, Department of Expenditure may, by order in writing, impose restrictions, including prior registration and/or screening, on procurement from bidders from a country or countries, or a class of countries, on grounds of defence of India, or matters directly or indirectly related thereto including national security; no procurement shall be made in violation of such restrictions.


(Sanjay Prasad)
Joint Secretary (PPD)
Email ID: js.pfc2.doe@gov.in
Telephone: 011-23093882

To,
(1) Secretaries of All Ministries/ Departments of Government of India
(2) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi

F.No.6/18/2019-PPD
Ministry of Finance
Department of Expenditure
Public Procurement Division

161, North Block,
New Delhi
23rd July, 2020

Order (Public Procurement No. 1)

Subject: Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs), 2017

Attention is invited to this office OM no. 6/18/2019-PPD dated 23rd July 2020 inserting Rule 144 (xi) in GFRs 2017. In this regard, the following is hereby ordered under Rule 144 (xi) on the grounds stated therein:

Requirement of registration

1. Any bidder from a country which shares a land border with India will be eligible to bid in any procurement whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority, specified in **Annex I**.
2. This Order shall not apply to (i) cases where orders have been placed or contract has been concluded or letter/notice of award/ acceptance (LoA) has been issued on or before the date of this order; and (ii) cases falling under **Annex II**.

Transitional cases

3. Tenders where no contract has been concluded or no LoA has been issued so far shall be handled in the following manner: -
 - a) *In tenders which are yet to be opened, or where evaluation of technical bid or the first exclusionary qualificatory stage (i.e. the first stage at which the qualifications of tenderers are evaluated and unqualified bidders are excluded) has not been completed: No contracts shall be placed on bidders from such countries. Tenders received from bidders from such countries shall be dealt with as if they are non-compliant with the tender conditions and the tender shall be processed accordingly.*
 - b) *If the tendering process has crossed the first exclusionary qualificatory stage: If the qualified bidders include bidders from such countries, the*

entire process shall be scrapped and initiated *de novo*. The *de novo* process shall adhere to the conditions prescribed in this Order.

- c) As far as practicable, and in cases of doubt about whether a bidder falls under paragraph 1, a certificate shall be obtained from the bidder whose bid is proposed to be considered or accepted, in terms of paras 8, 9 and 10 read with para 1 of this Order.

Incorporation in tender conditions

- 4. In tenders to be issued after the date of this order, the provisions of paragraph 1 and of other relevant provisions of this Order shall be incorporated in the tender conditions.

Applicability

- 5. Apart from Ministries / Departments, attached and subordinate bodies, notwithstanding anything contained in Rule 1 of the GFRs 2017, this Order shall also be applicable
 - a. to all Autonomous Bodies;
 - b. to public sector banks and public sector financial institutions; and
 - c. subject to any orders of the Department of Public Enterprises, to all Central Public Sector Enterprises; and
 - d. to procurement in Public Private Partnership projects receiving financial support from the Government or public sector enterprises/ undertakings.
 - e. Union Territories, National Capital Territory of Delhi and all agencies/ undertakings thereof

Definitions

- 6. "Bidder" for the purpose of this Order (including the term 'tenderer', 'consultant' 'vendor' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency, branch or office controlled by such person, participating in a procurement process.
- 7. "Tender" for the purpose of this Order will include other forms of procurement, except where the context requires otherwise.
- 8. "Bidder from a country which shares a land border with India" for the purpose of this Order means

- a) An entity incorporated, established or registered in such a country; or
- b) A subsidiary of an entity incorporated, established or registered in such a country; or
- c) An entity substantially controlled through entities incorporated, established or registered in such a country; or
- d) An entity whose *beneficial owner* is situated in such a country; or
- e) An Indian (or other) agent of such an entity; or
- f) A natural person who is a citizen of such a country; or
- g) A consortium or joint venture where any member of the consortium or joint venture falls under any of the above

9. "Beneficial owner" for the purpose of paragraph 8 above will be as under:

- (i) In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person(s), has a controlling ownership interest or who exercises control through other means.

Explanation—

- a. "Controlling ownership interest" means ownership of, or entitlement to, more than twenty-five per cent of shares or capital or profits of the company;
- b. "Control" shall include the right to appoint the majority of the directors or to control the management or policy decisions, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

- (ii) In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;

- (iii) In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;

- (iv) Where no natural person is identified under (i) or (ii) or (iii) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

4/12

(v) In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

10. "Agent" for the purpose of this Order is a person employed to do any act for another, or to represent another in dealings with third persons.

Sub-contracting in works contracts

11. In works contracts, including turnkey contracts, contractors shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. The definition of "contractor from a country which shares a land border with India" shall be as in paragraph 8 above. This shall not apply to sub-contracts already awarded on or before the date of this Order.

Certificate regarding compliance

12. A certificate shall be taken from bidders in the tender documents regarding their compliance with this Order. If such certificate given by a bidder whose bid is accepted is found to be false, this would be a ground for immediate termination and further legal action in accordance with law.

Validity of registration

13. In respect of tenders, registration should be valid at the time of submission of bids and at the time of acceptance of bids. In respect of supply otherwise than by tender, registration should be valid at the time of placement of order. If the bidder was validly registered at the time of acceptance / placement of order, registration shall not be a relevant consideration during contract execution.

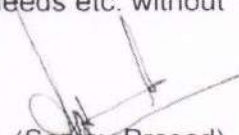
Government E-Marketplace

14. The Government E-Marketplace shall, as soon as possible, require all vendors/ bidders registered with GeM to give a certificate regarding compliance with this Order, and after the date fixed by it, shall remove non-compliant entities from GeM unless/ until they are registered in accordance with this Order.

5/12

Model Clauses/ Certificates

15. Model Clauses and Model Certificates which may be inserted in tenders / obtained from Bidders are enclosed as **Annex III**. While adhering to the substance of the Order, procuring entities are free to appropriately modify the wording of these clauses based on their past experience, local needs etc. without making any reference to this Department.


(Sanjay Prasad)
Joint Secretary (PPD)
Email ID: js.pfc2.doe@gov.in
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To

- (1) Secretaries of All Ministries/ Departments of Government of India for information and necessary action. They are also requested to inform these provisions to all procuring entities.
- (2) Secretary, Department of Public Enterprises with a request to immediately reiterate these orders in respect of Public Enterprises.
- (3) Secretary DPIIT with a request to initiate action as provided under Annex I
- (4) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi

6/12

Annex I: Competent Authority and Procedure for Registration

- A. The Competent Authority for the purpose of registration under this Order shall be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT)*.
- B. The Registration Committee shall have the following members*:
- i. An officer, not below the rank of Joint Secretary, designated for this purpose by DPIIT, who shall be the Chairman;
 - ii. Officers (ordinarily not below the rank of Joint Secretary) representing the Ministry of Home Affairs, Ministry of External Affairs, and of those Departments whose sectors are covered by applications under consideration;
 - iii. Any other officer whose presence is deemed necessary by the Chairman of the Committee.
- C. DPIIT shall lay down the method of application, format etc. for such bidders as stated in para 1 of this Order.
- D. On receipt of an application seeking registration from a bidder from a country covered by para 1 of this Order, the Competent Authority shall first seek political and security clearances from the Ministry of External Affairs and Ministry of Home Affairs, as per guidelines issued from time to time. Registration shall not be given unless political and security clearance have both been received.
- E. The Ministry of External Affairs and Ministry of Home Affairs may issue guidelines for internal use regarding the procedure for scrutiny of such applications by them.
- F. The decision of the Competent Authority, to register such bidder may be for all kinds of tenders or for a specified type(s) of goods or services, and may be for a specified or unspecified duration of time, as deemed fit. The decision of the Competent Authority shall be final.
- G. Registration shall not be granted unless the representatives of the Ministries of Home Affairs and External Affairs on the Committee concur*.
- H. Registration granted by the Competent Authority of the Government of India shall be valid not only for procurement by Central Government and its agencies/ public enterprises etc. but **also for procurement by State Governments and their agencies/ public enterprises etc. No fresh registration at the State level shall be required.**

7/12

- I. The Competent Authority is empowered to cancel the registration already granted if it determines that there is sufficient cause. Such cancellation by itself, however, will not affect the execution of contracts already awarded. Pending cancellation, it may also suspend the registration of a bidder, and the bidder shall not be eligible to bid in any further tenders during the period of suspension.
- J. For national security reasons, the Competent Authority shall not be required to give reasons for rejection / cancellation of registration of a bidder.
- K. In transitional cases falling under para 3 of this Order, where it is felt that it will not be practicable to exclude bidders from a country which shares a land border with India, a reference seeking permission to consider such bidders shall be made by the procuring entity to the Competent Authority, giving full information and detailed reasons. The Competent Authority shall decide whether such bidders may be considered, and if so shall follow the procedure laid down in the above paras.
- L. Periodic reports on the acceptance/ refusal of registration during the preceding period may be required to be sent to the Cabinet Secretariat. Details will be issued separately in due course by DPIIT.

[*Note:

- i. In respect of application of this Order to procurement by/ under State Governments, all functions assigned to DPIIT shall be carried out by the State Government concerned through a specific department or authority designated by it. The composition of the Registration Committee shall be as decided by the State Government and paragraph G above shall not apply. However, the requirement of **political and security clearance as per para D shall remain and no registration shall be granted without such clearance.**
- ii. Registration granted by State Governments shall be valid only for procurement by the State Government and its agencies/ public enterprises etc. and shall not be valid for procurement in other states or by the Government of India and their agencies/ public enterprises etc.]

8/12

Annex II: Special Cases

- A. Till 31st December 2020, procurement of medical supplies directly related to containment of the Covid-19 pandemic shall be exempt from the provisions of this Order.
- B. *Bona fide* procurements made through GeM without knowing the country of the bidder till the date fixed by GeM for this purpose, shall not be invalidated by this Order.
- C. *Bona fide* small procurements, made without knowing the country of the bidder, shall not be invalidated by this Order.
- D. In projects which receive international funding with the approval of the Department of Economic Affairs (DEA), Ministry of Finance, the procurement guidelines applicable to the project shall normally be followed, notwithstanding anything contained in this Order and without reference to the Competent Authority. Exceptions to this shall be decided in consultation with DEA.
- E. This Order shall not apply to procurement by Indian missions and by offices of government agencies/ undertakings located outside India.

9/12

Annex III

Model Clause /Certificate to be inserted in tenders etc.

(While adhering to the substance of the Order, procuring entities and GeM are free to appropriately modify the wording of the clause/ certificate based on their past experience, local needs etc.)

Model Clauses for Tenders

- I. Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority.
- II. "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.
- III. "Bidder from a country which shares a land border with India" for the purpose of this Order means: -
 - a. An entity incorporated, established or registered in such a country; or
 - b. A subsidiary of an entity incorporated, established or registered in such a country; or
 - c. An entity substantially controlled through entities incorporated, established or registered in such a country; or
 - d. An entity whose *beneficial owner* is situated in such a country; or
 - e. An Indian (or other) agent of such an entity; or
 - f. A natural person who is a citizen of such a country; or
 - g. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above
- IV. The *beneficial owner* for the purpose of (iii) above will be as under:
 1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.

Explanation—

 - a. "Controlling ownership interest" means ownership of or entitlement to more than twenty-five per cent. of shares or capital or profits of the company;

10/12

- b. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;
2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
 3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;
 4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
 5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.
- V. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.
- VI. *[To be inserted in tenders for Works contracts, including Turnkey contracts]* The successful bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority.

Model Certificate for Tenders (for transitional cases as stated in para 3 of this Order)

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I hereby certify that this bidder is not from such a country and is eligible to be considered."

Model Certificate for Tenders

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this bidder is not from such a country or, if from such a country, has been registered with the

11/12

Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model Certificate for Tenders for Works involving possibility of sub-contracting

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model Certificate for GeM:

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this vendor/ bidder is not from such a country or, if from such a country, has been registered with the Competent Authority. I hereby certify that this vendor/ bidder fulfills all requirements in this regard and is eligible to be considered for procurement on GeM. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

12/12

F.No.6/18/2019-PPD
Ministry of Finance
Department of Expenditure
Public Procurement Division

161, North Block
New Delhi
23rd July, 2020

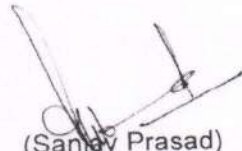
Order (Public Procurement No. 2)

Subject: Exclusion from restrictions under Rule 144 (xi) of the General Financial Rules (GFRs), 2017 –regarding.

In Order (Public Procurement No. 1) dated 23rd July 2020, orders have been issued requiring registration of bidders from a country sharing a land border with India in order to be eligible to bid in public procurement.

2. Notwithstanding anything contained therein, it is hereby clarified that the said Order will not apply to bidders from those countries (even if sharing a land border with India) to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects.

3. Updated lists of countries to which lines of credit have been extended or in which development projects are undertaken are given in the website of the Ministry of External Affairs.


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To,

- (1) Secretaries of All Ministries/ Departments of Government of India for information and necessary action. They are also requested to inform these provisions to all procuring entities.
- (2) Secretary, Department of Public Enterprises with a request to immediately reiterate these orders in respect of Public Enterprises.
- (3) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi

F.No.6/18/2019-PPD
Ministry of Finance
Department of Expenditure
Public Procurement Division

161, North Block,
New Delhi
24th July, 2020

Order (Public Procurement No. 3)

Subject: Clarification to Order (Public Procurement No.1) dated 23rd July 2020

Attention is invited to paragraph 3(b) of the Order (Public Procurement No.1), under the heading "Transitional provisions" which reads as follows:

- b) If the tendering process has crossed the first exclusionary qualificatory stage: If the qualified bidders include bidders from such countries, the entire process shall be scrapped and initiated *de novo*. The *de novo* process shall adhere to the conditions prescribed in this Order.*

It is hereby clarified that for the purpose of paragraph 3 (b), "qualified bidders" means only those bidders who would otherwise have been qualified for award of the tender after considering all factors including price, if Order (Public Procurement No. 1) dated 23rd July 2020 had not been issued.

2. If bidders from such countries would not have qualified for award for reasons unconnected with the said Order (for example, because they do not meet tender criteria or their price bid is higher or because of the provisions of purchase preference under any other order or rule or any other reason) then there is no need to scrap the tender / start the process de novo.

3. The following examples are given to assist in implementation of the Order.

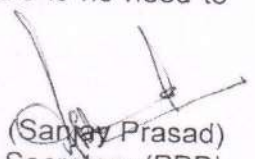
Example 1: Four bids are received in a tender. One of them is from a country which shares a land border with India. The bidder from such country is found to be qualified technically by meeting all prescribed criteria and is also the lowest bidder. In this case, the bidder is qualified for award of the tender, except for the provisions of the Order (Public Procurement No. 1) dated 23rd July. In this case, the tender should be scrapped and fresh tender initiated.

Example 2: The facts are as in Example 1, but the bidder from such country, though technically qualified is not the lowest because there are other technically qualified bidders whose price is lower. Hence the bidder from such country would not be

qualified for award of the tender irrespective of the Order (Public Procurement No. 1) dated 23rd July 2020. In such a case, there is no need to scrap the tender.

Example 3: The facts are as in Example 1, but the bidder from a country which shares a land border with India, though technically qualified, is not eligible for award due to the application of price preference as per other orders/ rules. In such a case, there is no need to scrap the tender.

Example 4: Three bids are received in a tender. One of them is a bidder from a country sharing a land border with India. The bidder from such a country does not meet the technical requirements and hence is not qualified. There is no need to scrap the tender.


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To,

- (1) Secretaries of All Ministries/ Departments of Government of India for information and necessary action. They are also requested to inform the clarification to all procuring entities.
- (2) Secretary, Department of Public Enterprises with a request to immediately circulate this clarification among Public Enterprises.
- (3) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi

No. P-45021/2/2017-PP (BE-II)
Government of India
Ministry of Commerce and Industry
Department for Promotion of Industry and Internal Trade
(Public Procurement Section)

Udyog Bhawan, New Delhi
Dated: 16th September, 2020

To

All Central Ministries/Departments/CPSUs/All concerned

ORDER

Subject: Public Procurement (Preference to Make in India), Order 2017– Revision; regarding.

Department for Promotion of Industry and Internal Trade, in partial modification [Paras 2, 3, 5, 10 & 13] of Order No.P-45021/2/2017-B.E.-II dated 15.6.2017 as amended by Order No.P-45021/2/2017-B.E.-II dated 28.05.2018, Order No.P-45021/2/2017-B.E.-II dated 29.05.2019 and Order No.P-45021/2/2017-B.E.-II dated 04.06.2020, hereby issues the revised 'Public Procurement (Preference to Make in India), Order 2017' dated 16.09.2020 effective with immediate effect.

Whereas it is the policy of the Government of India to encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment, and

Whereas procurement by the Government is substantial in amount and can contribute towards this policy objective, and

Whereas local content can be increased through partnerships, cooperation with local companies, establishing production units in India or Joint Ventures (JV) with Indian suppliers, increasing the participation of local employees in services and training them,

Now therefore the following Order is issued:

1. This Order is issued pursuant to Rule 153 (iii) of the General Financial Rules 2017.
2. **Definitions:** For the purposes of this Order:

'Local content' means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.

'Class-I local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-I local supplier' under this Order.

.....Contd. p/2

'Class-II local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-II local supplier' but less than that prescribed for 'Class-I local supplier' under this Order.

'Non - Local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than that prescribed for 'Class-II local supplier' under this Order.

'L1' means the lowest tender or lowest bid or the lowest quotation received in a tender, bidding process or other procurement solicitation as adjudged in the evaluation process as per the tender or other procurement solicitation.

'Margin of purchase preference' means the maximum extent to which the price quoted by a "Class-I local supplier" may be above the L1 for the purpose of purchase preference.

'Nodal Ministry' means the Ministry or Department identified pursuant to this order in respect of a particular item of goods or services or works.

'Procuring entity' means a Ministry or department or attached or subordinate office of, or autonomous body controlled by, the Government of India and includes Government companies as defined in the Companies Act.

'Works' means all works as per Rule 130 of GFR- 2017, and will also include *'turnkey works'*.

3. Eligibility of 'Class-I local supplier' / 'Class-II local supplier' / 'Non-local suppliers' for different types of procurement

(a) In procurement of all goods, services or works in respect of which the Nodal Ministry / Department has communicated that there is sufficient local capacity and local competition, only 'Class-I local supplier', as defined under the Order, shall be eligible to bid irrespective of purchase value.

(b) Only 'Class-I local supplier' and 'Class-II local supplier', as defined under the Order, shall be eligible to bid in procurements undertaken by procuring entities, except when Global tender enquiry has been issued. In global tender enquiries, 'Non-local suppliers' shall also be eligible to bid along with 'Class-I local suppliers' and 'Class-II local suppliers'. In procurement of all goods, services or works, not covered by sub-para 3(a) above, and with estimated value of purchases less than Rs. 200 Crore, in accordance with Rule 161(iv) of GFR, 2017, Global tender enquiry shall not be issued except with the approval of competent authority as designated by Department of Expenditure.

(c) For the purpose of this Order, works includes Engineering, Procurement and Construction (EPC) contracts and services include System Integrator (SI) contracts.

.....Contd. p/3

3A. Purchase Preference

(a) Subject to the provisions of this Order and to any specific instructions issued by the Nodal Ministry or in pursuance of this Order, purchase preference shall be given to 'Class-I local supplier' in procurements undertaken by procuring entities in the manner specified here under.

(b) In the procurements of goods or works, which are covered by para 3(b) above and which are divisible in nature, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

- i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract for full quantity will be awarded to L1.
- ii. If L1 bid is not a 'Class-I local supplier', 50% of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the 'Class-I local supplier' will be invited to match the L1 price for the remaining 50% quantity subject to the Class-I local supplier's quoted price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such 'Class-I local supplier' subject to matching the L1 price. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price or accepts less than the offered quantity, the next higher 'Class-I local supplier' within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and so on, and contract shall be awarded accordingly. In case some quantity is still left uncovered on Class-I local suppliers, then such balance quantity may also be ordered on the L1 bidder.

(c) In the procurements of goods or works, which are covered by para 3(b) above and which are not divisible in nature, and in procurement of services where the bid is evaluated on price alone, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

- i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract will be awarded to L1.
- ii. If L1 is not 'Class-I local supplier', the lowest bidder among the 'Class-I local supplier', will be invited to match the L1 price subject to Class-I local supplier's quoted price falling within the margin of purchase preference, and the contract shall be awarded to such 'Class-I local supplier' subject to matching the L1 price.
- iii. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price, the 'Class-I local supplier' with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly. In case none of the 'Class-I local supplier' within the margin of purchase preference matches the L1 price, the contract may be awarded to the L1 bidder.

- (d) "Class-II local supplier" will not get purchase preference in any procurement, undertaken by procuring entities.

3B. Applicability in tenders where contract is to be awarded to multiple bidders -

In tenders where contract is awarded to multiple bidders subject to matching of L1 rates or otherwise, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

- a) In case there is sufficient local capacity and competition for the item to be procured, as notified by the nodal Ministry, only Class I local suppliers shall be eligible to bid. As such, the multiple suppliers, who would be awarded the contract, should be all and only 'Class I Local suppliers'.
- b) In other cases, 'Class II local suppliers' and 'Non local suppliers' may also participate in the bidding process along with 'Class I Local suppliers' as per provisions of this Order.
- c) If 'Class I Local suppliers' qualify for award of contract for at least 50% of the tendered quantity in any tender, the contract may be awarded to all the qualified bidders as per award criteria stipulated in the bid documents. However, in case 'Class I Local suppliers' do not qualify for award of contract for at least 50% of the tendered quantity, purchase preference should be given to the 'Class I local supplier' over 'Class II local suppliers' / 'Non local suppliers' provided that their quoted rate falls within 20% margin of purchase preference of the highest quoted bidder considered for award of contract so as to ensure that the 'Class I Local suppliers' taken in totality are considered for award of contract for at least 50% of the tendered quantity.
- d) First purchase preference has to be given to the lowest quoting 'Class-I local supplier', whose quoted rates fall within 20% margin of purchase preference, subject to its meeting the prescribed criteria for award of contract as also the constraint of maximum quantity that can be sourced from any single supplier. If the lowest quoting 'Class-I local supplier', does not qualify for purchase preference because of aforesaid constraints or does not accept the offered quantity, an opportunity may be given to next higher 'Class-I local supplier', falling within 20% margin of purchase preference, and so on.
- e) To avoid any ambiguity during bid evaluation process, the procuring entities may stipulate its own tender specific criteria for award of contract amongst different bidders including the procedure for purchase preference to 'Class-I local supplier' within the broad policy guidelines stipulated in sub-paras above.

4. **Exemption of small purchases:** Notwithstanding anything contained in paragraph 3, procurements where the estimated value to be procured is less than Rs. 5 lakhs shall be exempt from this Order. However, it shall be ensured by procuring entities that procurement is not split for the purpose of avoiding the provisions of this Order.

5. **Minimum local content:** The 'local content' requirement to categorize a supplier as 'Class-I local supplier' is minimum 50%. For 'Class-II local supplier', the 'local content' requirement is minimum 20%. Nodal Ministry/ Department may prescribe only a higher

percentage of minimum local content requirement to categorize a supplier as 'Class-I local supplier'/ 'Class-II local supplier'. For the items, for which Nodal Ministry/ Department has not prescribed higher minimum local content notification under the Order, it shall be 50% and 20% for 'Class-I local supplier'/ 'Class-II local supplier' respectively.

6. **Margin of Purchase Preference:** The margin of purchase preference shall be 20%.
7. **Requirement for specification in advance:** The minimum local content, the margin of purchase preference and the procedure for preference to Make in India shall be specified in the notice inviting tenders or other form of procurement solicitation and shall not be varied during a particular procurement transaction.
8. **Government E-marketplace:** In respect of procurement through the Government E-marketplace (GeM) shall, as far as possible, specifically mark the items which meet the minimum local content while registering the item for display, and shall, wherever feasible, make provision for automated comparison with purchase preference and without purchase preference and for obtaining consent of the local supplier in those cases where purchase preference is to be exercised.
9. **Verification of local content:**
 - a. The 'Class-I local supplier'/ 'Class-II local supplier' at the time of tender, bidding or solicitation shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I local supplier'/ 'Class-II local supplier', as the case may be. They shall also give details of the location(s) at which the local value addition is made.
 - b. In cases of procurement for a value in excess of Rs. 10 crores, the 'Class-I local supplier'/ 'Class-II local supplier' shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.
 - c. Decisions on complaints relating to implementation of this Order shall be taken by the competent authority which is empowered to look into procurement-related complaints relating to the procuring entity.
 - d. Nodal Ministries may constitute committees with internal and external experts for independent verification of self-declarations and auditor's/ accountant's certificates on random basis and in the case of complaints.
 - e. Nodal Ministries and procuring entities may prescribe fees for such complaints.
 - f. False declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law.

- g. A supplier who has been debarred by any procuring entity for violation of this Order shall not be eligible for preference under this Order for procurement by any other procuring entity for the duration of the debarment. The debarment for such other procuring entities shall take effect prospectively from the date on which it comes to the notice of other procurement entities, in the manner prescribed under paragraph 9h below.
- h. The Department of Expenditure shall issue suitable instructions for the effective and smooth operation of this process, so that:
 - i. The fact and duration of debarment for violation of this Order by any procuring entity are promptly brought to the notice of the Member-Convenor of the Standing Committee and the Department of Expenditure through the concerned Ministry /Department or in some other manner;
 - ii. on a periodical basis such cases are consolidated and a centralized list or decentralized lists of such suppliers with the period of debarment is maintained and displayed on website(s);
 - iii. in respect of procuring entities other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in the such a manner that ongoing procurements are not disrupted.

10. Specifications in Tenders and other procurement solicitations:

- a. Every procuring entity shall ensure that the eligibility conditions in respect of previous experience fixed in any tender or solicitation do not require proof of supply in other countries or proof of exports.
- b. Procuring entities shall endeavour to see that eligibility conditions, including on matters like turnover, production capability and financial strength do not result in unreasonable exclusion of 'Class-I local supplier'/ 'Class-II local supplier' who would otherwise be eligible, beyond what is essential for ensuring quality or creditworthiness of the supplier.
- c. Procuring entities shall, within 2 months of the issue of this Order review all existing eligibility norms and conditions with reference to sub-paragraphs 'a' and 'b' above.

d. Reciprocity Clause

- i. When a Nodal Ministry/Department identifies that Indian suppliers of an item are not allowed to participate and/ or compete in procurement by any foreign government, due to restrictive tender conditions which have direct or indirect effect of barring Indian companies such as registration in the procuring country, execution of projects of specific value in the procuring country etc., it shall provide such details to all its procuring entities including CMDs/CEOs of PSEs/PSUs, State Governments and other procurement agencies under their administrative control and GeM for appropriate reciprocal action.

- ii. Entities of countries which have been identified by the nodal Ministry/Department as not allowing Indian companies to participate in their Government procurement for any item related to that nodal Ministry shall not be allowed to participate in Government procurement in India for all items related to that nodal Ministry/ Department, except for the list of items published by the Ministry/ Department permitting their participation.
 - iii. The stipulation in (ii) above shall be part of all tenders invited by the Central Government procuring entities stated in (i) above. All purchases on GeM shall also necessarily have the above provisions for items identified by nodal Ministry/ Department.
 - iv. State Governments should be encouraged to incorporate similar provisions in their respective tenders.
 - v. The term 'entity' of a country shall have the same meaning as under the FDI Policy of DPIIT as amended from time to time.
- e. Specifying foreign certifications/ unreasonable technical specifications/ brands/ models in the bid document is restrictive and discriminatory practice against local suppliers. If foreign certification is required to be stipulated because of non-availability of Indian Standards and/or for any other reason, the same shall be done only after written approval of Secretary of the Department concerned or any other Authority having been designated such power by the Secretary of the Department concerned.
- f. "All administrative Ministries/Departments whose procurement exceeds Rs. 1000 Crore per annum shall notify/ update their procurement projections every year, including those of the PSEs/PSUs, for the next 5 years on their respective website."

10A. Action for non-compliance of the Provisions of the Order: In case restrictive or discriminatory conditions against domestic suppliers are included in bid documents, an inquiry shall be conducted by the Administrative Department undertaking the procurement (including procurement by any entity under its administrative control) to fix responsibility for the same. Thereafter, appropriate action, administrative or otherwise, shall be taken against erring officials of procurement entities under relevant provisions. Intimation on all such actions shall be sent to the Standing Committee.

11. Assessment of supply base by Nodal Ministries: The Nodal Ministry shall keep in view the domestic manufacturing / supply base and assess the available capacity and the extent of local competition while identifying items and prescribing the higher minimum local content or the manner of its calculation, with a view to avoiding cost increase from the operation of this Order.

12. Increase in minimum local content: The Nodal Ministry may annually review the local content requirements with a view to increasing them, subject to availability of sufficient local competition with adequate quality.

13. **Manufacture under license/ technology collaboration agreements with phased indigenization:** While notifying the minimum local content, Nodal Ministries may make special provisions for exempting suppliers from meeting the stipulated local content if the product is being manufactured in India under a license from a foreign manufacturer who holds intellectual property rights and where there is a technology collaboration agreement / transfer of technology agreement for indigenous manufacture of a product developed abroad with clear phasing of increase in local content.

13A. In procurement of all goods, services or works in respect of which there is substantial quantity of public procurement and for which the nodal ministry has not notified that there is sufficient local capacity and local competition, the concerned nodal ministry shall notify an upper threshold value of procurement beyond which foreign companies shall enter into a joint venture with an Indian company to participate in the tender. Procuring entities, while procuring such items beyond the notified threshold value, shall prescribe in their respective tenders that foreign companies may enter into a joint venture with an Indian company to participate in the tender. The procuring Ministries/Departments shall also make special provisions for exempting such joint ventures from meeting the stipulated minimum local content requirement, which shall be increased in a phased manner.

14. **Powers to grant exemption and to reduce minimum local content:** The administrative Department undertaking the procurement (including procurement by any entity under its administrative control), with the approval of their Minister-in-charge, may by written order, for reasons to be recorded in writing,

- a. reduce the minimum local content below the prescribed level; or
- b. reduce the margin of purchase preference below 20%; or
- c. exempt any particular item or supplying entities from the operation of this Order or any part of the Order.

A copy of every such order shall be provided to the Standing Committee and concerned Nodal Ministry / Department. The Nodal Ministry / Department concerned will continue to have the power to vary its notification on Minimum Local Content.

15. **Directions to Government companies:** In respect of Government companies and other procuring entities not governed by the General Financial Rules, the administrative Ministry or Department shall issue policy directions requiring compliance with this Order.

16. **Standing Committee:** A standing committee is hereby constituted with the following membership:

Secretary, Department for Promotion of Industry and Internal Trade—Chairman
Secretary, Commerce—Member
Secretary, Ministry of Electronics and Information Technology—Member
Joint Secretary (Public Procurement), Department of Expenditure—Member
Joint Secretary (DPIIT)—Member-Convenor

The Secretary of the Department concerned with a particular item shall be a member in respect of issues relating to such item. The Chairman of the Committee may co-opt technical experts as relevant to any issue or class of issues under its consideration.

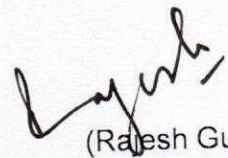
17. Functions of the Standing Committee: The Standing Committee shall meet as often as necessary, but not less than once in six months. The Committee

- a. shall oversee the implementation of this order and issues arising therefrom, and make recommendations to Nodal Ministries and procuring entities.
- b. shall annually assess and periodically monitor compliance with this Order
- c. shall identify Nodal Ministries and the allocation of items among them for issue of notifications on minimum local content
- d. may require furnishing of details or returns regarding compliance with this Order and related matters
- e. may, during the annual review or otherwise, assess issues, if any, where it is felt that the manner of implementation of the order results in any restrictive practices, cartelization or increase in public expenditure and suggest remedial measures
- f. may examine cases covered by paragraph 13 above relating to manufacture under license/ technology transfer agreements with a view to satisfying itself that adequate mechanisms exist for enforcement of such agreements and for attaining the underlying objective of progressive indigenization
- g. may consider any other issue relating to this Order which may arise.

18. Removal of difficulties: Ministries /Departments and the Boards of Directors of Government companies may issue such clarifications and instructions as may be necessary for the removal of any difficulties arising in the implementation of this Order.

19. Ministries having existing policies: Where any Ministry or Department has its own policy for preference to local content approved by the Cabinet after 1st January 2015, such policies will prevail over the provisions of this Order. All other existing orders on preference to local content shall be reviewed by the Nodal Ministries and revised as needed to conform to this Order, within two months of the issue of this Order.

20. Transitional provision: This Order shall not apply to any tender or procurement for which notice inviting tender or other form of procurement solicitation has been issued before the issue of this Order.



(Rajesh Gupta)
Director

Tel: 23063211

rajesh.gupta66@gov.in

No.F.1/4/2021-PPD
Government of India
Ministry of Finance
Department of Expenditure
Public Procurement Division

264-C, North Block, New Delhi.
18.05.2023.

OFFICE MEMORANDUM

Subject: Concurrent application of Public Procurement Policy for Micro and Small Enterprises Order, 2012 and Public Procurement (Preference to Make in India) Order, 2017.

The undersigned is directed to refer two Preferential Procurement Orders mandated for the Public Procurement in India, namely:

- i. Public Procurement Policy for Micro and Small Enterprises (MSEs) Order dated 23.03.2012 (PPP-MSE Order) issued by Ministry of Micro, Small and Medium Enterprises (MoMSME) in exercise of the powers conferred in Section 11 of the MSME Development Act, 2006. (Last revised on 09.11.2018)
 - ii. Public Procurement (Preference to Make in India) Order, 2017 (PPP-MII order), under Rule 153(iii) of the General Financial Rules (GFRs) 2017, approved by the Cabinet. Implementation of this PPP-MII order is monitored by Department for Promotion of Industry and Internal Trade (DPIIT). (Last revised on 16.09.2020.)
2. It has been brought to the notice of this Department that concurrent application of these two orders are creating confusion to the procuring entities and different procuring entities interpret them differently. In order to bring predictability both to the procuring entities as well as bidders, following guidelines are being issued.

Guidelines

3. The Class-I local suppliers, under PPP-MII Order, participating in any government tender, may or may not be MSEs, as defined under the MSME Act. Similarly, MSEs participating in any government tender, may or may not be Class-I local suppliers. Suppliers may be categorised in following four broad categories for consideration or applicability of purchase preference:

Category	Terminology
Supplier is both MSE & Class-I local supplier.	"MSE Class-I local supplier"
Supplier is MSE but not Class-I local supplier.	"MSE but non-Class-I local supplier"
Supplier is not MSE but is Class-I local supplier.	"Non-MSE but Class-I local supplier"
Supplier is neither MSE nor Class-I local.	"Non-MSE non-Class-I local supplier"

4. The applicability of PPP-MSE Order and PPP-MII Order in various scenarios, involving simultaneous purchase preference to MSEs and Class-I local suppliers under PPP-MSE Order and PPP-MII Order respectively, shall be as under:

a) *Items covered under Para 3(a) of PPP- MII Order, 2017 for which Nodal Ministry has notified sufficient local capacity and competition:* For these items, only Class-I local suppliers are eligible to bid irrespective of purchase value. Hence, Class-II local suppliers or Non-local suppliers, including MSEs which are Class-II local suppliers/ Non-local suppliers, are not eligible to bid. Possible scenarios can be as under:

- (i) L-1 is "MSE Class-I local supplier" - 100% of the tendered quantity is to be awarded to L-1.
- (ii) L-1 is "Non-MSE but Class-I local supplier" - Purchase preference is given to MSEs as per PPP-MSE Order. Balance quantity is to be awarded to the L-1 bidder.

b) *Items reserved exclusively for procurement from MSEs as per PPP-MSE Order:* These items are reserved exclusively for purchase from MSEs. Hence, non-MSEs are not eligible to bid for these items. Possible scenarios can be as under:

- (i) L-1 is "MSE Class-I local supplier" - 100% of the tendered quantity is to be awarded to L-1.
- (ii) L-1 is "MSE non-Class-I local supplier" - Purchase preference is to be given to Class-I local supplier as per PPP-MII Order. Balance quantity, is to be awarded to L-1 bidder.

c) *If items are neither notified for sufficient local capacity nor reserved for MSEs, then the process will be as follows:*

c (a) Items covered under Para 3A(b) of PPP-MII Order are divisible items and both MSEs as well as Class-I local suppliers are eligible for purchase preference. Possible scenarios can be as under:

- (i) L-1 is "MSE Class-I local supplier" - 100% of the tendered quantity is to be awarded to L-1.
- (ii) L-1 is "Non-MSE but Class-I local supplier" - Purchase preference is to be given to MSEs, if eligible, as per PPP-MSE Order. Balance quantity is to be awarded to L-1 bidder.
- (iii) L-1 is "MSE but non-Class-I local supplier" - Purchase preference is to be given to Class-I local suppliers, if eligible, as per PPP-MII Order. Balance quantity is to be awarded to L-1 bidder.
- (iv) L-1 is "Non-MSE non-Class-I local supplier" - Purchase preference is to be given to MSEs as per PPP-MSE Order. Thereafter, purchase preference is to be given to Class-I local suppliers for "50% of the tendered quantity minus quantity allotted to MSEs

above" as per PPP- MII Order. For the balance quantity, contract is to be awarded to L-1 bidder. (Kindly refer to the illustrative example in the annexure).

- c (b) Items covered under Para 3A(c) of PPP-MII Order, 2017 are non-divisible items and both MSEs as well as Class-I local suppliers are eligible for purchase preference. Possible scenarios can be as under:
- (i) L-1 is "MSE Class-I local supplier" - Contract is awarded to L-1.
 - (ii) L-1 is not "MSE Class-I local supplier" but the "MSE Class-I local supplier" falls within 15% margin of purchase preference - Purchase preference is to be given to lowest quoting "MSE Class-I local supplier". If lowest quoting "MSE Class-I local supplier" does not accept the L-1 rates, the next higher "MSE Class-I local supplier" falling within 15% margin of purchase preference is to be given purchase preference and so on.
 - (iii) If conditions mentioned in sub paras (i) and (ii) above are not met i.e. L-1 is neither "MSE Class-I local supplier" nor "MSE Class-I local supplier" is eligible to take benefit of purchase preference, the contract is to be awarded/ purchase preference to be given in different possible scenarios as under:
 - A. L1 is "MSE but non-Class-I local supplier" or "Non-MSE but Class-I local supplier" – Contract is to be awarded to L1.
 - B. L1 is "Non-MSE non-Class-I local supplier" - First purchase preference to be given to MSE as per PPP-MSE Order. If MSE not eligible/ does not accept - purchase preference to be given to Class- I Local supplier as per PPP-MII Order. If Class-I Local supplier also not eligible/ does not accept – contract to be awarded to L-1.
- d) *Items reserved for both MSEs and Class-I local suppliers:* These items are reserved exclusively for purchase from MSEs as well as Class-I local suppliers. Hence, only "MSE Class-I local supplier" are eligible to bid for these items. Non-MSEs/Class-II local suppliers/ Non-local suppliers cannot bid for these items. Hence the question of purchase preference does not arise.
- e) Non-local suppliers, including MSEs falling in the category of Non-local suppliers, shall be eligible to bid only against Global Tender Enquiry.

(Kanwalpreet)
Director

Tel.: -223093811; email: - kanwal.irss@gov.in

To

1. Secretaries of all Central Government Ministries/ Departments.
2. Secretary Department of Public Enterprises with a request for issuing suitable instructions to all Central Public Sector Enterprises in this regard.

Example explaining applicability in scenario explained in para 4 c (a)(iv)

(Scenario: Divisible items, both MSEs as well as Class-I local suppliers eligible for purchase preference and L-1 is "Non-MSE non-Class-I local supplier")

Item – Desktop computer

Qty – 50 Nos.

Details of bids received

Sr. No.	Name of bidder	Rates quoted	Price Ranking	Status of bidder
1.	A	100	L1	"Non-MSE non- Class-I local supplier"
2.	B	110	L2	"Non-MSE but Class-I local supplier"
3.	C	112	L3	"MSE but non- Class-I local supplier"
4.	D	115	L4	"Non-MSE but Class-I local supplier"
5.	E	118	L5	"MSE but non- Class-I local supplier"
6.	F	120	L6	"MSE Class-I local supplier"

1. In this case, first purchase preference is to be given to MSEs as per PPP-MSE Order for 25% of tendered quantity of 50 Nos. i.e. 12.5 Nos. (rounded off to the next whole number say 13 Nos). Accordingly, invite L3 (bidder C), whose quoted rates falls within 15% margin of purchase preference to match L1 price i.e. Rs. 100/- for quantity of 13 Nos. Bidder "E" and "F", although MSEs, will not get purchase preference since their quoted rates don't fall within 15% margin of purchase preference. Bidder C will be considered for order of 13 Nos. on confirmation of reduction of price.
2. For 50% of balance quantity of 37 number (tendered quantity of 50 – 13 awarded to bidder C; assuming bidder C has confirmed to accept L1 rates), purchase preference will be given to lowest Class-I local supplier as per PPP-MII Order. Accordingly, bidder B will be invited to match L-1 price for 50% of 37 Nos i.e. 18.5 (say 19 Nos of computers). If bidder "B" does not accept the L1 price i.e. price of Rs. 100/- per unit, next higher Class-I local supplier falling within 20% margin of purchase preference, i.e. bidder "D", may be invited to match L-1 price for 19 Nos. of computers and so on.
3. For remaining quantity i.e. 18 Nos (50-13-19), the contract will be awarded to lowest quoting bidder i.e. Bidder "A", who is L-1 in the example.



NON – DISCLOSURE AGREEMENT

BETWEEN

BEML LIMITED
BENGALURU

AND

.....

NON – DISCLOSURE AGREEMENT

This Non – Disclosure Agreement (hereinafter referred to as "**NDA**") is made and entered into between ;

M/s BEML LIMITED, a Central Public Sector Undertaking, coming under the administrative control of Ministry of Defence, and a Company incorporated under the Companies Act, 1956, having its Corporate Office at 'BEML SOUDHA', 23/1, 4th Main, SR Nagar, Bengaluru – 560027, India (hereinafter referred to as "**BEML**" which expression, unless repugnant to the context, shall mean and include its successors and permitted assigns) of the One Part ,

And

M/s..... (Hereinafter referred to as "**Consultant**" which expression, unless repugnant to the context, shall mean and include its successors and permitted assigns) Other Part.

Hereinafter, BEML and the Consultant are collectively referred to as "**Parties**" and individually as "**Party**".

WHEREAS, BEML is a multi-technology heavy engineering industry engaged in the business of design, development, manufacture and marketing of a variety of equipment and spare parts and aggregates required for Mining & Construction ,Rail and Metro Defence and Aerospace, etc.

Whereas the Firm is engaged in

Whereas BEML intends to procure trackshoe profiles from the firm where the drawings will be shared to the firm. (hereinafter referred to as "**the Purpose**"). If the firm emerged as the successful bidder and agreed to provide his products in accordance with terms and conditions specifically stipulated in -the Tender

Whereas as per the Tender documents the Successful bidder has to execute a Non-Disclosure Agreement on Non-judicial stamp paper before placement of Purchase order

as the Parties may disclose certain Information to each other, and the Parties recognise that careful protection and non-disclosure by the Party receiving the Confidential Information (hereinafter referred to as the "**Receiving Party**") from the Party disclosing such Confidential Information (hereinafter referred to as the "**Disclosing Party**") is of vital importance while executing the purpose.

NOW THEREFORE, in consideration of the mutual promises made herein, the Parties agree to disclose and receive certain Confidential Information only under the following terms and conditions:

1. SCOPE OF THE NDA

1.1. The Parties recognise that there is a need to disclose to one another certain Confidential Information for the purpose. Confidential information is to be used only for the Purpose.

1.2. The following terms and conditions shall apply when the Disclosing Party discloses Confidential Information to the Receiving Party. Nothing contained in this NDA shall be construed as granting rights by the Disclosing Party to the Receiving Party, by license or otherwise, to any of the Confidential Information under any patent, know-how or other rights till now or hereinafter held by the Disclosing Party except as specified in this NDA. The Disclosing Party will provide Confidential Information without warranties of any nature whatsoever.

1.3. The firm should not participate in any tenders published by BEMLS customer in terms of spares or any kind of supply of the products to BEML customers.

2. CONFIDENTIAL INFORMATION

The term "Confidential Information" shall mean and refer to all or any information and data of confidential or proprietary in nature which is disclosed by the Disclosing Party to the Receiving Party, including but not limited to, past, current and future customer information, proprietary, technical, financial, personnel,

marketing, pricing, sales and/or commercial information with respect to the “Purpose” as well as ideas, concepts, designs, drawings and inventions, embedded hardware design, data and information, computer source and object code and computer programming techniques; and all record bearing media containing or disclosing such information and techniques which are disclosed pursuant to this NDA

3. EXCEPTIONS

This NDA imposes no obligation upon the Receiving Party with respect to information that:

- a) is now, or hereafter becomes, through no act or failure to act on the part of the Receiving Party, generally known or available to the public;
- b) is hereafter rightfully furnished to the Receiving Party by a third party, without restrictions to use or disclosure;
- c) is disclosed with the prior written consent of the Disclosing Party; or
- d) is required to be disclosed in pursuant to law, order of the court or Government authority, and then only to the extent ordered by the court or governmental authority, provided that the Receiving Party shall give a notice as early as possible to enable the Disclosing Party to get a protective order.

4. NON-DISCLOSURE

All Confidential Information is and shall remain the property of the Disclosing Party. The Receiving Party agrees to hold the Confidential Information disclosed to it by the disclosing party in strict confidence and will not disclose the Confidential Information to any third party without the prior written consent of the Disclosing party.

5. RECEIVING PARTY'S OBLIGATIONS:

The Receiving Party undertakes:

- a) to use the same care and discretion to avoid disclosure, publication or dissemination of the Confidential Information as it uses with respect to its own Confidential Information, but no less than reasonable care;

- b) not to use the Confidential Information for any other purpose except for the purpose for which the information has been disclosed.
- c) to comply with any other reasonable security measures requested in writing by the Disclosing Party;
- d) not to, under any circumstances, copy, replicate, or reverse engineer any products or services of the Disclosing Party by unauthorised use of Confidential Information and shall not infringe the intellectual property rights law applicable to the Disclosing Party;
- e) not to, directly or indirectly, make or permit any oral or written communications to the public media regarding the Confidential Information of the Disclosing Party, its business or clients or use the name of the Disclosing Party in any public announcements, promotional, marketing or sales materials or efforts, without the express prior approval of the Disclosing Party.
- f) Not to disclose Confidential Information to any third party without the prior consent of the Disclosing party.
- g) to disclose the confidential information to its employees, on a 'need to know' basis for the purpose of this NDA.

6. REMEDIES

The Parties recognise and acknowledge that Confidential Information is of a special, unique and extraordinary character to the Disclosing Party and that disclosure, misappropriation or unauthorized use of such Confidential Information by the Receiving Party cannot be fully compensated and that, further any such disclosure, misappropriation or unauthorized use of the Confidential Information shall cause irreparable injury to the Disclosing Party. The Receiving Party expressly agrees, therefore, that the Disclosing Party, in addition to any rights and remedies it may have under this NDA or at law or in equity, shall be entitled to seek injunctive and other equitable relief to prevent the breach, or the further breach, or any of the terms and provisions hereof. The Receiving Party agrees to reimburse the Disclosing Party for any and all losses, liabilities, damages, costs and expenses (including reasonable attorney's fees and court costs) incurred and sustained by the Disclosing Party as a result of any breach of this NDA

7. TERM

The term of this NDA shall be till the completion of purchase order and that the obligations of the Receiving Party to protect the Confidential Information under this NDA shall survive for a period of two (2) years from the date of its early termination or expiry.

8. TERMINATION

This NDA shall, unless otherwise extended by mutual agreement of the Parties, terminate upon happening of any of the following events :

- (a) Termination by mutual consent.
- (b) Termination by either party due to breach of any of the covenants hereof by the other
- (c) by giving written notice in the event of the liquidation, bankruptcy, reorganization, dissolution or insolvency of the other Party resulting in that Party's inability to perform the obligations under this Agreement;

Notwithstanding the above, termination shall not prejudice any obligation that has arisen prior to the date of effective termination between the Parties and/or obligation of either Party to any other third party.

9. RETURN OF CONFIDENTIAL INFORMATION

Upon the expiry or termination of this NDA or at the earlier request of the Disclosing Party, the Receiving Party shall return all Confidential Information to the Disclosing Party without retaining any copies of such Confidential Information or, if so desired by the Disclosing Party, confirm in writing that all such Confidential Information has been destroyed. Notwithstanding the return or destruction of the Confidential Information, the Receiving Party will continue to be bound by its obligations of confidentiality and other obligations hereunder.

10. DISPUTE SETTLEMENT& JURISDICTION :

Disputes if any, arising between the Parties, in connection with this NDA or any other matters connected therewith, the same will be mutually discussed and amicably settled between the parties, failing which, the disputes shall be referred to Arbitration in accordance with the provisions of Arbitration and Conciliation Act, 1996 and Rules framed there under from time-to-time. The place of Arbitration shall be at Bengaluru and the Arbitration proceedings shall be conducted in English language.

Courts at Bengaluru alone will have jurisdiction to entertain, try and adjudicate any matter connected with this Agreement, including Arbitration.

11. NON-SOLICITATION

No Party shall, either directly or indirectly, on its own behalf or on the behalf of others, solicit or hire for work any person(s) employed by the other Party, whether or not such employment is pursuant to a written contract or is at will, without the express written permission of such other Party, or until such employee has ceased his/her employment with such other Party for at least two (2) years. This clause shall survive for a period of two years even from the date of termination.

12. AMENDMENT

Any amendment or modification of this NDA shall be valid only if the same is in writing and signed by or on behalf of each of the Parties.

13. MISCELLANEOUS

13.1 Severability and Waiver. If any provision of this NDA is held to be invalid or unenforceable for any reason, the remaining provisions shall continue in full

force without being impaired or invalidated in any way. The Parties shall replace any invalid provision with a valid provision, which must closely approximate the intent and economic effect of the invalid provision. The waiver by the Disclosing Party of a breach of any provision of this NDA shall not operate or be interpreted as a waiver of any other or subsequent breach.

13.2.Notices. All notices under this NDA must be in writing and must be either: faxed; mailed by registered or certified mail, postage prepaid and return receipt requested; or delivered by hand to the party to whom such notice is required or permitted to be given at the address set out in the title of this NDA.

IN WITNESS WHEREOF, the Parties hereto have set their respective hands to this NDA on(Day) (Month) (Year)at (Place) in the presence of the following witnesses.

For BEML LIMITED

Firm

Name:

Name:

Signature:

Signature:

WITNESSES :

WITNESSES :

1.

1.

2.

2.

GENERAL TERMS & CONDITIONS

APPLICABLE TO CONTRACTS & PURCHASE ORDER

8205350535 Dtd 13th July- 2017

1. DEFINITIONS & INTERPRETATIONS

- 1.1. **`The Purchaser`** means “(include company name and address)” (A Government of India Undertaking) incorporated under the Companies Act having its registered office at “(include address)” and shall be deemed to include its successors and assignee.
- 1.2. **`Supplier`** means a person having been included in a contract as a Contractor and also means a firm or company with whom the order for supply is placed and shall be deemed to include the supplier’s successors, (approved by BEML Ltd.,) representatives, heirs, executors and administrators. The supplier may also be referred to as the supplier, Contractor or vendor.
- 1.3. **`Parties to the Contract`** shall mean the Supplier and the Purchaser as named in the main body of the Purchase Order.
- 1.4. **`Tender`** means and includes quotation, invitation to tender and all other documents like drawings, specifications, quality plan, etc that form part of the tender document.
- 1.5. **`Acceptance of Tender`** Means the letter of memorandum communicating supplier, the acceptance of the Tender and includes advance acceptance of this tender.
- 1.6. **`Purchase Orders / Contract`** means and includes the invitation to tender, instruction to tenderers, acceptance of tender, Letter of intent / letter of award, the general terms and conditions of Purchase Order / contract, special conditions of Purchase Order / contract, particulars, descriptions, specifications, schedule of prices, quantities, quality plan, drawings enclosed and other condition specified in the acceptance of tenders and includes the repeat order which has been accepted or acted upon by / for the supplier for the supply of stores and includes an order for performance of service and includes amendments, if any, that may take place subsequent to the discussions, negotiations, mutual agreement if any.
- 1.7. **`Stores / Materials / Services`** means the goods or services specified in the Purchase Order which the supplier has agreed to supply under the Purchase Order.
- 1.8. **`Words in singular include the plural & vice-versa.**
- 1.9. Words imparting the masculine gender shall be taken to include the feminine gender and words imparting persons shall include any firm, company or associations or body of individuals whether incorporated or not.
- 1.10 The heading of these conditions shall not affect the interpretations o construction thereof of the contract.

2. AUTHORITY OF PERSONS SIGNING DOCUMENT

A person signing the tender or any other document in respect of the Purchase Order shall be deemed to have power to do so on behalf of the Supplier.

3. ACCEPTANCE OF ORDER

The supplier shall send Order Acceptance within two weeks from the date of LOI/LOA/Purchase Order or such other period as specified / agreed by the Purchaser. Purchaser reserves the right to revoke the order placed if the order confirmation differs from the original Purchase Order placed and the Purchaser shall only be legally bound after it has agreed explicitly in writing to be in agreement with the deviation. The acceptance of deliveries or supplies by Purchaser as well as payments made in this regard shall not imply acceptance of any deviations. The Purchase Order will be deemed to have been accepted if no communication to the contrary is received within two weeks (or the time limit as specified / agreed by the Purchaser) of the receipt of the order.

4. SECURITY DEPOSIT / PERFORMANCE GUARANTEE

4.1 10 % of PO value has to be deposited as interest free security deposit/Performance Guarantee at the time of acceptance of offer in respect of all service contracts and major capital goods like plant and machinery, etc as follows:

(i) Bank guarantee for faithful performance (FPBG), Combined Bank Guarantee for contract performance covering delivery obligation and warranty (CBG) clause for 10% of the total order value shall be applicable where the order value exceeds Rs.5.00 lakhs. Bank guarantee for faithful performance, combined bank guarantee covering both contract performance and warranty, Advance Payment guarantee etc., shall be indicated wherever applicable.

(ii) A period of 60 days time from the date of Purchase Order or the delivery schedule, whichever is earlier shall be stipulated for submission of Bank Guarantee so that contractual remedies could be enforced, if required.

(iii) A bank guarantee for a nominal amount of Rs.5000/- must be obtained from each Sub-contractor valid for a year, on yearly basis

4.2 BEML reserves the right to accept a bank guarantee from any of the nationalized banks in lieu of cash deposit as security deposit as calculated above at its sole discretion. These bank guarantees shall be valid for the full supply period of the Purchase Order with a claim period of three months.

4.3 No claim shall lie against BEML Ltd., in respect of interest on cash deposits or Govt. Securities depreciation thereof

4.5 BEML Ltd. shall be entitled and it shall be lawful on its part to forfeit the said security deposit in whole or in part in the event of any default, failure or neglect on the part of the supplier in the fulfilment or performance in all respect of the Purchase Order.

5. VALIDITY PERIOD

The Purchase Order is valid for a maximum period for 24 months from the date of issue unless otherwise stated, within which time the supplier shall complete the supplies failing which the Purchase Order shall be treated as cancelled / short closed unless it is revalidated against specific request for reasons acceptable to BEML Ltd.,

6. QUALITY AND WORKMANSHIP

The stores supplied shall be of the best quality and Workmanship shall be in strict conformity with all the drawings and specifications furnished with the Purchase Orders and shall answer to the description in all respects. All supplies shall be accompanied by supplier's works inspections/test certificates duly certifying, the Stores are in strict conformity with the drawings / specifications. However, final acceptance will be subject to inspection and approval at BEML works. Once the materials are rejected and communicated to the supplier, no request shall be entertained for re-inspection or acceptance of the stores. However, BEML reserves the right to re-inspect the stores and consider acceptance at its discretion.

7. GUARANTEE / WARRANTY :

a. Guarantee

Wherever required, and so provided in the specifications / Purchaser Order, the Supplier shall guarantee that the stores supplied shall comply with the specifications laid down, for materials, workmanship and performance. If within the guarantee period the delivery is found to be non-compliant including those with the stipulations in clause 10 (Quality and Condition of Delivery) of these Conditions, the Supplier shall, on its own account, replace, repair, or re-execute the delivery at Purchaser's discretion when first requested to do so within two weeks or mutually agreed period, without prejudice to Purchaser's other legal rights. If the Supplier continues to default on its obligations, Purchaser has the right to proceed to replace, repair or re-execute the order at the Supplier's expense, with or without help from third parties besides, Purchaser's other legal remedies. Purchaser shall notify the Supplier of the exercise of this right in advance where possible. Unless otherwise specified, guarantee period shall be 18 months after the date of delivery of goods. For capital goods or bought out packages which are intended to be incorporated in installations or systems the Guarantee period shall not start until the time the installations or systems are commissioned, provided always that the period ends no later than 30 months after the date of delivery of the goods. The guarantee period shall be extended by the period during which the goods are not in compliance with the stipulations in Clause 10 (Quality and Condition of Delivery). A guarantee period as described above shall apply afresh to replaced, repaired or re-executed parts of a delivery.

The decision of the Purchaser in regard to the Supplier liability under this clause shall be conclusive and final and will be binding on the supplier.

b. Warranty

All the stores supplied shall be warranted against any defect in material, Workmanship, design or dimension etc., for a period of twelve calendar months from the date they are actually put on use or eighteen months from the date of receipt of supply in BEML Limited whichever is earlier and the supplier shall remedy such defects at his/her own cost or replace free of charge such stores when called upon to do so by BEML who shall stage in writing in what respect the stores are defective. Warranty Certificate shall be furnished by the Supplier in triplicate as under covering the entire supplies to be made against this order within 15 days from the date of order, but before commencement of supplies.

The supplies covered under P.O.No. date by Warranted against all defects in material, workmanship, design dimensions etc., for a period of 12 months from the date they are put to actual use or 18 months from the date of receipt of supply in BEML whichever is earlier and if any defects are found within the above period for any of the reasons stated, they will be replaced at your premises free of cost within a reasonable time.

8. SUPPLY OF SAMPLE

Before effecting the bulk supplies, an acceptable sample shall be submitted without any obligation on the part of BEML Ltd., as regards safe custody and shall obtain necessary clearance for effecting bulk supplies as per schedule of delivery. Samples so supplied shall be clearly labelled with Supplier's Name, Address and Purchase Order No. shall any certified sample be lent by BEML the suppliers shall be responsible for the safe custody and return of the certified sample intact without damage after the purpose for which it is given is served, without delay or when demanded back. Any clarification regarding submission of sample may be obtained from Chief of Quality department. If the supplier submits a sample whether with, before or after the tender, the same shall not govern the standard of supply, except when it has been so specifically stated in the acceptance of tender.

9. PACKING AND DISPATCH

The supplier shall package the deliveries safely and carefully and pack them suitably in all respects considering the peculiarity of the material for normal safe transport by Sea / Air / Rail / Road to its destination suitably protected against loss, damage, corrosion in transit and the effect of tropical salt laden atmosphere. The packages shall be provided with fixtures / hooks and sling marks as may be required for easy and safe handling by mechanical means.

The packing, shipping, storage and processing of the delivery must comply with the prevailing legislation and regulations concerning safety, the environment and working conditions. Items packed with raw / solid wood packing material shall be treated as per ISPM – 15 (fumigation) and accompanied by Phytosanitary / Fumigation certificate. If safety information sheets exist for a delivery or the packaging, the Supplier must always supply these sheets direct (at the same time).

The Supplier shall inform the Purchaser one month in advance of likely shipment date/s, the no. of packages, Gross weight & Net weight, Dimensions (LxBxH) of each of the packages. Each such package must be marked with Consignee name, P.O. Number, Package No., Gross weight & Net weight, dimensions (LxBxH) and Supplier's name. The packing shall allow for easy removal and checking of goods on receipt and comply with carrier's conditions of packing or established trade practices. Packing list of goods inside each package with PO item no., & Quantity must also be fixed securely outside the box to indicate the contents. If any consignment needs special handling instruction, the same shall be clearly marked with standard symbols / instructions. Hazardous material shall be notified such and their packing, transportation and other protection must conform to relevant regulations.

10. RAW MATERIALS ARRANGEMENT

The Supplier shall make his own arrangement to procure all raw materials required and BEML shall not be responsible for any assistance in such procurement or whatsoever.

11. IDENTIFYING OF ITEMS / PIECES

The supplier shall indicate BEML stock number and Supplier Code Number / Vendor Code No. and BEML PO No. in all Delivery documents / invoices and correspondence. Also he shall emboss / engrave the Supplier Code No. / Vendor Code No. on each item / piece at a convenient non-machinable place, otherwise the supplies are liable for rejections.

12. DELIVERY

Except as otherwise indicated in the Purchase Order, delivery shall be FOR (BEML). Trade terms such as EXW, FOB, CFR etc., if stipulated in the order shall be construed in accordance with the version of the INCOTERMS applicable at the time of ordering, without prejudice to the provisions contained in these conditions. The delivery date(s) or delivery period(s) as stipulated in the agreement shall be firm and binding and shall apply to the entire delivery for each PO item. Partial shipments may, however, be permitted by the purchaser.

The time and the date of delivery of the stores stipulated in the PO No. shall be deemed to be the essence of the Purchase Order and delivery must be completed not later than the dates specified therein. The supplier shall strictly adhere to the delivery schedule indicated in the P.O. Any supplies made ahead of this schedule are liable for rejection at the discretion of BEML. Shall the supplier fail to deliver the stores or any consignment thereof within the period prescribed for such delivery, BEML shall be entitled at their option either.

- a) To purchase elsewhere, without notice to the supplier on the account and at the risk and cost of the supplier the stores not delivered or other of a similar description where stores exactly comply with the description are not in the opinion of BEML (which shall be final, readily procurable) without cancelling the P.O. in respect of consignments not yet due for delivery.

Or

b) To cancel the Purchase Order

In the event of action being taken under (a) or (b) the supplier shall be liable for any loss which BEML may sustain on that account but the supplier shall not be entitled to any gain on purchase made against default. As soon as it is apparent that the scheduled dates cannot be adhered to, an application shall be sent by the supplier to BEML, well before the expiry of the delivery period specified in the Purchase Order. Without prejudice to the foregoing rights, if such failure to deliver in proper time as aforesaid shall have arisen from any cause which BEML may admit as a reasonable ground for an extension of the time (and their decision shall be final) they may allow such additional time as they may consider justified by circumstances of the case.

Delivery required to be made in lots shall be made in lots only and any extra deliveries involved either on account of repeated rejections or variance in supply or loss shall be liable for service charges of 5% of the Purchase Order value for each extra delivery.

13. PLANT & MACHINERY SUPPLY

In case of Purchase Order for supply of Plant & Machinery and supplies requiring inspection and test after erection and *commissioning* at site if the completed Plant or any portion thereof or after it is taken over is found to be defective or fails to fulfill the requirements of the P.O. BEML shall give the supplier, notice setting forth details of such defects or failures, and the supplier shall forth with make the defective plant good, or after the same to make it comply with the requirements of the P.O. shall he fail to do so within a reasonable time BEML may reject and replace at the cost of the supplier the whole or any portion of the Plant / Machinery, as the case may be which is defective or fails to fulfil the requirements.

14. INSPECTION AND TESTING:

The goods and stores shall be of approved design and each part / component may be inspected and tested by the Purchaser prior to shipment and shall fully comply with relevant requirements of purchaser.

Purchaser has the right to inspect the delivery. In the event of rejection, Purchaser shall inform the Supplier accordingly and Purchaser shall be entitled to replacement or repair at its discretion or may proceed to terminate or annul the agreement. All this does not affect Purchaser's right to compensation.

In case the goods / stores are rejected at the time of inspection at BEML or the rejections are notices at the time of further processing the supplier will be informed of these rejections. On receipt of this information the supplier shall immediately arrange to collect the rejected items at his cost and risk and arrange for the replacement of goods within the shortest possible time. Under no circumstances the supplier shall compel the Purchaser to rework the rejected goods.

Wherever the supplier has not collected the rejected items within 60 days from the date of intimation, BEML shall have the right to dispose the goods and all cost related to the cost of material, statutory levies incurred both in procurement and disposal shall

be recovered from the supplier from any of the bills that are due. The supplier shall have no claims whatsoever against the Purchaser for such disposal.

Purchaser or his authorized representative shall be entitled at all reasonable times during execution to inspect, examine and test at the Supplier's premises the material and workmanship of all stores to be supplied under the Contract, and if the part of the stores are being manufactured at other premises the Supplier shall obtain Purchaser's or his authorized representative's permission to inspect, examine and test as if the said stores are being manufactured at the Supplier's premises. Such inspection, examination and testing, if made shall not release the Supplier from any obligation under the Contract.

All costs related to inspections and re-inspections shall be borne by the Supplier. The cost of inspection staff / third party specified by the Purchaser shall be borne by Purchaser, unless otherwise specifically agreed. Whether the Contract provides for tests on the premises of the Supplier or any of his Sub-contractor/s, Supplier shall be responsible to provide assistance such as, labour, materials, electricity, fuels, stores, apparatus, instruments as may be required and as may be reasonably demanded to carry out such tests efficiently. Cost of any type test or such other special tests shall be borne by the Purchaser only if specifically agreed.

The supplier shall give the authorized representative of the Purchaser reasonable prior notice in writing of the date on and the place at which any stores will be ready for inspection / testing as provided in the Contract.

15. QUALITY & CONDITION OF DELIVERY

The Supplier guarantees that the delivery is of good quality and free from all defects and in the case of services rendered that they are performed by skilled personnel and that new materials are used.

The Supplier guarantees that the delivery corresponds exactly with the provisions of the agreement, the reasonable expectations of Purchaser regarding the characteristics, quality and reliability of delivery.

The Supplier guarantees that the delivery is suitable for the purpose for which it is intended by its very nature or which is evident from the specifications listed and from the order.

The Supplier guarantees that the delivery complies with legal requirements applicable in India and other (international) Government regulations, as applicable.

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The supplier guarantees that the delivery complies with the customary norms and standards in the relevant branch of trade or industry.

The supplier shall be responsible for compliance with applicable technical, safety, quality, environmental requirements and other regulations in relation to his product, packaging, and raw and ancillary materials.

16. PAYMENT PROCEDURE

All bills shall be submitted in triplicate to the concerned Accounts Department as per terms of the P.O. whenever the terms of P.O. stipulate for balance payment, a separate bill in triplicate for the balance amount shall be submitted.

Payment shall be recommended / arranged only when supplies are made strictly in line with the supply schedule of the P.O. Requests for piece meal payments are making staggered supplies, deviation from the supply schedule, shall not be entertained.

All direct payment shall be made by E-payment mode only. In case of foreign suppliers payments will be made through bank based on the documentation as called in the relevant Purchase Order directly to the supplier's banker for credit to supplier's account.

17. APPROPRIATION

BEML Ltd., shall be entitled to recover by appropriating in part or full any sum of money payable by the contractor under this contract or any other contract including contracts with other divisions of BEML. Shall the sum of amount recovered is not sufficient to cover the total amount due, BEML is entitled to recover such amount from the bills that becomes due or the contractor shall pay BEML the balance due.

18. CENTRAL EXCISE

The supplier shall obtain Central Excise Licenses opting to pay Excise Duty wherever applicable. Central Excise Duty Gate Pass in original shall be forwarded to the Chief of Stores, in respect of each consignment along with despatch documents. When goods are despatched through Road Transport Carriers, it shall be ensured that the Excise Duty Gate Pass No. and date is endorsed on the GC Note binding the carriers to deliver the Excise Duty Gate Passes in original to our Stores Department along with the consignment. Wherever Excise Duty is payable extra, the same shall be reimbursed at actual against production of qualified Excise Duty gate pass in original as a proof for having paid the duty on the particular consignment. The supplier shall ensure that the Gate Pass accompanies each consignment that is sent to us. In addition a photocopy of Gate Pass, in advance along with Invoice to be sent to Purchase Department in case of payment through Bank. If the terms of payment are other than the above, the photo copy of the Gate Pass with the bills etc. shall be sent to Accounts Department concerned. The Excise Duty Gate Pass number and date shall be incorporated in the Invoice, Delivery challan and all other despatch documents.

19. APPLICABLE LAWS AND JURISDICTION OF COURTS:

Indian laws both substantive and procedure, for the time being in force including modifications thereto, shall govern Contract. The competent Indian courts of shall have sole jurisdiction over disputes between purchaser and the Supplier.

20. INTELLECTUAL PROPERTY RIGHTS; LICENSES

If any Patent design, trademark or any other intellectual property rights apply to the delivery or accompanying documentation, Purchaser shall be entitled to the legal use thereof free of charge by means of anon-exclusive, worldwide, perpetual license. All intellectual property rights that arise due to the execution of the delivery by the Supplier and by its employees or third parties involved by the Supplier for performance of the agreement belong to Purchaser.

The Supplier shall be obligated to do everything necessary to obtain or establish the above mentioned rights. The Supplier guarantees that the delivery does not infringe on any of the intellectual property rights of third parties. The Supplier shall also be obligated to do everything necessary to obtain or establish the alternate acceptable arrangement pending resolution of any (alleged) claims by third parties. The supplier shall indemnify the Purchaser against any (alleged) claims by third parties in this regard and shall reimburse Purchaser for any damages suffered as a result thereof.

“The Supplier shall comply with all applicable Labour Laws, particularly Contract Labour (Regulation & Abolition) Act, 1970, ESI Act, Gratuity Act, Payment of Bonus Act, Payment of Minimum Wages Act, Provident Fund Act etc., and Rules framed therein from time-to-time and the Supplier shall indemnify BEML for any loss caused to it by reason of inaction, non-compliance etc., of the provisions of any Law by the Supplier”.

21. BRIBES AND GIFTS

Any bribe, commissions, gift or advantage given, promised or offered by or on behalf of the supplier or his partner, agent or servant or anyone on his or on their behalf to any officer, servant, representative or agent of BEML or any person on his or their behalf in relation to the obtaining or to the execution of or any other contract with BEML Ltd., shall in addition to any criminal liability which the supplier, may incur, subject the supplier to the cancellation of this and all other contracts with BEML and also for payment of any loss or damage resulting from any such cancellation to like extent, as is provided in case of cancellation under clause – 12 hereof. Any question or dispute as o the commissions of any offence under the present clause shall be settled by BEML in such manner and on such evidence of information as they may think fit and sufficient and their decision shall be final and conclusive.

22. JURISDICTION

Courts of Bangalore alone shall have jurisdiction to decide any issue / dispute arising out of the Arbitration or this Purchase Order in exclusion of all other Courts. However, jurisdiction of any other court may be accepted by mutual discussion and agreement by and between BEML and the Supplier

23. ARBITRATION

Disputes if any, arising between BEML and the supplier in connection with this Purchase Order or any other matters connected herewith, the same will be mutually discussed and settled, failing which, the disputes shall be referred to a sole arbitrator to be appointed by BEML. The arbitration / proceedings shall be in accordance with the provisions of Arbitration and Conciliation Act 1996 and Rules framed there under. The place of arbitration shall be at Bangalore or any other place mutually decided by and between BEML and the supplier and all arbitration proceedings shall be conducted in English language. The award of the sole arbitrator shall be final and binding on all the parties.

24. FORCE MAJEURE CLAUSE:

Notwithstanding anything contained in the Contract, neither the Supplier nor the Purchaser shall be held responsible for total or partial non-execution of any of the contractual obligations, shall the obligation become unreasonably onerous or impossible due to occurrence of a 'Force Majeure' conditions which directly affect the obligations to be performed by the Purchaser or the Supplier. Such events include war, military operations of any nature, blockages, revolutions, insurrections, riots, civil commotions, insurgency, sabotage, acts of public enemy, fires, explosion, epidemics, quarantine restrictions, floods, earthquake, or acts of God, restrictions by Govt. authorities over which the Supplier or the acts on which the Purchaser has no control.

The party claiming to be affected by Force Majeure shall notify the other party in writing without delay, within two weeks on the intervention and on the cessation of such circumstance. Extension of time sought by the Supplier along with supporting evidence and so granted by the Purchaser for the supply / work affected, if any, shall not be construed as waiver in respect of remaining deliveries.

Notwithstanding above provisions, Purchaser shall reserve the right to cancel the order / Contract, wholly or partly, in order to meet the overall delivery schedule and make alternative arrangements including arrangements with third party for completion of deliveries and other schedules. Purchase may takeover partly processed material at a mutually agreed price.

25. DRAWINGS AND DOCUMENTS:

Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than that for which they were provided. They may not, without the consent of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to third parties. The supplier shall, as per agreed date/s but not later than the date of delivery, provide free of charge information and drawings which are necessary to permit the Purchaser to erect, commission, operate and maintain the product. All intellectual properties, including designs, drawings and product information etc. exchanged during the formation and execution of the Contract shall continue to be the property of the submitting party.

26. NON-DISCLOSURE AND INFORMATION OBLIGATIONS:

The supplier shall provide Purchaser with all information pertaining to the delivery in so far as it could be of importance to Purchaser. The Supplier shall not reveal confidential information to its own employees not involved with the tender / Contract & its execution and delivery or to third parties. The supplier shall not be entitled to use the Purchaser's name in advertisements and other commercial publications without prior written permission from Purchaser.

27. PRICE, INVOICING AND PAYMENT:

The agreed prices are fixed prices in the currency as specified in the Purchase Order. They shall include packing, forwarding, loading and carriage to the place specified by the Purchaser and are inclusive of all applicable taxes, duties etc. except for those specifically agreed between the supplier and purchaser. The method of invoicing shall be without prejudice to the parties; agreement as to the place of performance. Invoices shall be submitted bearing the Purchase Order number & date, item number / s and supporting documents as called for in the Purchase Order.

28. FALL CLAUSE:

- i. The prices charged for the stores supplied under this P.O by the supplier shall in no event exceed the lowest price at which the supplier sells the stores of identical description to any other BEML Office / Division during the pendency of this Purchase Order.
- ii. If at any time, during the said period, the supplier reduces the sale price of such stores or sells such stores to any other BEML Office / Division at a price lower than the price chargeable under this P.O and the price payable under this PO for the stores supplied after the date of coming into force of such reduction shall stand correspondingly reduced.
- iii. The supplier shall furnish to the consigned / paying Authority concerned for this PO the following certificate under along with the invoice for the supplies effected under this PO. "I/We certify that the stores of description identical to the stores supplied to the consignee concerned under this PO have not been sold by me/ us to any other BEML Office / Division from the commencement of the contract upto the period of completion of delivery at a price lower than the price charged to the consignee concerned of this PO."
- iv. Failure in submission of the aforesaid certificate by the supplier will result in with holding of the payment of their bills against supply, if any.

29. DURING ARBITRATION

"Supplies under this Purchase Order, if reasonably possible, may continue by mutual agreement during the dispute / Arbitration proceedings".

30. PROGRESS REPORT:

The supplier shall regularly inform the progress of work and in such form as may be called for by the Purchaser from time to time. The submission and acceptance of such reports shall not prejudice the rights of the Purchaser in any manner.

31. CONTRACT VARIATIONS: INCREASE OR DECREASE IN THE SCOPE OF SUPPLY:

Purchaser may vary the contracted scope. If the supplier is of the opinion that the variation in scope has an effect on the agreed price or delivery period, purchaser shall be informed of this immediately in writing along with technical details, and in the event of additional work, submit a quotation with regards to the price and delivery period and the effect this scope will have on the other contracts under execution by the supplier. The supplier shall not perform additional work / altered scope of work without the written instructions / amendment to the Purchase Order to that effect. The Purchaser also reserves its rights to decrease the scope of supply placed against Purchase Orders under due intimation to the supplier. Such decrease may be warranted due to defective goods or Policy Decisions of the Management of the Purchaser. And in such an event, the Supplier shall not have any claims or right against the Purchaser.

32. PENALTY / LIQUIDATED DAMAGES:

The time or period of delivery as stipulated in the schedule of delivery shall be deemed to be essence of the Contract. Shall circumstances arise whereby the deadline for an agreed delivery date(s) or period(s) is expected to be exceeded, the Supplier shall inform Purchaser without delay that in such an event the Supplier shall bind himself to any of the terms and conditions that may be imposed by the Purchaser. If delay in delivery is caused by any of the circumstances mentioned is on account of Force Majeure conditions prior to the scheduled / extended delivery or by additional work, if any, or by an act or omission on the part of the Purchaser, the Purchaser shall extent the time for delivery by a period which is reasonable having regard to all the circumstances in the case.

If the Supplier exceeds any agreed delivery date(s) or period(s), Purchaser shall levy LD for such delay @0.5% per week (7 days) and part thereof, subject to a maximum of 5% of the value of the delayed portion of the Purchase Order.

The penalty / LD will be charged on the value of the Purchase Order excluding statutory levies, freight and insurance wherever not included in the price. Imposition, recovery or settlement of this LD shall not affect Purchaser's right to performance, compensation and termination of the agreement.

33. TRANSFER OF OWNERSHIP AND RISK

The risk for the delivery remains with the Supplier until the goods are delivered at the agreed place. Title to the delivery shall pass on to Purchaser at the moment of delivery.

Models, stamps, moulds, templates, dies, callipers, drawings and the like procured or manufactured by the Supplier in aid of the delivery, shall be deemed to have been

made available to the supplier by Purchaser at the moment that these articles are delivered to the Supplier or have been manufactured by it. If Purchaser makes items available or is considered to have made items available to the Supplier in aid of the delivery, these shall remain or become the property of Purchaser and the Supplier shall be obliged to clearly mark these items as Purchaser's property and to make a declaration of ownership available if requested to do so. Items created by amalgamation, confusion or otherwise, become Purchaser property at the moment of creation. The supplier shall be deemed to have created the items for Purchaser and shall retain these new items as Purchaser property and make a declaration of ownership available to Purchaser if requested to do so.

34. SHORT SHIPMENT / WARRANTY / GUARANTEE REPLACEMENTS:

In case of any short shipments during initial supply, subsequently despatched by the Supplier or as any Guarantee / Warranty replacement shall be despatched on "DDP – Delivered Duty

Paid BEML Stores" basis for imported items and "FOR – BEML Stores / designated destination" basis for indigenous items.

35. EXPORT ADMINISTRATION REGULATIONS

If a delivery includes such technology and or supply that are subject to the export regulations, the Supplier shall obtain due permissions, approvals, license etc.

36. NON-WAIVER OF DEFAULTS

If any individual provision of the Contract is invalid the other provisions shall not be affected. The failure of BEML to insist upon performance of the Contract to enforce any of the terms and conditions of this Contract or to exercise any right or privilege granted to BEML under this Contract or under law shall not be construed as a waiver and the same shall continue in full force and effect.

37. ASSIGNMENT OF RIGHTS AND OBLIGATIONS; SUB-CONTRACTING:

The supplier is not permitted to sub-contract the delivery or any part thereof to third parties or to assign the rights and obligations resulting from this agreement in whole or in part to third parties without prior written permission from Purchaser. Any permission or approval given by the Purchaser shall, however, not absolve the supplier of the responsibility of his obligations under the contract.

38. INTEGRITY COMMITMENT IN THE EXECUTION OF CONTRACTS:

Commitment by Purchaser:

Purchaser commits to take all necessary steps to prevent corruption in connection with the execution of the Contract.

Commitment by the Contractor:

The Contractor (s) commit (s) to take all measures to prevent corruption and will not directly or indirectly try to influence any decision for the benefit for which he is not legally entitled.

The contractor (s) will not commit any offence under the relevant Acts. The Contractor(s) will not use improperly, for purpose of competition or personal gain or pass on to others, any information or documents provided by Purchaser as part of business relationship.

The Contractor (s) will not enter with other Bidder (s) / Contractors (s) into any undisclosed agreement or understanding or any actions to restrict competition.

If the Contractor (s), before award or during execution of the Contract commit (s) a transgression of the above or in any other manner such as to put his reliability or credibility in question, Purchaser is entitled to disqualify the contractor (s) from the tender process or terminate the contract and / or take suitable actions as deemed fit.