

## General Terms & Conditions for Tender

### **LIMITED TENDER**

#### CHAPTER – 1

#### INSTRUCTIONS TO BIDDERS

##### Table of Contents

##### Sl. No. Contents

##### A. Introduction

##### 1.1 Eligible Bidders

##### 1.2 Cost of Bidding

##### 1.3 Code of Integrity for Public Procurement

##### B. The Bidding Documents

##### 1.4 Cost of tender Documents

##### 1.5 Content of tender Documents

##### 1.6 Clarification of tender documents

##### 1.7 Amendment of tender Documents

##### C. Preparation of Bids

##### 1.8 Language of Bid

##### 1.9 Purchase Preference Policies

##### 1.10 Documents Comprising the Bid

##### 1.11 Bid form and price schedule

##### 1.12 Bid Prices

##### 1.13 Bid Currencies

##### 1.14 Documents Establishing Bidder's Eligibility and Qualifications

##### 1.15 Documents Establishing Goods' Eligibility And Conformity to Bidding Documents

##### 1.16 Bid Security

##### 1.17 Period of Validity of Bids

##### 1.18 Format and Signing of Bid

##### D. Submission and Sealing Bids

##### 1.19 Submission, Sealing and Marking of Bids

##### 1.20 Deadline for Submission of Bids

##### 1.21 Late Bids

##### 1.22 Withdrawal, substitution and Modification of Bids

##### E. Opening and Evaluation of Bids

##### 1.23 Opening of Bids by the Purchaser

##### 1.24 Confidentiality

##### 1.25 Clarification of Bids

##### 1.26 Preliminary Examination

##### 1.27 Responsiveness of Bids

##### 1.28 Bidders right to question rejection

##### 1.29 Non-Conformity, Error and Omission

##### 1.30 Examination of Terms & Conditions, Technical Evaluation

##### 1.31 Conversion to Single Currency

- 1.32 Evaluation and Comparison of bids
- 1.33 Contacting the Purchaser
- 1.34 Post qualification
- F. Award of Contract
- 1.35 Negotiations
- 1.36 Award Criteria
- 1.37 Option Clause
- 1.38 Purchaser's right to vary Quantities at Time of Award
- 1.39 Purchaser's right to accept any Bid and to reject any or all Bids
- 1.40 Notification of Award
- 1.41 Signing of Contract
- 1.42 Order Acceptance
- 1.43 Performance Security
- 1.44 Pre-bid Conference

## A. Introduction

### 1.1. Eligible Bidders

#### 1.1.1

This Invitation for Bids is open to all suppliers subject to para 25 of the invitation for bids.

#### 1.1.2

A supplier or bidder shall be considered to be from a country if (i) the entity is incorporated in that country, or ii) a majority of its shareholding or effective control of the entity is exercised from that country; or (iii) more than 50% of the value of the item being supplied has been added in that country. Indian suppliers shall mean those entities which meet any of these tests with respect to India.

#### 1.1.3

MSEs would be treated as owned by Scheduled Caste/Schedule Tribe enterprises as under:

(a) In case of proprietary MSE, proprietor(s) shall be SC /ST.

(b) In case of partnership MSE, the SC/ST partners shall be holding at least 51% (fifty-one percent) shares in the unit.

(c) In case of Private Limited Companies, at least 51% (fifty-one percent) share shall be held by SC/ST promoters

#### 1.1.4

MSEs owned by women shall also be determined as per the above analogy/criteria.

#### 1.1.5

Bidders should not be associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Purchaser to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods to be purchased under this Invitation of Bids.

#### 1.1.6

Bids from Joint Ventures, Consortium or Associations so long as they are formed and registered prior to the bid submission date.

#### 1.1.7

The bidders who have been temporarily suspended or removed from the list of

registered suppliers by the purchaser or banned from Ministry/country wide procurement shall be ineligible for participation in the bidding process.

## 1.2 Cost of Bidding

### 1.2.1

The Bidder shall bear all costs associated with the preparation and submission of its bid, and "the Purchaser", will in no case be responsible or liable for these costs, regardless of the conduct or outcome of the bidding process.

## 1.3 Code of Integrity

### 1.3.1

The bidders/suppliers should sign a declaration about abiding by the Code of Integrity for Public Procurement in bid documents. In case of any transgression of this code, the bidder is not only liable to be removed from the list of registered suppliers, but it would be liable for other punitive actions such as cancellation of contracts, banning and blacklisting or action in Competition Commission of India, and so on.

### 1.3.2 Code of integrity for Public Procurement:

The Purchaser as well as bidders, suppliers, contractors and consultants should observe the highest standard of ethics and should not indulge in the following prohibited practices, either directly or indirectly, at any stage during the procurement process or during execution of resultant contracts:

- i) "Corrupt practice": making offers, solicitation or acceptance of bribe, rewards or gifts or any material benefit, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process or contract execution;
- ii) "Fraudulent practice": any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefits may be obtained or an obligation avoided. This includes making false declaration or providing false information for participation in a tender process or to secure a contract or in execution of the contract;
- iii) "Anti-competitive practice": any collusion, bid rigging or anti-competitive arrangement, or any other practice coming under the purview of the Competition Act, 2002, between two or more bidders, with or without the knowledge of the purchaser, that may impair the transparency, fairness and the progress of the procurement process or to establish bid prices at artificial, non-competitive levels;
- iv) "Coercive practice": harming or threatening to harm, persons or their property to influence their participation in the procurement process or affect the execution of a contract;
- v) "Conflict of interest": participation by a bidding firm or any of its affiliates that are either involved in the consultancy contract to which this procurement is linked; or if they are part of more than one bid in the procurement; or if the bidding firm or their personnel have relationships or financial or business transactions with any official of purchaser who are directly or indirectly related to tender or execution process of contract; or improper use of information obtained by the (prospective) bidder from the purchaser with an intent to gain unfair advantage in the procurement process or for personal gain; and
- vi) "Obstructive practice": materially impede the purchaser's investigation into allegations of one or more of the above mentioned prohibited practices either by deliberately destroying, falsifying, altering; or by concealing of evidence material to

the investigation; or by making false statements to investigators and/or by threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or by impeding the purchaser's Entity's rights of audit or access to information;

#### 1.3.3 Obligations for Proactive disclosures

i) The Purchaser as well as bidders, suppliers, contractors and consultants, are obliged under Code of Integrity for Public Procurement to sue-moto proactively declare any conflicts of interest (coming under the definition mentioned above – pre-existing or as and as soon as these arise at any stage) in any procurement process or execution of contract. Failure to do so would amount to violation of this code of integrity; and  
ii) The bidder must declare, whether asked or not in a bid document, any previous transgressions of such a code of integrity with any entity in any country during the last three years or of being debarred by any other Procuring Entity. Failure to do so would amount to violation of this code of integrity;  
iii) To encourage voluntary disclosures, such declarations would not mean automatic disqualification for the bidder making such declarations. The declared conflict of interest would be evaluated and mitigation steps, if possible, taken by the purchaser. Similarly, voluntary reporting of previous transgressions of Code of Integrity elsewhere may be evaluated and barring cases of various grades of debarment, an alert watch may be kept on the bidder's actions in the tender and subsequent contract.

#### 1.3.4 Punitive Provisions

Without prejudice to and in addition to the rights of the Purchaser to other penal provisions as per the bid documents or contract, if the Purchaser comes to a conclusion that a (prospective) bidder/supplier, directly or through an agent, has violated this code of integrity in competing for the contract or in executing a contract, the purchaser may take appropriate measures including one or more of the following:

i) If his bids are under consideration in any procurement

- a) Forfeiture or encashment of bid security;
- b) Calling off of any pre-contract negotiations; and
- c) Rejection and exclusion of the bidder from the procurement process.

ii) If a contract has already been awarded

- a) Cancellation of the relevant contract and recovery of compensation for loss incurred by the purchaser;
- b) Forfeiture or encashment of any other security or bond relating to the procurement;
- c) Recovery of payments including advance payments, if any, made by the purchaser along with interest thereon at the prevailing rate.

iii) Provisions in addition to above:

- a) Removal from the list of registered suppliers and banning/debarment of the bidder from participation in future procurements of the purchaser for a period not less than one year;
- b) In case of anti-competitive practices, information for further processing may be filed under a signature of the Joint Secretary level officer, with the Competition Commission of India;
- c) Initiation of suitable disciplinary or criminal proceedings against any individual

or staff found responsible.

## **B. The Bidding Documents**

### **1.4 Cost of Tender Documents**

#### **1.4.1**

The bidding documents are available to the eligible bidders free of cost.

### **1.5 Content of Tender Documents**

#### **1.5.1**

The goods required, bidding procedures and contract terms are prescribed in the bidding documents which should be read in conjunction. The bidding documents, apart from the invitation for bids and Critical Date Sheet have been divided into 3 Chapters as under:

Chapter 1: Instructions to Bidder (ITB)

Chapter 2: General Conditions of Contract (GCC)

Chapter 3: Formats

#### **1.5.2**

The Bidder is expected to examine all instructions, forms, terms, and specifications in the bidding documents. Failure to furnish all information required by the bidding documents or submission of a bid not substantially responsive to the bidding documents in every respect will be at the Bidder's risk and may result in rejection of its bid.

### **1.6 Clarification of tender documents**

#### **1.6.1**

A prospective Bidder requiring any clarification of the Bidding Documents shall contact the Purchaser in writing sufficiently in advance before the due date of opening. Should the Purchaser deem it necessary to amend the Bidding Documents as a result of a clarification, it shall do so following the procedure under Clause relating to amendment of Bidding Documents and Clause relating to Deadline for Submission of Bids.

### **1.7 Amendment of Tender Documents**

#### **1.7.1**

At any time prior to the deadline for submission of bids, the Purchaser may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective bidder, modify the tender documents by amendment. The same would also be hosted on the website of the Purchaser and all prospective bidders are expected to surf the website before submitting their bids to take cognizance of the amendments. However, the copies of the amendments would be sent by registered post/speed post/courier/e-mail to all the bidders who have been sent the tender documents.

#### **1.7.2**

In order to allow prospective bidders' reasonable time in which to take the amendment into account in preparing their bids, the Purchaser, at its discretion, may extend the deadline for the submission of bids and inform all the prospective bidders to whom the invitation to bid has been sent.

## **C. PREPARATION OF BIDS**

### **1.8. Language of Bid**

#### **1.8.1**

The bid prepared by the Bidder, as well as all correspondence and documents

relating to the bid exchanged by the Bidder and the Purchaser, shall be written in English language only especially when the details are technical.

#### 1.8.2

The Supplier shall bear all costs of translation, if any, to the English language and bear all risks of the accuracy of such translation, for documents provided by the Supplier.

### 1.9 Purchase Preference Policies

#### 1.9.1

The purchaser is bound to give product reservation/purchase preference/price preference in line with current Govt. of India procurement policies to help inclusive national economic growth by providing long term support to Micro and Small enterprises and disadvantaged sections of the society and to address environmental concerns along with preferential market access in govt. procurements.

### 1.10. Documents Comprising the Bid

#### 1.10.1

The bid prepared by the Bidder shall include:

##### A. Technical bid

- (a) Bidder Information Form;
- (b) Declaration abiding by the Code of Integrity and no conflict of interest for public procurement;
- (c) Bid security as specified in the Invitation to Bids;
- (d) Service support details form;
- (e) Deviation Statement Form;
- (f) Performance Statement Form;
- (g) Manufacturer's Authorization Form along with a certified copy of the Agency Agreement between the bidders and the Indian Agent.
- (h) Documentary evidence establishing that the bidder is eligible to bid and is qualified to perform the contract if its bid is accepted;
- (i) Documents establishing goods eligibility and conformity to bidding document; indicating the Indian Customs Tariff Number (ICT & HSN No.)
- (j) Self certification that the item offered meets the minimum local content of 50% and shall give details of the location(s) at which the local value addition is made in case the bidder wishes to avail the benefits under the make in India policy. (if applicable)
- (k) Documentary evidence about the status of the bidder i.e. whether MSE or not, owned by SC/ST or not and whether the MSE is owned by a women entrepreneur or not.

##### B. Price bid

- (j) Bid form;
- (k) Applicable Price Schedule Form;

### 1.11. Bid form and price schedule

#### 1.11.1

The bidder shall complete the Bid Form and the appropriate price schedule form furnished in the bidding documents. These forms must be completed without any alterations to its format and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested. The Bid Form and the appropriate Price Schedule form shall be submitted in accordance with invitation to bid and Clause

1.18.3 of the bidding documents.

#### 1.12. Bid Prices

##### 1.12.1

The Bidder shall indicate on the appropriate price schedule form, the unit prices and total bid prices of the goods it proposes to supply under the contract.

##### 1.12.2

Prices indicated on the price-schedule form shall be entered separately in the following manner:

(a) For Goods manufactured within India

(i) The price of the goods quoted Ex -works including taxes already paid.

(ii) GST and other taxes, if any which will be payable on the goods if the contract is awarded.

(iii) The charges for inland transportation, insurance and other local services required for delivering the goods at the desired destination as specified in the price schedule form.

(iv) Wherever applicable, the cost towards the installation, commissioning, spares, extended warranty, AMC/CMC, site preparation and training including any incidental services, if any.

(b) For Goods manufactured abroad

(i) The price of the goods, quoted on FCA (named place of delivery abroad) or FOB (named port of shipment), as specified in the price schedule form.

(ii) The charges for insurance and transportation of the goods to the port / place of destination.

(iii) The agency commission charges, if any.

(iv) Wherever applicable, the cost towards the installation, commissioning, spares, extended warranty, AMC/CMC, site preparation and training including any incidental services, if any.

##### 1.12.3

The terms FOB, FCA, CIF, CIP etc. shall be governed by the rules prescribed in the current edition of the Incoterms published by the International Chambers of Commerce, Paris.

##### 1.12.4

Where there is no mention of packing, forwarding, freight, insurance charges, taxes etc. such offer shall be rejected as incomplete.

##### 1.12.5

The price quoted shall remain fixed during the contract period and shall not vary on any account

##### 1.12.6

All lots and items must be listed and priced separately in the Price Schedules.

If a Price Schedule shows items listed but not priced, their prices shall be assumed to be included in the prices of other items. Lots or items not listed in the Price Schedule shall be assumed to be not included in the bid.

##### 1.12.7

The Purchaser is registered with Dept. of Scientific & Industrial Research, Govt. of India and concessional customs duty and GST & IGST are leviable vide notification no. 54/2002-Customs on all imports covered under notification No.51/96-Customs dated 23.07.1996 Notification No.47/2017-Integrated Tax (Rate) and Notification No.45/2017-

Central Tax (Rate) both dated 14<sup>th</sup> November, 2017.

Note: All payments due under the contract shall be paid after deduction of statutory levies at source (like ESIC, IT, etc.), wherever applicable.

1.12.8

Please state specifically in your offer whether the duties and taxes are extra over the prices quoted, failing which it will be presumed that the prices are inclusive of taxes and duties and no claim would be entertained for statutory variations at a later date.

1.12.9

Stipulations like "GST is presently not applicable but the same will be charged if it becomes leviable later on" is not acceptable unless in such cases it is clearly stated that GST will not be charged if the same becomes applicable later on due to increase in turn over etc. If a bidder fails to comply with this requirement, his quoted price shall be loaded with the quantum of duty which is normally applicable on the item in question for the purpose of comparison with the prices of other tenderers.

1.13. Bid Currencies

1.13.1

Prices shall be quoted in Indian Rupees for offers received for supply within India and in freely convertible foreign currency in case of offers received for supply from foreign countries i.e. domestic tenderers are to quote and accept their payment in Indian currency; Indian agents of foreign suppliers are to receive their agency commission in Indian currency; cost of imported goods & services rendered in India, which are directly imported against the contract, may be quoted in foreign currency (currencies).

1.14. Documents Establishing Bidder's Eligibility and qualifications

1.14.1

The bidder shall furnish, as part of its bid, documents establishing the bidders' eligibility to bid and its qualification to perform the contract if its bid is accepted.

1.14.2

The documentary evidence of the bidder's qualification to perform the contract if the bid is accepted shall establish to the purchaser's satisfaction that;

(a) The bidder meets the qualification criteria listed in bidding documents if any.

(b) Bidder who doesn't manufacture the goods it offers to supply shall submit Manufacturers' Authorization Form (MAF) using the form specified in the bidding document to demonstrate that it has been duly authorized by the

(c) In case a bidder not doing business within India, it shall furnish the certificate to the effect that the bidder is or will be represented by an agent in India equipped and able to carry out the supply, maintenance, repair obligations etc. during the warranty and post warranty period or ensure a mechanism at place for carrying out the supply, maintenance, repair obligations etc. during the warranty and post-warranty period.

1.14.3 Conditional tenders shall not be accepted.

1.15. Documents Establishing Goods' Eligibility and Conformity to Bidding Documents

1.15.1

To establish the goods' eligibility, the documentary evidence of the goods and services eligibility shall consist of a statement on the country of origin of the goods and services offered which shall be confirmed by a certificate of origin at the time of shipment.



#### 1.15.2

To establish the conformity of the goods and services to the specifications and schedule of requirements of the bidding document, the documentary evidence of conformity of the goods and services to the bidding documents may be in the form of literature, drawings and data, and shall consist of:

- (a) A detailed description of the essential technical and performance characteristics of the goods;
- (b) A list giving full particulars, including available sources and current prices, of spare parts, special tools, etc., necessary for the proper and continuing functioning of the goods during the warranty period following commencement of the use of the goods by the Purchaser in the Priced- bid; and
- (c) An item-by-item commentary on the Purchaser's Technical Specifications demonstrating substantial responsiveness of the goods and services to those specifications or a statement of deviations and exceptions to the provisions of the Technical Specifications.

#### 1.15.3

For purposes of the commentary to be furnished pursuant to above, the Bidder shall note that standards for workmanship, material and equipment, designated by the Purchaser in its Technical Specifications are intended to be descriptive only and not restrictive. The Bidder may substitute these in its bid, provided that it demonstrates to the Purchaser's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

#### 1.15.4

### 1.16. Bid Security

#### 1.16.1

The Bidder shall furnish, as part of its bid, a bid security (BS) for an amount as specified in the Invitation for Bids if any. In the case of foreign bidders, the BS shall be submitted either by the principal or by the Indian agent and in the case of indigenous bidders, the BS shall be submitted by the manufacturer or their specifically authorized dealer/bidder.

#### 1.16.2

The bid security is required to protect the Purchaser against the risk of Bidder's conduct, which would warrant the security's forfeiture.

#### 1.16.3

The bid security shall be in Indian Rupees for offers received for supply within India and denominated in the currency of the bid or in any freely convertible foreign exchange in the case of offers received for supplies from foreign countries in equivalent Indian Rupees. The bid security shall be in one of the following forms at the bidders' option:

- (a) A bank guarantee issued/confirmed by a Scheduled Commercial Bank in India in the form provided in the bidding documents and valid for 45 days beyond the validity of the bid. In case a bidder desires to submit a BG issued from a foreign bank, then the same should be confirmed by a Scheduled commercial bank in India; or
- (b) Fixed Deposit receipt pledged in favour of the Lab. /Institute.
- (c) A Banker's cheque or demand draft in favour of the purchaser issued by any Scheduled commercial bank in India;

(d) Bid Securing Declaration

1.16.4

The bid security shall be payable promptly upon written demand by the purchaser in case the conditions listed in the ITB clause 1.16.9 are invoked.

1.16.5

The bid security should be submitted in its original form. Copies shall not be accepted.

1.16.6

The bid security of unsuccessful bidder will be discharged /returned as promptly as possible positively within a period of 30 days after the expiration of the period of bid validity or placement of order whichever is later, without any interest.

1.16.7

The successful Bidder's bid security will be discharged upon the Bidder furnishing the performance security, without any interest

1.16.8

Bidders that are currently registered with the purchaser or registered as MSEs will continue to remain registered during the tender validity period also and are exempted from payment of EMD. In case the tenderer falls in these categories, the bidder should furnish a certified copy of its valid registration details. Except for MSEs, this exemption is valid for the trade group and monetary value of registration only. The MSEs are provided tender document free of cost and are exempted from the payment of Bid Security provided the goods are produced and the services are rendered by them and not for any trading activities undertaken by them. Further firms who are having Udyog Aadhar Memorandum are entitled to all benefits available for MSEs under the Public Procurement Policies for MSEs and can get registered with any of the following agencies:

- a) District Industries Centre
- b) Khadi and Village Industries Commission
- c) Khadi and Village Industries Board
- d) Coir Board
- e) National Small Industries Corporation
- f) Directorate of Handicraft and handloom and
- g) Any other body specified by the Ministry of MSME

1.16.9

Where any aggregator has been appointed by the Ministry of MSME, themselves quote on behalf of some MSE units, such offers will be considered as offer from MSE units and all such facilities would be extended to these aggregators also.

1.16.10

The bid security may be forfeited:

- (a) If a Bidder withdraws or amends or modifies or impairs or derogates its bid during the period of bid validity specified by the Bidder on the Bid Form; or
- (b) In case of a successful Bidder, if the Bidder fails to furnish order acceptance within 14 days of the order or fails to sign the contract and/or fails to furnish Performance Security within 21 days from the date of contract/ order.

1.16.11

Whenever the bidder chooses to submit the Bid Security in the form of Bank Guarantee, then he should advise the banker issuing the Bank Guarantee to

immediately send by Registered Post (A.D.) an unstamped duplicate copy of the Guarantee directly to the Purchaser with a covering letter to compare with the original BG for the correctness, genuineness, etc.

#### 1.17. Period of Validity of Bids

##### 1.17.1

Bids shall remain valid for minimum of 90 days after the date of bid opening prescribed by the Purchaser. A bid valid for a shorter period shall be rejected by the Purchaser as non-responsive.

##### 1.17.2

In exceptional circumstances, the Purchaser may solicit the Bidder's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing (or by post, fax or e-mail). The bid security provided shall also be suitably extended failing which the bid would be summarily ignored. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request will not be required nor permitted to modify its bid.

##### 1.17.3

Bid evaluation will be based on the bid prices without taking into consideration the above corrections.

#### 1.18. Format and Signing of Bid

##### 1.18.1

The bids may be submitted in single envelop or in two parts as specified in the Invitation for Bids.

##### 1.18.2

In case the bids are invited on single envelop basis, then the Bidder shall prepare two copies of the bid, clearly marking each "Original Bid" and "Copy Bid", as appropriate. In the event of any discrepancy between them, the original shall govern.

##### 1.18.3

In case the bids are invited on two-bid system, the Bidder shall submit the bids in two separate parts. One part shall contain Technical bid comprising all documents listed under clause relating to Documents Comprising the Bid excepting bid form and price schedules. The other part shall contain the priced-bid comprising bid form and price schedules. The Bidder shall prepare two copies of the bid, clearly marking each "Original Bid" and "Copy Bid", as appropriate.

##### 1.18.4

The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by the Bidder or a person or persons duly authorized to bind the Bidder to the Contract. All pages of the bid, except for un-amended printed literature, shall be initialled by the person or persons signing the bid detailing his/her name and contact details.

##### 1.18.5

Any interlineations, erasures or overwriting shall be valid only if they are initialled by the persons or persons signing the bid.

#### D Submission and sealing of Bids

#### 1.19. Submission, Sealing and Marking of Bids

##### 1.19.1

##### 1.19.2

In the case of bids invited on single envelop basis, the Bidders shall seal the original

and each copy of the bid in separate inner envelopes, duly marking the envelopes as "original" and "copy". The envelopes shall then be sealed in an outer envelope.

1.19.3

In the case of bids invited on two-part basis, the Bidder shall seal the un-priced commercial and technical bid comprising the documents as listed in ITB 1.10.1 excepting for 'j' & 'k' and the priced bid in two separate envelopes duly marked as "Technical bid" and "priced bid". Both the envelopes shall then be sealed in one outer envelope.

1.19.4

(a) The inner and outer envelopes shall be addressed to the -

\_\_\_\_\_ (*Designation and Address of the officer concerned*) and deposited in the Tender box kept in Purchase Section, if delivered by hand.

(b) Bear the name and address of the bidder, Tender No., due date and a warning "Do not open before \_\_\_\_\_" to be completed with the time and date as specified in the invitation for bids.

1.19.5

If the outer envelope is not sealed and marked as required above, The Purchaser will assume no responsibility for the bid's misplacement or premature opening. In such cases, bids received in open condition within the due date and time will be accepted at the risk of the bidder if the same is presented to the Controller of Stores & Purchase before expiry of the due date and time of opening of the bids.

1.19.6

Firms submitting bids in a single envelope against the requirement of two-bid system would be considered for further evaluation at the risk & responsibility of the bidder. However, the opened priced bid if prepared separate from the technical bid, would be sealed immediately by the Tender Opening Committee without disclosing the price.

1.20. Deadline for Submission of Bids

1.20.1

Bids must be received by the Purchaser at the address specified at Clause 1.19.4 (a) not later than the time and date specified in invitation to bid. In the event of the specified date for the submission of Bids being declared a holiday for the Purchaser, the Bids will be received up to the appointed time on the next working day.

1.20.2

The Purchaser may, at its discretion, extend the deadline for submission of bids by amending the bid documents in accordance with Clause relating to Amendment of Bidding Documents in which case all rights and obligations of the Purchaser and Bidders previously subject to the deadline will thereafter be subject to the

1.21. Late Bids

1.21.1

Any bid received by the Purchaser after the deadline for submission of bids prescribed by the Purchaser will be rejected.

1.21.2

Such tenders shall be marked as late and not considered for further evaluation. They shall not be opened at all and be returned to the bidders in their original envelope without opening.

1.22. Withdrawal, substitution and Modification of Bids.

#### 1.22.1

A Bidder may withdraw, substitute, or modify its Bid after it has been submitted by sending a written notice in accordance with ITB Clause 1.19 duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB Sub-Clause 1.18.4 (except that no copies of the withdrawal notice are required). The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be:

- (a) Submitted in accordance with ITB Clauses 1.18 and 1.19 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," or "MODIFICATION"; and
- (b) Received by the Purchaser prior to the deadline prescribed for submission of bids, in accordance with ITB Clause 1.20.

#### 1.22.2

Bids requested to be withdrawn in accordance with ITB Sub-Clause 1.22.1 shall be returned unopened to the Bidders. No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Bid Form or any extension thereof.

### E. Opening and Evaluation of Bids

#### 1.23 Opening of Bids by the Purchaser

##### 1.23.1

The Purchaser will open all bids one at a time in the presence of bidders' authorized representatives who choose to attend, as per the schedule given in invitation for bids. The Bidders' representatives who are present shall sign the quotation opening sheet evidencing their attendance. In the event of the specified date of Bid opening being declared a holiday for the Purchaser, the Bids shall be opened at the appointed time and location on the next working day. In two-part bidding, the

##### 1.23.2

First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned to the Bidder. No Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at bid opening. Envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Bid. No Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Bid opening. Only envelopes that are opened and read out at Bid opening shall be considered further.

##### 1.23.3

The bidders' names, bid modifications or withdrawals, bid prices, discounts, and the presence or absence of requisite bid security and such other details as the Purchaser, at its discretion, may consider appropriate, will be announced at the

opening. No bid shall be rejected at bid opening, except for late bid(s). The contents of the bid forms and price schedules would however be announced only at the time of opening of Priced-bids in the case of two-bid system.

#### 1.23.4

Bids that are received late shall not be considered further for evaluation, irrespective of the circumstances.

#### 1.23.5

Bidders interested in participating in the bid opening process, should depute their representatives along with an authority letter to be submitted to the purchaser at the time of bid opening as per form Annexed at Chapter-3.

### 1.24. Confidentiality

#### 1.24.1

Information relating to the examination, evaluation, comparison, and post qualification of bids, and recommendation of contract award, shall not be disclosed to bidders or any other persons not officially concerned with such process until publication of the Contract Award.

#### 1.24.2

Any effort by a Bidder to influence the Purchaser in the examination, evaluation, comparison, and post qualification of the bids or contract award decisions may result in the rejection of its Bid.

### 1.25. Clarification of Bids

#### 1.25.1

bids, the Purchaser may, at its discretion, ask the Bidder for a clarification of its bid. The request for clarification and the response shall be in writing and no change in prices or substance of the bid shall be sought, offered or permitted. However, no negotiation shall be held except with the lowest bidder, at the discretion of the purchaser. Any clarification submitted by a bidder in respect to its bid which is not in response to a request by the purchaser shall not be considered.

### 1.26. Preliminary Examination

#### 1.26.1

The Purchaser shall examine the bids to confirm that all documents and technical documentation requested in ITB Clause 1.10 have been provided, and to determine the completeness of each document submitted.

#### 1.26.2

The Purchaser shall confirm that the following documents and information have been provided in the Bid. If any of these documents or information is missing, the offer shall be rejected.

(a) Bid Form and Price Schedule, in accordance with ITB Clause 1.10;

(b) All the tenders received will first be scrutinized to see whether the tenders meet the basic requirements as incorporated in the tender enquiry document. The tenders, who do not meet the basic requirements, are to be treated as unresponsive and ignored. The following are some of the important points, for which a tender may be declared as unresponsive and to be ignored, during the initial scrutiny:

(i) The Bid is unsigned.

(ii) The Bidder is not eligible.

(iii) The Bid validity is shorter than the required period.

(iv) The Bidder has quoted for goods manufactured by a different firm

without the required authority letter from the proposed manufacturer.

(v) Bidder has not agreed to give the required performance security or has not furnished the bid security.

(vi) The goods quoted are sub-standard, not meeting the required specification, etc.

(vii) Against the schedule of Requirement (incorporated in the tender enquiry), the bidder has not quoted for the entire requirement as specified in that schedule.

(viii) The bidder has not agreed to some essential condition(s) incorporated in the tender enquiry.

#### 1.27 Bidder's right to question rejection.

##### 1.27.1

A Bidder shall have the right to be heard in case he feels that a proper procurement process is not being followed and/or his tender has been rejected wrongly. Only a directly affected bidder can represent in this regard as under:

pre-qualification, bidder registration or bidding, as the case may be, can make such representation;

ii) In case pre-qualification bid has been evaluated before the bidding of Technical bids, an application for review in relation to the technical bid may be filed only by a bidder who has qualified in pre-qualification bid;

iii) In case technical bid has been evaluated before the opening of the financial bid, an application for review in relation to the financial bid may be filed only by a bidder whose technical bid is found to be acceptable.

iv) Following decisions of the purchaser in accordance with the provision of internal guidelines shall not be subject to review:

a) Determination of the need for procurement;

b) Selection of the mode of procurement or bidding system;

c) Choice of selection procedure;

d) Provisions limiting participation of bidders in the procurement process;

e) The decision to enter into negotiations with the L1 bidder;

f) Cancellation of the procurement process except where it is intended to subsequently re-tender the same requirements;

g) Issues related to ambiguity in contract terms may not be taken up after a contract has been signed, all such issues should be highlighted before consummation of the contract by the vendor/contractor; and

h) Complaints against specifications except under the premise that they are either vague or too specific so as to limit competition may be permissible.

##### 1.27.2

In case a Bidder feels aggrieved by the decision of the purchaser, he may then send his representation in writing to the Purchaser's address as indicated in Invitation to bids within 05 working days from the date of communication of the purchaser intimating the rejection for reconsideration of the decision by the purchaser.

#### 1.28 Responsiveness of Bids

##### 1.28.1

Prior to the detailed evaluation, the purchaser will determine the substantial responsiveness of each bid to the bidding documents. For purposes of this clause, a substantive responsive bid is one, which conforms to all terms and condition of the bidding documents without material deviations, reservations or omissions. A material deviation, reservation or omission is one that:

- (a) Affects in any substantial way the scope, quality, or performance of the Goods and Related Services specified in the Contract; or
- (b) Limits in any substantial way, inconsistent with the Bidding Documents, the Purchaser's rights or the Bidder's obligations under the Contract; or
- (c) If rectified, would unfairly affect the competitive position of other bidders presenting substantially responsive bids.

1.28.2

The purchasers' determination of a bid's responsiveness is to be based on the contents of the bid itself without recourse to extrinsic evidence.

1.28.3

If a bid is not substantially responsive, it will be rejected by the Purchaser and may not subsequently be made responsive by the Bidder by correction of the material deviation, reservation or omission.

1.28.4

If a bidder quotes Nil Charges/consideration, the bid shall be treated as unresponsive and will not be considered.

1.29 Non-Conformity, Error and Omission

1.29.1

Provided that a Bid is substantially responsive, the Purchaser may waive any nonconformities or omissions in the Bid that do not constitute a material deviation.

1.29.2

Provided that a bid is substantially responsive, the Purchaser may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities or omissions in the bid related to documentation requirements. Such omission shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.

1.29.3

Provided that the Bid is substantially responsive, the Purchaser shall correct arithmetical errors on the following basis:

- (a) if there is a discrepancy between the unit price and the line item total that is obtained by multiplying the unit price by the quantity, the unit price shall prevail and the line item total shall be corrected, unless in the opinion of the Purchaser there is an obvious misplacement of the decimal point in the unit price, in which case the line item total as quoted shall govern and the unit price shall be corrected;
- (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
- (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b)

1.29.4



Provided that a bid is substantially responsive, the purchaser may request that a bidder may confirm the correctness of arithmetic errors as done by the purchaser within a target date. In case, no reply is received then the bid submitted shall be ignored and its Bid Security may be forfeited.

#### 1.30 Examination of Terms & Conditions, Technical Evaluation

##### 1.30.1

The Purchaser shall examine the Bid to confirm that all terms and conditions specified in the GCC have been accepted by the Bidder without any material deviation or reservation.

##### 1.30.2

The Purchaser shall evaluate the technical aspects of the Bid submitted in accordance with ITB Clause 1.15, to confirm that all requirements specified in Schedule of Requirements of the Bidding Documents have been met without any material deviation or reservation.

##### 1.30.3

If, after the examination of the terms and conditions and the technical evaluation, the Purchaser determines that the Bid is not substantially responsive in accordance with ITB Clause 1.28, it shall reject the Bid.

#### 1.31 Conversion to Single Currency

##### 1.31.1

To facilitate evaluation and comparison, the Purchaser will convert all quoted prices expressed in various currencies to Indian Rupees at the selling exchange rate established by any bank in India as notified in the Newspapers on the date of bid opening (techno-commercial bid in the case of two-part bidding). For this purpose, exchange rate notified in [www.xe.com](http://www.xe.com) or [www.rbi.org](http://www.rbi.org) or any other website could also be used by the purchaser.

#### 1.32 Evaluation and comparison of bids

##### 1.32.1

The Purchaser shall evaluate each bid that has been determined, up to this stage of the evaluation, to be substantially responsive.

##### 1.32.2

To evaluate a Bid, the Purchaser shall only use all the factors, methodologies and criteria defined below. No other criteria or methodology shall be permitted.

##### 1.32.3

Purchase preference shall be given to all local suppliers in all procurements undertaken by the purchaser in the following manner:

(a) Where the purchaser has restricted the eligibility of suppliers to Indian suppliers only as per para 25 of the invitation to bid. This is applicable only for those items for which the Nodal Ministry has communicated that there is sufficient local capacity and local competition.

(b) If the tendered items are not listed by the Nodal Ministry indicating the local capacity and local competition, the following procedure of evaluation shall be followed:

(i) Among all qualified bids, the lowest bid will be termed as L1. If L1 is from a local supplier, the contract for full quantity will be awarded to L1.

(ii) If L1 bid is not from a local supplier, 50% of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the local suppliers, will be

invited to match the L1 price for the remaining 50% quantity subject to the local supplier's quoted price falling within the margin of purchase preference of 20%, and contract for that quantity shall be awarded to such local supplier subject to matching the L1 price. In case such lowest eligible local supplier fails to match the L1 price or accepts less than the offered quantity, the next higher 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 local suppliers, then such balance quantity may also be ordered on the L1 bidder.

(c) If the tendered item is not divisible the following procedure of evaluation shall be followed:

- i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is from a local supplier, the contract will be awarded to L1.
- ii. If L1 is not from a local supplier, the lowest bidder among the local suppliers, will be invited to match the L1 price subject to local supplier's quoted price falling within the margin of purchase preference of 20%, and the contract shall be awarded to such local supplier subject to matching the L1 price.
- iii. In case such lowest eligible local supplier fails to match the L1 price, the 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 local suppliers within the margin of purchase preference matches the L1 price, then the contract may be awarded to the L1 bidder.

#### 1.32.4

Further, In tender, where the items are divisible, the participating Micro and Small Enterprises (MSE) quoting price within price band of  $L1+15$  (fifteen) per cent shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than a MSE and such MSE shall be allowed to supply up to 25 (twenty five) per cent of total tendered value. The 25 (twenty five) per cent quantity is to be distributed proportionately among these bidders, in case there are more than one MSMEs within such price band.

#### 1.32.5

Within this 25% (Twenty five Percent) quantity, a purchase preference of 25 (twenty five) per cent out of 25 (twenty five) per cent is reserved for MSEs owned by Scheduled Caste (SC)/Scheduled Tribe (ST) entrepreneurs (if they participate in the tender process and match the L1 price). Further, out of the total annual procurement from the MSEs, (3%) three percent from within the 25% target shall be earmarked for procurement from MSEs owned by women. Provided that, in the event of failure of such SC/ST MSE to participate in tender process or meet tender requirements and L1 price, four per cent sub-target shall be met from other MSE.

#### 1.32.6

In case the items are not divisible, then the MSE quoting price within price band  $L1 + 15\%$  may be awarded for full/complete supply of total tendered quantity to MSE, considering the spirit of the policy for enhancing the Government procurement from MSEs.

#### 1.32.7

The bids shall be evaluated on the basis of final landing cost which shall be arrived as under:

For goods manufactured in India

- (i) The price of the goods quoted ex-works including all taxes already paid.
- (ii) GST and other taxes, if any which will be payable on the goods if the contract is awarded.
- (iii) Charges for inland transportation, insurance and other local services required for delivering the goods at the desired destination.
- (iv) Wherever applicable, the cost towards the installation, commissioning, spares, extended warranty, AMC/CMC, site preparation and training including any incidental services, if any.

For goods manufactured abroad

- (i) The price of the goods, quoted on FCA (named place of delivery abroad) or FOB (named port of shipment), as specified in the invitation to bid.
- (ii) The charges for insurance and transportation of the goods to the port/place of destination.
- (iii) The agency commission etc., if any.
- (iii) Wherever applicable, the cost towards the installation, commissioning, spares, extended warranty, AMC/CMC, site preparation and training including any incidental services, if any.

#### 1.32.8

The comparison between the indigenous and the foreign offers shall be made on FOR destination basis and CIF/CIP basis respectively. However, the CIF/CIP prices quoted by any foreign bidder shall be loaded further as under:

(a) Towards customs duty and other statutory levies—as per applicable rates.

(b) Towards custom clearance, inland transportation etc. - 2% of the CIF/CIP value. The bidder should give a clear cut breakup of EXW, FOB/FCA, CIF/CIP prices to facilitate proper comparison with the purchaser reserving the right to order on either basis, failing which the bid would be summarily ignored.

Note: Where there is no mention of packing, forwarding, freight, insurance charges, taxes etc. such offers shall be rejected as incomplete.

#### 1.32.9

Orders for imported stores need not necessarily be on FOB/FCA basis rather it can be on the basis of any of the incoterm specified in ICC Incoterms 2000 as may be amended from time to time by the ICC or any other designated authority and favourable to the purchaser.

#### 1.32.10

Wherever the price quoted on FOB/FCA and CIF/CIP basis are the same, the Contract would be made on CIF / CIP basis only.

#### 1.32.11

The invitation to bid shall specify the mode of transport i.e., whether by air/ocean/road/rail.

#### 1.32.12

There is no provision to purchase optional items. The specifications embodied in the tender documents would be the basis of evaluating the responsiveness of bids received.

#### 1.32.13

The Purchaser shall compare all substantially responsive bids to determine the

### 1.33 Contacting the Purchaser

#### 1.33.1

Subject to ITB Clause 1.25, no Bidder shall contact the Purchaser on any matter relating to its bid, from the time of the bid opening to the time the Contract is awarded.

#### 1.33.2

Any effort by a Bidder to influence the Purchaser in its decisions on bid evaluation, bid comparison or contract award may result in rejection of the Bidder's bid.

### 1.34 Post qualification

#### 1.34.1

In the absence of pre-qualification, the Purchaser will determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated responsive bid is qualified to perform the contract satisfactorily, in accordance with the criteria listed, if any, in invitation to bid.

#### 1.34.2

The determination will take into account the eligibility criteria listed in the bidding documents and will be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, as well as such other information as the Purchaser deems necessary and appropriate.

#### 1.34.3

An affirmative determination will be a prerequisite for award of the contract to the Bidder. A negative determination will result in rejection of the Bidder's bid.

## F. AWARD OF CONTRACT

### 1.35 Negotiations

#### 1.35.1

There shall not be any negotiation normally. Negotiations, if at all, shall be an exception and only in the case of items with limited source of supply. Negotiations shall be held with the lowest evaluated responsive bidder. Counter offers tantamount to negotiations and shall be treated at par with negotiations in the case of one time purchases.

### 1.36 Award Criteria

#### 1.36.1

Subject to ITB Clause 1.39, the Purchaser will award the contract to the successful Bidder whose bid has been determined to be substantially responsive and has been determined to be the lowest evaluated bid, provided further that the Bidder is determined to be qualified to perform the contract satisfactorily. The details of the award would be hosted on the website of the Purchaser.

**287**

### 1.37 Purchaser's right to vary Quantities at Time of Award

#### 1.37.1

The Purchaser reserves the right at the time of Contract award to increase or decrease the quantity of goods and services originally specified in the invitation to bid to the extent of 25% without any change in unit price or other terms and conditions.

### 1.38 Option Clause

#### 1.38.1

The Purchaser reserves the right to increase or decrease the quantity of the required

goods up to 25% (Twenty-Five) per cent at any time, till final delivery date (or the extended delivery date of the contract), by giving reasonable notice even though the quantity ordered initially has been supplied in full before the last date of the delivery period (or the extended delivery period)

#### 1.39 Purchaser's right to accept Any Bid and to reject any or All Bids

##### 1.39.1

The Purchaser reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to award of Contract, without thereby incurring any liability to the affected Bidder or Bidders.

#### 1.40 Notification of Award

##### 1.40.1

Prior to the expiration of the period of bid validity, the Purchaser will notify the successful bidder in writing by registered letter or by cable or telex or fax or e mail that the bid has been accepted and a separate purchase order shall follow through post.

##### 1.40.2

Until a formal contract is prepared and executed, the notification of award should constitute a binding contract.

##### 1.40.3

Upon the successful Bidder's furnishing of the signed Contract Form and performance security pursuant to ITB Clause 1.43, the Purchaser will promptly notify each unsuccessful Bidder and will discharge its bid security.

#### 1.41 Signing of Contract

##### 1.41.1

Promptly after notification, the Purchaser shall send the successful Bidder the Agreement/Purchase Order.

##### 1.41.2

Within fourteen (14) days of date of the Purchase Order, the successful Bidder shall sign, date, and return it to the Purchaser.

#### 1.42 Order Acceptance

##### 1.42.1

The successful bidder should submit Order acceptance within 14 days from the date of issue, failing which it shall be presumed that the vendor is not interested and his bid security is liable to be forfeited pursuant to clause 1.16.9 of ITB.

##### 1.43.2

The order confirmation must be received within 14 days. However, the Purchaser has the powers to extend the time frame for submission of order confirmation beyond the original date. Even after extension of time, if the order confirmation is not received, the contract is liable to be cancelled provided that the purchaser, on being satisfied that it is not a case of cartelization and the integrity of the procurement process has been maintained, may, for cogent reasons, offer the next successful bidder an opportunity to match the financial bid of the first successful bidder, and if the offer is accepted, award the contract to the next successful bidder at the price bid of the first successful bidder.

#### 1.43 Performance Security

##### 1.43.1

Within 21 days of receipt of the notification of award/PO, the Supplier shall furnish

performance security (PS) in the amount specified in the purchase order, valid till 60 days after the warranty period.

1.43.2

The proceeds of the performance security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.

1.43.3

The Performance Security shall be denominated in Indian Rupees for the offers received for supplies within India and denominated in the currency of the contract in the case of offers received for supply from foreign countries or in equivalent Indian Rupees in case the Performance Security is submitted by the Indian Agent.

1.43.4

In the case of imports, the PS may be submitted either by the principal or by the Indian agent and, in the case of purchases from indigenous sources, the PS may be submitted by either the manufacturer or their authorized dealer/bidder.

1.43.5

The Performance security shall be in one of the following forms:

- (a) A Bank guarantee or stand-by Letter of Credit issued by a Nationalized/ Scheduled bank located in India or a foreign bank with preferably its operating branch in India in the form provided in the bidding documents. Or
- (b) A Banker's cheque or Account Payee demand draft in favour of the purchaser. Or,
- (c) A Fixed Deposit Receipt pledged in favour of the Purchaser.

1.43.6

The performance security will be discharged by the Purchaser and returned to the Supplier not later than 60 days following the date of completion of the Supplier's performance obligations, including any warranty obligations, unless specified otherwise, without levy of any interest.

1.43.7

In the event of any contract amendment, the supplier shall, within 21 days of receipt of such amendment, furnish the amendment to the performance security, rendering the same valid for the duration of the contract, as amended for further period of 60 days thereafter.

1.43.8

The performance security must be received within 21 days. However, the Purchaser has the powers to extend the time frame for submission of Performance Security (PS). Even after extension of time, if the PS is not received, the contract is liable to be cancelled provided that the purchaser, on being satisfied that it is not a case of cartelization and the integrity of the procurement process has been maintained, may, for cogent reasons, offer the next successful bidder an opportunity to match the financial bid of the first successful bidder, and if the offer is accepted, award the contract to the next successful bidder at the price bid of the first successful bidder.

1.43.9

Whenever, the bidder chooses to submit the Performance Security in the form of Bank Guarantee, then he should advise the banker issuing the Bank Guarantee to immediately send by Registered Post (A.D.) an unstamped duplicate copy of the Guarantee directly to the Purchaser with a covering letter to compare with the

original BG for the correctness, genuineness, etc.

#### 1.44 Pre-bid Conference (PBC)

##### 1.44.1

A Pre-bid Conference shall be held as indicated in invitation to bid, if any. All prospective bidders are requested to kindly attend the Pre-bid Conference. In order to facilitate the purchaser the proper conduct of the Pre-bid Conference, all prospective bidders are requested to kindly submit their queries (with envelope bearing Tender No. and Date on top and marked "Queries for Pre-bid Conference") so as to reach the purchaser as indicated in invitation to bid. The purchaser shall answer the queries during the pre-bid conference, which would become a part of the proceedings of the Pre-bid Conference. The proceeding of the Pre Bid Conference would be hosted on the website of the purchaser. Before formulating and submitting their bids, all prospective bidders are advised to surf through the purchaser's website after the Pre-bid Conference, in order to enable them take cognizance of the revised tender conditions.

## CHAPTER 2

### CONDITIONS OF CONTRACT

#### A GENERAL CONDITIONS OF CONTRACT (GCC)

##### Table of Contents

##### Sl. No. Clause

- 2.1 Definitions
- 2.2 Contract Documents
- 2.3 Code of Integrity
- 2.4 Joint Venture, Consortium or Association
- 2.5 Scope of Supply
- 2.6 Suppliers' Responsibilities
- 2.7 Contract price
- 2.8 Copy Right
- 2.9 Application
- 2.10 Standards
- 2.11 Use of Contract Documents and Information
- 2.12 Patent Indemnity
- 2.13 Performance Security
- 2.14 Inspections and Tests
- 2.15 Packing
- 2.16 Delivery and Documents
- 2.17 Insurance
- 2.18 Transportation
- 2.19 Incidental Services
- 2.20 Spare Parts
- 2.21 Warranty
- 2.22 Terms of Payment
- 2.23 Change Orders and Contract Amendments
- 2.24 Assignment
- 2.25 Subcontracts
- 2.26 Extension of time
- 2.27 Liquidated Damages Clause
- 2.28 Termination for Default
- 2.29 Force Majeure
- 2.30 Termination for insolvency

- 2.31 Termination for Convenience
- 2.32 Settlement of Disputes
- 2.33 Governing Language
- 2.34 Applicable Law
- 2.35 Notice
- 2.36 Taxes and Duties
- 2.37 Right to use Defective Goods
- 2.38 Protection against Damage
- 2.39 Site preparation and installation
- 2.40 Import and Export Licenses
- 2.41 Risk Purchase Clause
- 2.42 Option Clause
- 2.43 Order Acceptance

291

## GENERAL CONDITIONS OF CONTRACT (GCC)

### 2.1 Definitions

2.1.1 The following words and expressions shall have the meanings hereby assigned to them:

- (i) "Contract" means the Contract Agreement entered into between the Purchaser and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
- (ii) "Contract Documents" means the documents listed in the Contract Agreement, including any amendments thereto.
- (iii) "Contract Price" means the price payable to the Supplier as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions there from, as may be made pursuant to the Contract.
- (iv) "Day" means calendar day.
- (v) "Completion" means the fulfilment of the Goods and related Services by the Supplier in accordance with the terms and conditions set forth in the Contract.
- (vi) "GCC" means the General Conditions of Contract.
- (vii) "Goods" means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Purchaser under the Contract.
- (viii) "Related Services" means the services incidental to the supply of the goods, such as transportation, insurance, installation, training and initial maintenance and other such obligations of the Supplier under the Contract.
- (ix) "Subcontractor" means any natural person, private or government entity, or a combination of the above, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier.
- (x) "Supplier" means the natural person, private or government entity, or a combination of the above, whose bid to perform the Contract has been accepted by the Purchaser and is named as such in the Contract Agreement.
- (xi) The "Council" means the Council of Scientific & Industrial Research (CSIR), registered under the Societies Registration Act, 1860 of the Govt. of India having its registered office at 2, Rafi Marg, New Delhi-110001, India and the
- (xii) "Purchaser" means any of the constituent Laboratory/Institute of the Council situated at any designated place in India as specified in Invitation to bid.
- (xiii) "The final destination," where applicable, means \_\_\_\_\_



## 2.2 Contract Documents

### 2.2.1

Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.

## 2.3 Code of Integrity

### 2.3.1

Without prejudice to and in addition to the rights of the Purchaser to other penal provisions as per the bid documents or contract, if the Purchaser comes to a conclusion that a (prospective) bidder/supplier, directly or through an agent, has violated this code of integrity in competing for the contract or in executing a contract, the Purchaser may take appropriate measures including one or more of the following:

a) Cancellation of the relevant contract and recovery of compensation for loss incurred by the purchaser;

b) Forfeiture or encashment of any other security or bond relating to the procurement;

c) Recovery of payments including advance payments, if any, made by the Purchaser along with interest thereon at the prevailing rate.

d) Provisions in addition to above:

1) Removal from the list of registered suppliers and banning/debarment of the bidder from participation in future procurements of the purchaser for a period not less than one year;

2) In case of anti-competitive practices, information for further processing may be filed under a signature of the Joint Secretary level officer, with the Competition Commission of India;

3) Initiation of suitable disciplinary or criminal proceedings against any individual or staff found responsible.

## 2.4 Joint Venture, Consortium or Association

### 2.4.1

If the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Purchaser for the fulfilment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Purchaser.

## 2.5 Scope of Supply

### 2.5.1

The Goods and Related Services to be supplied shall be as specified in invitation to bid.

## 2.6 Suppliers' Responsibilities

### 2.6.1

The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with Scope of Supply Clause of the GCC, and the Delivery and Completion Schedule, as per GCC Clause relating to delivery and document.

## 2.7 Contract price

### 2.7.1

Prices charged by the Supplier for the Goods supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its bid.

## 2.8 Copy Right

### 2.8.1

The copyright in all drawings, documents, and other materials containing data and information furnished to the Purchaser by the Supplier herein shall remain vested in the Supplier, or, if they are furnished to the Purchaser directly or through the Supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

## 2.9 Application

### 2.9.1

These General Conditions shall apply to the extent that they are not superseded by provisions in other parts of the Contract.

## 2.10 Standards

### 2.10.1

The Goods supplied and services rendered under this Contract shall conform to the standards mentioned in the Technical Specifications, and, when no applicable standard is mentioned, to the authoritative standard appropriate to the Goods' country of origin and such standards shall be the latest issued by the concerned institution.

## 2.11 Use of Contract Documents and Information

### 2.11.1

The Supplier shall not, without the Purchaser's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample or information furnished by or on behalf of the Purchaser in connection therewith, to any person other than a person employed by the Supplier in performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far, as may be necessary for purposes of such performance.

### 2.11.2

The Supplier shall not, without the Purchaser's prior written consent, make use of any document or information enumerated above except for purposes of performing the Contract.

### 2.11.3

Any document, other than the Contract itself, enumerated above shall remain the property of the Purchaser and shall be returned (in all copies) to the Purchaser on completion of the Supplier's performance under the Contract if so required by the Purchaser.

## 2.12 Patent Indemnity

### 2.12.1

The Supplier shall, subject to the Purchaser's compliance with GCC Sub-Clause

2.12.2 Indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark,

copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

(a) The installation of the Goods by the Supplier or the use of the Goods in India; and

(b) The sale in any country of the products produced by the Goods.

#### 2.12.2

If any proceedings are brought or any claim is made against the Purchaser, the Purchaser shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

### 2.13 Performance Security

#### 2.13.1

Within 21 days of receipt of the notification of award/PO, the Supplier shall furnish performance security in the amount specified in the Purchase Order, valid till 60 days after the warranty period

#### 2.13.2

The proceeds of the performance security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.

#### 2.13.3

The Performance Security shall be denominated in Indian Rupees for the offers received for supplies within India and denominated in the currency of the contract in the case of offers received for supply from foreign countries or in equivalent Indian Rupees in case the Performance Security is submitted by the Indian Agent.

#### 2.13.4

In the case of imports, the PS may be submitted either by the principal or by the Indian agent and, in the case of purchases from indigenous sources, the PS may be submitted by either the manufacturer or their authorized dealer/bidder.

#### 2.13.5

The Performance security shall be in one of the following forms:

(a) A Bank guarantee or stand-by Letter of Credit issued by a Scheduled commercial bank located in India or a bank located abroad in the form provided in the bidding documents.

Or

(b) A Banker's cheque or Account Payee demand draft in favour of the purchaser.

Or

(c) A Fixed Deposit Receipt pledged in favour of the Purchaser.

#### 2.13.6

The performance security will be discharged by the Purchaser and returned to the Supplier not later than 60 days following the date of completion of the Supplier's performance obligations, including any warranty obligations, unless specified otherwise, without levy of any interest.

#### 2.13.7

In the event of any contract amendment, the supplier shall, within 21 days of receipt of such amendment, furnish the amendment to the performance security, rendering the same valid for the duration of the contract, as amended for further period of 60 days thereafter.

#### 2.13.8

The order confirmation must be received within 14 days. However, the Purchaser has the powers to extend the time frame for submission of order confirmation and submission of Performance Security (PS). Even after extension of time, if the order confirmation /PS are not received, the contract shall be cancelled provided that the purchaser, on being satisfied that it is not a case of cartelization and the integrity of the procurement process has been maintained, may, for cogent reasons, offer the next successful bidder an opportunity to match the financial bid of the first successful bidder, and if the offer is accepted, award the contract to the next successful bidder at the price bid of the first successful bidder.

#### 2.13.9

Whenever, the bidder chooses to submit the Performance Security in the form of Bank Guarantee, then he should advise the banker issuing the Bank Guarantee to immediately send by Registered Post (A.D.) an unstamped duplicate copy of the Guarantee directly to the Purchaser with a covering letter to compare with the

#### 2.14 Inspections and Tests

##### 2.14.1

The inspections & test, training required would be as detailed in invitation to bid.

#### 2.15 Packing

##### 2.15.1

The Supplier shall provide such packing of the Goods as is required to prevent them damage or deterioration during transit to their final destination as indicated in the Contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods' final destination and the absence of heavy handling facilities at all points in transit.

##### 2.15.2

The packing, marking and documentation within and outside the packages shall comply strictly with such special requirements as shall be provided for in the Contract including additional requirements, if any, specified in the Purchase Order and any subsequent instructions ordered by the Purchaser.

##### 2.15.3

The marking and documentation within and outside the packages shall be as under:

- (a) Each package should have a packing list within it detailing the part Number(s), description, quantity etc.
- (b) Outside each package, the contract No., the name and address of the purchaser and the final destination should be indicated on all sides and top.
- (c) Each package should be marked as 1/x, 2/x, 3/x.....x/x, where "x" is the total No. of packages contained in the consignment.
- (d) All the sides and top of each package should carry an appropriate indication/label/stickers indicating the precautions to be taken while handling/storage.

#### 2.16 Delivery and Documents

##### 2.16.1

Delivery of the Goods and completion and related services shall be made by the

Supplier in accordance with the terms specified by the Purchaser in the contract. The details of shipping and/or other documents to be furnished by the supplier are as under :-

For goods manufactured within India

Within 24 hours of dispatch, the supplier shall notify the purchaser the complete details of dispatch and also supply following documents by registered post / speed post and copies thereof by FAX/Email.

(a) Two copies of Supplier's Invoice indicating, *inter-alia* description and specification of the goods, quantity, unit price, total value;

(b) Packing list;

(c) Insurance certificate, if required under the contract;

(d) Railway receipt/Consignment note;

(e) Manufacturer's guarantee certificate and in-house inspection certificate;

(f) Inspection certificate issued by purchaser's inspector, if any; and

(g) Any other document(s) as and when required in terms of the contract;

Note:

01 The nomenclature used for the item description in the Invoices (s), packing list(s) and the delivery note(s) etc. should be identical to that used in the contract. The dispatch particulars including the name of the transporter should also be mentioned in the Invoice(s).

02 The above documents should be received by the Purchaser before arrival of the Goods and, if not received, the Supplier will be responsible for any consequent expenses

For goods manufactured abroad

Within 24 hours of dispatch, the supplier shall notify the purchaser the complete details of dispatch and also supply following documents by Registered Post/courier and copies thereof by FAX/Email.

(a) Two copies of supplier's Invoice giving full details of the goods including quantity, value, etc.;

(b) Packing list;

(c) Certificate of country of origin issued by the supplier

(d) Manufacturer's guarantee and Inspection certificate;

(e) Inspection certificate issued by the Purchaser's Inspector, if any;

(f) Insurance Certificate, if required under the contract;

(g) Name of the Vessel/Carrier;

(h) Bill of Lading/Airway Bill;

(i) Any other document(s) as and when required in terms of the contract;

Note:

01. The nomenclature used for the item description in the invoices(s), packing list(s) and the delivery note(s) etc. should be identical to that used in the contract. The dispatch particulars including the name of the transporter should also be mentioned in the Invoice(s).

02. The above documents should be received by the Purchaser before arrival of the Goods and, if not received, the Supplier will be responsible for any consequent expenses.

298

2.16.2

The terms FOB, FCA, CIF, CIP etc shall be governed by the rules prescribed in the

current edition of the Inco terms published by the International Chambers of Commerce, Paris.

#### 2.16.3

The mode of transportation shall be as specified in invitation to bid. In case the purchaser elects to have the transportation done through Air, then air lifting needs to be done through Air India only. In case Air India does not operate in the Airport of despatch, then the bidder is free to engage the services of any other Airlines.

#### 2.17 Insurance

##### 2.17.1

Should the purchaser elect to buy on CIF/CIP basis, the Goods supplied under the Contract shall be fully insured against any loss or damage incidental to manufacture or acquisition, transportation, storage and delivery. The Insurance shall be for an amount equal to 110% of the CIF or CIP value of the contract from within "warehouse to warehouse (final destination)" on "all risk basis" including strikes, riots and civil commotion.

##### 2.17.2

Where delivery of the goods is required by the purchaser on CIF or CIP basis the supplier shall arrange and pay for Cargo Insurance, naming the purchaser as beneficiary and initiate & pursue claims till settlement, on the event of any loss or damage.

##### 2.17.3

Where delivery is on FOB or FCA basis, insurance would be the responsibility of the purchaser.

##### 2.17.4

With a view to ensure that claims on insurance companies, if any, are lodged in time, the bidders and /or the Indian agent shall be responsible for follow up with their principals for ascertaining the dispatch details and informing the same to the Purchaser and he shall also liaise with the Purchaser to ascertain the arrival of the consignment after clearance so that immediately thereafter in his presence the consignment could be opened and the insurance claim be lodged, if required, without any loss of time. Any delay on the part of the bidder/Indian Agent would be viewed seriously and he shall be directly responsible for any loss sustained by the purchaser on the event of the delay.

#### 2.18 Transportation

##### 2.18.1

Where the Supplier is required under the Contract to deliver the Goods FOB, transport of the Goods, up to and including the point of putting the Goods on board the vessel at the specified port of loading, shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract price. Where the Supplier is required under the Contract to deliver the Goods FCA, transport of the Goods and delivery into the custody of the carrier at the place named by the Purchaser or other agreed point shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract price.

##### 2.18.2

Where the Supplier is required under the Contract to deliver the Goods CIF or CIP, transport of the Goods to the port of destination or such other named place of destination in the Purchaser's country, as shall be specified in the Contract, shall be

arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price.

#### 2.18.3

In the case of supplies from within India, where the Supplier is required under the Contract to transport the Goods to a specified destination in India, defined as the Final Destination, transport to such destination, including insurance and storage, as specified in the Contract, shall be arranged by the Supplier, and the related costs shall be included in the Contract Price.

#### 2.19 Incidental Services

##### 2.19.1

The supplier may be required to provide any or all of the services, including training, if any, specified in invitation to bid.

#### 2.20 Spare Parts

##### 2.20.1

The Supplier shall be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the Supplier:

(a) Such spare parts as the Purchaser may elect to purchase from the Supplier, providing that this election shall not relieve the Supplier of any warranty obligations under the Contract; and

(b) In the event of termination of production of the spare parts:

(i) Advance notification to the Purchaser of the pending termination, in sufficient time to permit the Purchaser to procure needed requirements; and

(ii) Following such termination, furnishing at no cost to the Purchaser, the blueprints, drawings and specifications of the spare parts, if requested.

#### 2.21 Warranty

##### 2.21.1

The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.

##### 2.21.2

The Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in India.

##### 2.21.3

The warranty shall remain valid for a period as specified in the Purchase Order after the goods or any portion thereof as the case may be have been delivered to and accepted at the final destination.

##### 2.21.4

The Purchaser shall give notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Supplier to inspect such defects.

##### 2.21.5

Upon receipt of such notice, the Supplier shall, within a reasonable period of time, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.

#### 2.21.6

If having been notified, the Supplier fails to remedy the defect within a reasonable period of time, the Purchaser may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.

#### 2.21.7

Goods requiring warranty replacements must be replaced on free of cost basis to the purchaser.

### 2.22 Terms of Payment

#### 2.22.1

The method and conditions of payment to be made to the Supplier under this Contract shall be as specified in the Purchase Order.

#### 2.22.2

The Supplier's request(s) for payment shall be made to the Purchaser in writing, accompanied by an invoice describing, as appropriate, the Goods delivered and the Services performed, and by documents, submitted pursuant to Delivery and document Clause of the GCC and upon fulfilment of other obligations stipulated in the contract.

#### 2.22.3

Payments shall be made promptly by the Purchaser but in no case later than thirty (30) days after submission of the invoice or claim by the Supplier. While claiming the payment, the supplier should certify in the bill/invoice that the payment being claimed strictly in terms of the contract and all obligations on the part of the supplier for claiming the payment have been fulfilled as required under the contract.

#### 2.22.4

Payments shall be made in currency as indicated in the contract.

#### 2.22.5

In case of imports, the L/C will be confirmed at the suppliers cost, if requested specifically by the supplier. All bank charges abroad shall be to the account of the beneficiary i.e. supplier and all bank charges in India shall be to the account of the opener i.e. purchaser. If L/C is requested to be extended/ reinstated for reasons not attributable to the purchaser, the charges thereof would be to the suppliers' account. Payment of local currency portion shall be made in Indian Rupees within thirty (30) days of presentation of claim supported by a certificate from the Purchaser declaring that the Goods have been delivered and that all other contracted Services have been performed. The LC for 100% value of the contract shall be established after deducting the agency commission payable if any, to the Indian agent from the FOB/FCA value.

#### Note:

All payments due under the Contract shall be paid after deduction of statutory levies at source (like ESIC, Income Tax, etc.), wherever applicable.

### 2.23 Change Orders and Contract Amendments

#### 2.23.1

The Purchaser may at any time, by written order given to the Supplier pursuant to Clause on Notices of the GCC make changes within the general scope of the Contract in any one or more of the following:



(a) Increase or decrease in the quantity required, exercise of quantity option clause;

(b) Changes in schedule of deliveries and terms of delivery;

(c) The changes in inspection arrangements;

(d) Changes in terms of payments and statutory levies;

(e) Changes due to any other situation not anticipated;

#### 2.23.2

No changes in the price quoted shall be permitted after the purchase order has been issued except on account of statutory variations.

#### 2.23.3

No variation or modification in the terms of the contract shall be made except by written amendment signed by the parties.

### 2.24 Assignment

#### 2.24.1

The Supplier shall not assign, in whole or in part, its obligations to perform under the Contract, except with the Purchaser's prior written consent.

### 2.25 Subcontracts

#### 2.25.1

The Supplier shall notify the Purchaser in writing of all subcontracts awarded under this Contract if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the Supplier from any liability or duties or obligation under the Contract.

#### 2.26 Extension of time.

##### 2.26.1

Delivery of the Goods and performance of the Services shall be made by the Supplier in accordance with the time schedule specified by the Purchaser.

##### 2.26.2

If at any time during performance of the Contract, the Supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the Goods and performance of Services, the Supplier shall promptly notify the Purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may, at its discretion, extend the Supplier's time for performance with or without liquidated damages, in which case the extension shall be ratified by the parties by amendment of the Contract.

##### 2.26.3

Except as provided under the Force Majeure clause of the GCC, a delay by the Supplier in the performance of its delivery obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to liquidated damages Clause of the GCC unless an extension of time is agreed upon pursuant to above clause without the application of penalty clause.

### 2.27 Liquidated Damages

#### 2.27.1

Subject to GCC Clause on Force Majeure, if the Supplier fails to deliver any or all of the Goods or to perform the Services within the period(s) specified in the Contract, the Purchaser shall, without prejudice to its other remedies under the Contract, deduct from the Contract Price, as penalty, a sum equivalent to 0.5% of the delivered

price of the delayed Goods or unperformed Services or contract value in case the delivered price of the delayed goods or unperformed services cannot be ascertained from the contract, for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of 10%. Once the maximum is reached, the Purchaser may consider termination of the Contract pursuant to GCC Clause on Termination for Default.

#### 2.28 Termination for Default

##### 2.28.1

The Purchaser may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the Supplier, terminate the Contract in whole or part.

- (a) If the Supplier fails to deliver any or all of the Goods within the period(s) specified in the contract, or within any extension thereof granted by the Purchaser pursuant to GCC Clause on Extension of Time; or
- (b) If the Supplier fails to perform any other obligation(s) under the Contract.
- (c) If the Supplier, in the judgment of the Purchaser has engaged in corrupt or fraudulent or collusive or coercive practices etc. as defined in GCC Clause and ITB clause on code of integrity in competing for or in executing the Contract.

##### 2.28.2

In the event the purchaser terminates the contract in whole or in part, he may take recourse to any one or more of the following action:

- (a) The Performance Security is to be forfeited;
- (b) The purchaser may procure, upon such terms and in such manner as it deems appropriate, stores similar to those undelivered, and the supplier shall be liable for all available actions against it in terms of the contract.
- (c) However, the supplier shall continue to perform the contract to the extent not terminated.

#### 2.29 Force Majeure

##### 2.29.1

Notwithstanding the provisions of GCC Clauses relating to extension of time, Liquidated damages and Termination for Default the Supplier shall not be liable for forfeiture of its performance security, liquidated damages or termination for default, if and to the extent that, its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

##### 2.29.2

For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

##### 2.29.3

If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such conditions and the cause thereof within 21 days of its occurrence. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

#### 2.29.4

If the performance in whole or in part or any obligations under the contract is prevented or delayed by any reason of Force Majeure for a period exceeding 60 days, either party may at its option terminate the contract without any financial repercussions on either side.

#### 2.30 Termination for Insolvency

##### 2.30.1

The Purchaser may at any time terminate the Contract by giving written notice to the Supplier, if the Supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy, which has accrued or will accrue thereafter to the Purchaser.

#### 2.31 Termination for Convenience

##### 2.31.1

The Purchaser, by written notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.

##### 2.31.2

The Goods that are complete and ready for shipment within 30 days after the Supplier's receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:

- (a) To have any portion completed and delivered at the Contract terms and prices; and/or
- (b) To cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and for materials and parts previously procured by the Supplier.

#### 2.32 Settlement of Disputes

##### 2.32.1

The Purchaser and the supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.

##### 2.32.2

If, after twenty-one (21) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Purchaser or the Supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under the Contract.

##### 2.32.3

The dispute settlement mechanism/arbitration proceedings shall be concluded as under:

- (a) If any dispute or difference arises between the parties hereto as to the construction, interpretation, effect and implication of any provision of this

agreement including the rights or liabilities or any claim or demand of any party against other or in regard to any other matter under these presents but excluding any matters, decisions or determination of which is expressly provided for in this Agreement, such disputes or differences shall be referred to an Arbitral Bench consisting of three Arbitrators, one each to be appointed by each party and the two Arbitrators shall appoint a third Arbitrator who shall be the presiding Arbitrator. A reference to the Arbitration under this Clause shall be deemed to be submission within the meaning of the Arbitration and Conciliation Act, 1996 and the rules framed thereunder for the time being in force. Each party shall bear and pay its own cost of the arbitration proceedings unless the Arbitrators otherwise decides in the Award. The venue of arbitration should be the place from where the contract has been issued.

(b) In the case of a dispute between the purchaser and a Foreign Supplier, the dispute shall be settled by arbitration. In accordance with provision of subclause (a) above. But if this is not acceptable to the supplier then the dispute shall be settled in accordance with provisions of UNCITRAL (United Nations Commission on International Trade Law) Arbitration Rules.

#### 2.32.4

The venue of the arbitration shall be the place from where the purchase order or contract is issued.

#### 2.32.5

Notwithstanding any reference to arbitration herein,

(a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and

(b) the Purchaser shall pay the Supplier any monies due the Supplier.

#### 2.33 Governing Language

##### 2.33.1

The contract shall be written in English language which shall govern its interpretation. All correspondence and other documents pertaining to the Contract, which are exchanged by the parties, shall be written in the English language only.

#### 2.34 Applicable Law

##### 2.34.1

The Contract shall be interpreted in accordance with the laws of the Union of India and all disputes shall be subject to place of jurisdiction from where the Purchase Order has been issued.

#### 2.35 Notices

##### 2.35.1

Any notice given by one party to the other pursuant to this contract/order shall be sent to the other party in writing or by cable, telex, FAX, e-mail or and confirmed in writing to the other party's address specified in the invitation to bid.

##### 2.35.2

A notice shall be effective when delivered or on the notice's effective date, whichever is later.

#### 2.36 Taxes and Duties

##### 2.36.1

For goods manufactured outside India, the Supplier shall be entirely responsible for

all taxes, stamp duties, license fees, and other such levies imposed outside India.

#### 2.36.2

For goods Manufactured within India, the Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred till its final manufacture/production.

#### 2.36.3

If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in India, the Purchaser shall make its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

#### 2.36.4

All payments due under the contract shall be paid after deduction of statutory levies (at source) (like ESIC, IT, etc.) wherever applicable.

#### 2.36.5

Customs Duty – If the supply is from abroad this Institute is permitted to import goods as per notification No.51/96 – Customs and pay a concessional duty up to 5% as per notification 24/2002 – Customs on all imports.

### 2.37 Right to use Defective Goods

#### 2.37.1

If after delivery, acceptance and installation and within the guarantee and warranty period, the operation or use of the goods proves to be unsatisfactory, the Purchaser shall have the right to continue to operate or use such goods until rectifications of defects, errors or omissions by repair or by partial or complete replacement is made without interfering with the Purchaser's operation.

### 2.38 Protection against Damage

#### 2.38.1

The system shall not be prone to damage during power failures and trip outs. The normal voltage and frequency conditions available at site as under:

(a) Voltage 230 volts – Single phase/ 415 V 3 phase (+\_ 10%)

(b) Frequency 50 Hz.

### 2.39 Site preparation and installation

#### 2.39.1

The Purchaser is solely responsible for the construction of the equipment sites in compliance with the technical and environmental specifications defined by the Supplier. The Purchaser will designate the installation sites before the scheduled installation date to allow the Supplier to perform a site inspection to verify the appropriateness of the sites before the installation of the Equipment, if required. The supplier shall inform the purchaser about the site preparation, if any, needed for installation, of the goods at the purchaser's site immediately after notification of award/contract.

### 2.40 Import and Export Licenses

#### 2.40.1

If the ordered materials are covered under restricted category of EXIM policy in India the Vendor / Agent may intimate such information for obtaining necessary, license in India.

#### 2.40.2

If the ordered equipment is subject to Vendor procuring an export license from the designated government agency / country from where the goods are shipped / sold, the vendor has to mention the name, address of the government agency / authority.

The vendor must also mention the time period within which the license will be granted in normal course.

#### 2.41 Risk Purchase Clause

##### 2.41.1

If the supplier fails to deliver the goods within the maximum delivery period specified in the contract or Purchase Order, the purchaser may procure, upon such terms and in such a manner as it deems appropriate, Goods or Services similar to those undelivered and the Supplier shall be liable to the purchaser for any excess costs incurred for such similar goods or services.

#### 2.42 Option Clause

##### 2.42.1

The Purchaser reserves the right to increase or decrease the quantity of the required goods up to 25% (Twenty Five) per cent at any time, till final delivery date (or the extended delivery date of the contract), by giving reasonable notice even though the quantity ordered initially has been supplied in full before the last date of the delivery period (or the extended delivery period)

#### 2.43 Order Acceptance

##### 2.43.1

The successful bidder should submit Order acceptance within 14 days from the date of issue of order/signing of contract, failing which it shall be presumed that the vendor is not interested and his bid security is liable to be forfeited pursuant to clause 1.16.9 of ITB.

## CHAPTER 3

### FORMATS

#### Table of Contents

##### S.No. Name

01 Price Schedule Forms

02 Bid Form

03 Bidder Information Form

04 Manufacturers' Authorization Form (MAF)

05 Bid Security Form

06 Bid Securing Declaration

07 Performance Statement Form

08 Deviation Statement Form

09 Service Support Detail Form

10 Performance Security Form

11 Acceptance Certificate Form

12 Format of Letter of Authority for participating in bid opening

13 Format of declaration of abiding by the code of integrity and conflict of interest to be submitted by the bidder

14. Format of Affidavit of self-certification regarding domestic value addition

## Global Tender

### CHAPTER - 1

### INSTRUCTIONS TO BIDDERS

#### Table of Contents

## Sl. No. Contents

### A. Introduction

- 1.1 Eligible Bidders
- 1.2 Cost of Bidding
- 1.3 Code of Integrity for Public Procurement

### B. The Bidding Documents

- 1.4 Cost of tender Documents
- 1.5 Content of tender Documents
- 1.6 Clarification of tender documents
- 1.7 Amendment of tender Documents

### C. Preparation of Bids

- 1.8 Language of Bid
- 1.9 Purchase Preference Policies
- 1.10 Documents Comprising the Bid
- 1.11 Bid form and price schedule
- 1.12 Bid Prices
- 1.13 Bid Currencies
- 1.14 Documents Establishing Bidder's Eligibility and Qualifications
- 1.15 Documents Establishing Goods' Eligibility And Conformity to Bidding Documents
- 1.16 Bid Security
- 1.17 Period of Validity of Bids
- 1.18 Format and Signing of Bid

### D. Submission and Sealing Bids

- 1.19 Submission, Sealing and Marking of Bids
- 1.20 Deadline for Submission of Bids
- 1.21 Late Bids
- 1.22 Withdrawal, substitution and Modification of Bids

### E. Opening and Evaluation of Bids

- 1.23 Opening of Bids by the Purchaser
- 1.24 Confidentiality
- 1.25 Clarification of Bids
- 1.26 Preliminary Examination
- 1.27 Responsiveness of Bids
- 1.28 Bidders right to question rejection
- 1.29 Non-Conformity, Error and Omission
- 1.30 Examination of Terms & Conditions, Technical Evaluation
- 1.31 Conversion to Single Currency
- 1.32 Evaluation and Comparison of bids
- 1.33 Contacting the Purchaser
- 1.34 Post qualification

### F. Award of Contract

- 1.35 Negotiations
- 1.36 Award Criteria
- 1.37 Option Clause
- 1.38 Purchaser's right to vary Quantities at Time of Award
- 1.39 Purchaser's right to accept any Bid and to reject any or all

## Bids

### 1.40 Notification of Award

### 1.41 Signing of Contract

### 1.42 Order Acceptance

### 1.43 Performance Security

### 1.44 Pre-bid Conference

### 1.45 Integrity Pact

## A Introduction

### 1.1. Eligible Bidders

#### 1.1.1

This Invitation for Bids is open to all suppliers subject to para 06 of the invitation for bids/NIT.

1.1.2 A supplier or bidder shall be considered to be from a country if (i) the entity is incorporated in that country, or ii) a majority of its shareholding or effective control of the entity is exercised from that country; or (iii) more than 50% of the value of the item being supplied has been added in that country. Indian suppliers shall mean those entities which meet any of these tests with respect to India.

1.1.3 MSEs would be treated as owned by Scheduled Caste/Schedule Tribe enterprises as under:

(a) In case of proprietary MSE, proprietor(s) shall be SC /ST.

(b) In case of partnership MSE, the SC/ST partners shall be holding at least 51% (fifty one percent) shares in the unit.

(c) In case of Private Limited Companies, at least 51% (fifty one percent) share shall be held by SC/ST promoters.

1.1.4 MSEs owned by women shall also be determined as per the above analogy/criteria.

1.1.5 Bidders should not be associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Purchaser to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods to be purchased under this Invitation of Bids.

1.1.6 Bids from Joint Ventures, Consortium or Associations so long as they are formed and registered prior to the bid submission date.

1.1.7 The bidders who have been temporarily suspended or removed from the list of registered suppliers by the purchaser or banned from Ministry/country wide procurement shall be ineligible for participation in the bidding process.

### 1.2 Cost of Bidding

#### 1.2.1

The Bidder shall bear all costs associated with the preparation and submission of its bid, and "the Purchaser", will in no case be responsible or liable for these costs, regardless of the conduct or outcome of the bidding process.

### 1.3 Code of Integrity

#### 1.3.1

The bidders/suppliers should sign a declaration about abiding by the Code of Integrity for Public Procurement in bid documents. In case of any transgression of this code, the bidder is not only liable to be removed from the list of registered suppliers, but it would be liable for other punitive actions such as cancellation of contracts, banning and blacklisting or action in Competition Commission of India,



and so on.

#### 1.3.2

Code of integrity for Public Procurement: The Purchaser as well as bidders, suppliers, contractors and consultants should observe the highest standard of ethics and should not indulge in the following prohibited practices, either directly or indirectly, at any stage during the procurement process or during execution of resultant contracts:

- i) "corrupt practice": making offers, solicitation or acceptance of bribe, rewards or gifts or any material benefit, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process or contract execution;
- ii) "Fraudulent practice": any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefits may be obtained or an obligation avoided. This includes making false declaration or providing false information for participation in a tender process or to secure a contract or in execution of the contract;
- iii) "anti-competitive practice": any collusion, bid rigging or anti-competitive arrangement, or any other practice coming under the purview of the Competition Act, 2002, between two or more bidders, with or without the knowledge of the purchaser, that may impair the transparency, fairness and the progress of the procurement process or to establish bid prices at artificial, non-competitive levels;
- iv) "coercive practice": harming or threatening to harm, persons or their property to influence their participation in the procurement process or affect the execution of a contract;
- v) "conflict of interest": participation by a bidding firm or any of its affiliates that are either involved in the consultancy contract to which this procurement is linked; or if they are part of more than one bid in the procurement; or if the bidding firm or their personnel have relationships or financial or business transactions with any official of purchaser who are directly or indirectly related to tender or execution process of contract; or improper use of information obtained by the (prospective) bidder from the purchaser with an intent to gain unfair advantage in the procurement process or for personal gain; and
- vi) "Obstructive practice": materially impede the purchaser's investigation into allegations of one or more of the above mentioned prohibited practices either by deliberately destroying, falsifying, altering; or by concealing of evidence material to the investigation; or by making false statements to investigators and/or by threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or by impeding the purchaser's Entity's rights of audit or access to information;

318

#### 1.3.3

Obligations for Proactive disclosures

- i) The Purchaser as well as bidders, suppliers, contractors and consultants, are obliged under Code of Integrity for Public Procurement to sue-moto proactively declare any conflicts of interest (coming under the definition mentioned above – preexisting or as and as soon as these arise at any stage) in any procurement process or execution of contract. Failure to do so would amount to violation of this code of

integrity; and

ii) The bidder must declare, whether asked or not in a bid document, any previous transgressions of such a code of integrity with any entity in any country during the last three years or of being debarred by any other Procuring Entity. Failure to do so would amount to violation of this code of integrity;

iii) To encourage voluntary disclosures, such declarations would not mean automatic disqualification for the bidder making such declarations. The declared conflict of interest would be evaluated and mitigation steps, if possible, taken by the purchaser.

#### 1.3.4 Punitive Provisions

Without prejudice to and in addition to the rights of the Purchaser to other penal provisions as per the bid documents or contract, if the Purchaser comes to a conclusion that a (prospective) bidder/supplier, directly or through an agent, has violated this code of integrity in competing for the contract or in executing a contract, the purchaser may take appropriate measures including one or more of the following:

i) If his bids are under consideration in any procurement:

- a) Forfeiture or encashment of bid security;
- b) Calling off of any pre-contract negotiations; and
- c) Rejection and exclusion of the bidder from the procurement process.

ii) If a contract has already been awarded

- a) Cancellation of the relevant contract and recovery of compensation for loss incurred by the purchaser;
- b) Forfeiture or encashment of any other security or bond relating to the procurement;
- c) Recovery of payments including advance payments, if any, made by the purchaser along with interest thereon at the prevailing rate.

iii) Provisions in addition to above:

- a) Removal from the list of registered suppliers and banning/debarment of the bidder from participation in future procurements of the purchaser for a period not less than one year;
- b) In case of anti-competitive practices, information for further processing may be filed under a signature of the Joint Secretary level officer, with the Competition Commission of India;
- c) Initiation of suitable disciplinary or criminal proceedings against any individual or staff found responsible.

**319**

## **B. The Bidding Documents**

### **1.4 Cost of Tender Documents**

#### **1.4.1**

Interested eligible bidders may purchase the bidding documents on payment of the cost of bidding documents as indicated in the invitation forbids/NIT or alternatively, the bidding documents can be downloaded from our Website as indicated in the Invitation for Bids/NIT free of cost.

### **1.5 Content of Tender Documents**

#### **1.5.1**

The goods required, bidding procedures and contract terms are prescribed in the bidding documents which should be read in conjunction. The bidding documents,

apart from the invitation for bids and Critical Date Sheet have been divided into 8 Chapters as under:

Chapter 1: Instructions to Bidder (ITB)

Chapter 2: General Conditions of Contract (GCC) and Special Condition of Contract (SCC)

Chapter 3: Schedule of Requirements

Chapter 4: Specifications and Allied Technical Details

Chapter 5: Price Schedule Forms

Chapter 6: Qualification requirements

Chapter 7: Contract Form

Chapter 8: Other Standard Forms comprising:

(1) Bidder Information Form

(2) Manufacturer's Authorization Form (MAF);

(3) Bid Security Form

(4) Bid Securing declaration

(5) Performance Statement form

(6) Deviation Statement Form;

(7) Service Support details;

(8) Bid form

(9) Performance Security Form;

(10) Acceptance Certificate Form

(11) Integrity pact

(12) Format of letter of authority for participating in bid opening

(13) Format for declaration by the bidder for code of integrity and Conflict of interest.

1.5.2 The Bidder is expected to examine all instructions, forms, terms, and specifications in the bidding documents. Failure to furnish all information required by the bidding documents or submission of a bid not substantially responsive to the bidding documents in every respect will be at the Bidder's risk and may result in rejection of its bid.

**320**

## 1.6 Clarification of tender documents

### 1.6.1

A prospective Bidder requiring any clarification of the Bidding Documents shall contact the Purchaser in writing at the Purchaser's address specified in the Special Conditions of Contract (SCC), latest by the date specified in the critical date sheet. No request for clarification or query shall normally be entertained after the deadline/pre-bid conference if any. Should the Purchaser deem it necessary to amend the Tender Documents as a result of a clarification, it shall do so following the procedure under Clause relating to amendment of Tender Documents and Clause relating to Deadline for Submission of Bids.

The queries, clarifications and amendments issued would also be hosted on the website of the Purchaser for the benefit of the other prospective bidders and also shall be sent to all bidders who have purchased the tender documents.

## 1.7 Amendment of Tender Documents

### 1.7.1

At any time prior to the deadline for submission of bids, the Purchaser may, for any

reason, whether at its own initiative or in response to a clarification requested by a prospective bidder, modify the tender documents by amendment. The same would also be hosted on the website of the Purchaser and all prospective bidders are expected to surf the website before submitting their bids to take cognizance of the amendments. However, the copies of the amendments would be sent by registered post/speed post/courier/e-mail to all the bidders who have purchased the tender documents.

#### 1.7.2

In order to allow prospective bidders' reasonable time in which to take the amendment into account in preparing their bids, the Purchaser, at its discretion, may extend the deadline for the submission of bids and host the changes on the website of the Purchaser.

### C. PREPARATION OF BIDS

#### 1.8. Language of Bid

##### 1.8.1

The bid prepared by the Bidder, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Purchaser shall be written in English language only.

##### 1.8.2

The Supplier shall bear all costs of translation, if any, to the English language and bear all risks of the accuracy of such translation, for documents provided by the Supplier.

**321**

#### 1.9 Purchase Preference Policies

##### 1.9.1

The purchaser intends to give product reservation/purchase preference/price preference in line with current Govt. of India procurement policies to help inclusive national economic growth by providing long term support to Small and Medium enterprises (SMEs) and disadvantaged sections of the society and to address environmental concerns along with preferential market access in govt. procurements.

1.9.2 For the above purpose, local supplier means a supplier or service provider whose product or service offered for procurement meets the minimum local content as prescribed in DIPP Order No.P-45021/2/2017-PP (BE-II) dated 28<sup>th</sup> May, 2018 or by the competent Ministries/Departments in pursuance of this order and 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 items 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.

##### 1.10.1 Documents comprising the bid

The bid prepared by the Bidder shall include documents as under:

##### A. Technical bid

- (a) Bidder Information Form;
- (b) Declaration abiding by the Code of Integrity and no conflict of interest for public procurement;
- (c) Bid security as specified in the Invitation to Bids;
- (d) Service support details form;

- (e) Deviation Statement Form;
- (f) Performance Statement Form;
- (g) Manufacturer's \_\_\_\_\_ Authorization Form along with a certified copy of the Agency Agreement between the bidders and the Indian Agent;
- (h) Documentary evidence establishing that the bidder is eligible to bid and is qualified to perform the contract if its bid is accepted;
- (i) Integrity Pact, if required;
- (j) Documents establishing goods eligibility and conformity to bidding documents; indicating the Indian Customs Tariff Number (ICT & HSN No.) .
- (k) Schedule of requirements.
- (l) Self certification that the item offered meets the minimum local content of 50% giving details of the location(s) at which the local value addition is made in case the bidder wishes to avail the benefits under the make in India policy, if applicable.
- (m) In cases of procurement for a value in excess of ₹ 10 crores, the 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 to avail the benefits under the make in India policy, if applicable.

322

- (n) Documentary evidence about the status of the bidder i.e. whether MSE or not, owned by SC/ST or not and whether the MSE is owned by a women entrepreneur or not.

#### B Price bid

- (i) Bid form;
- (ii) Applicable Price Schedule Form;

#### 1.11. Bid form and price schedule

##### 1.11.1

The bidder shall complete the Bid Form and the appropriate price schedule form furnished in the bidding documents. These forms must be completed without any alterations to its format and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested. The Bid Form and the appropriate Price Schedule form shall be submitted in accordance with Clause 1.18.3 of the bidding documents.

#### 1.12. Bid Prices

##### 1.12.1

The Bidder shall indicate on the appropriate price schedule form, the unit prices and total bid prices of the goods it proposes to supply under the contract.

##### 1.12.2

Prices indicated on the price-schedule form shall be entered separately in the following manner:

- (a) For Goods manufactured within India
  - (i) The price of the goods quoted Ex-works including taxes already paid.
  - (ii) GST and other taxes, if any which will be payable on the goods if the contract is awarded.
  - (iii) The charges for inland transportation, insurance and other local services

required for delivering the goods at the desired destination as specified in the price schedule form.

(iii) Wherever applicable, the cost towards the installation, commissioning, spares, extended warranty, AMC/CMC, site preparation and training including any incidental services, if any.

(b) For Goods manufactured abroad

(i) The price of the goods, quoted on FCA (named place of delivery abroad) or FOB (named port of shipment), as specified in the price schedule form.

(ii) The charges for insurance and transportation of the goods to the port / place of destination both by Air/Sea.

(iii) The agency commission charges, if any.

(iv) Wherever applicable, the cost towards the installation, commissioning, spares, extended warranty, AMC/CMC, site preparation and training including any incidental services, if any.

**323**

1.12.3

The terms FOB, FCA, CIF, CIP etc. shall be governed by the rules prescribed in the current edition of the Incoterms published by the International Chambers of Commerce, Paris.

1.12.4

Where there is no mention of packing, forwarding, freight, insurance charges, taxes etc. such offer shall be rejected as incomplete.

1.12.5

The price quoted shall remain fixed during the contract period and shall not vary on any account

1.12.6

All lots and items must be listed and priced separately in the Price Schedules. If a Price Schedule shows items listed but not priced, their prices shall be assumed to be included in the prices of other items. Lots or items not listed in the Price Schedule shall be assumed to be not included in the bid.

1.12.7

The Purchaser is registered with Dept. of Scientific & Industrial Research, Govt. of India and concessional customs duty and GST & IGST are leviable vide notification No. 54/2002-Customs on all imports covered under Notification No.51/96-Customs dated 23.07.1996, Notification No.47/2017-Integrated Tax (Rate) and Notification No. 45/2017-Central Tax (Rate) both dated 14<sup>th</sup> November, 2017

1.12.8

Please state specifically in your offer whether the duties and taxes are extra over the prices quoted, failing which it will be presumed that the prices are inclusive of taxes and duties and no claim would be entertained for statutory variations at a later date.

1.12.9

Stipulations like "GST is presently not applicable but the same will be charged if it becomes leviable later on" is not acceptable unless in such cases it is clearly stated that GST will not be charged if the same becomes applicable later on due to increase in turn over etc. If a bidder fails to comply with this requirement, his quoted price shall be loaded with the quantum of duty which is normally applicable on the item in question for the purpose of comparison with the prices of other tenderers.

Note: All payments due under the contract shall be paid after deduction of statutory levies at source (like TDS etc.), wherever applicable.

#### 1.13. Bid Currencies

##### 1.13.1

Prices shall be quoted in Indian Rupees for offers received for supply within India and in freely convertible foreign currency in case of offers received for supply from foreign countries i.e. domestic tenderers are to quote and accept their payment in Indian currency; Indian agents of foreign suppliers are to receive their agency commission in Indian currency; cost of imported goods & services rendered in India, which are directly imported against the contract, may be quoted in foreign currency (currencies).

324

#### 1.14. Documents Establishing Bidder's Eligibility and qualifications

##### 1.14.1

The bidder shall furnish, as part of its bid, documents establishing the bidders' eligibility to bid and its qualification to perform the contract if its bid is accepted.

##### 1.14.2

The documentary evidence of the bidder's qualification to perform the contract if the bid is accepted shall establish to the purchaser's satisfaction that;

(a) The bidder meets the qualification criteria listed in bidding documents if any.

(b) Bidder who doesn't manufacture the goods it offers to supply shall submit Manufacturers' Authorization Form (MAF) using the form specified in the bidding document to demonstrate that it has been duly authorized by the manufacturer of the goods to quote and/or supply the goods.

(c) In case a bidder not doing business within India, it shall furnish the certificate to the effect that the bidder is or will be represented by an agent in India equipped and able to carry out the supply, maintenance, repair obligations etc. during the warranty and post warranty period or ensure a mechanism at place for carrying out the supply, maintenance, repair obligations etc. during the warranty and post-warranty period.

##### 1.14.3

Conditional tenders shall not be accepted.

#### 1.15 Documents Establishing Goods' Eligibility and Conformity to Bidding Documents

##### 1.15.1

To establish the goods' eligibility, the documentary evidence of the goods and services eligibility shall consist of a statement on the country of origin of the goods and services offered which shall be confirmed by a certificate of origin at the time of shipment.

##### 1.15.2

To establish the conformity of the goods and services to the specifications and schedule of requirements of the bidding document, the documentary evidence of conformity of the goods and services to the bidding documents may be in the form of literature, drawings and data, and shall consist of:

(a) A detailed description of the essential technical and performance characteristics of the goods;

(b) A list giving full particulars, including available sources and current prices, of spare parts, special tools, etc., necessary for the proper and continuing

functioning of the goods during the warranty period following commencement of the use of the goods by the Purchaser in the Priced-bid; and

325

(c) An item-by-item commentary on the Purchaser's Technical Specifications demonstrating substantial responsiveness of the goods and services to those specifications or a statement of deviations and exceptions to the provisions of the Technical Specifications.

1.15.3

For purposes of the commentary to be furnished pursuant to above, the Bidder shall note that standards for workmanship, material and equipment, designated by the Purchaser in its Technical Specifications are intended to be descriptive only and not restrictive. The Bidder may substitute these in its bid, provided that it demonstrates to the Purchaser's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

1.15.4

Alternate offers/makes/models would not be considered.

1.16. Bid Security

1.16.1

The Bidder shall furnish, as part of its bid, a bid security (BS) for an amount as specified in the Invitation for Bids. In the case of foreign bidders, the BS shall be submitted either by the principal or by the Indian agent and in the case of indigenous bidders; the BS shall be submitted by the manufacturer or their specifically authorized dealer/bidder.

1.16.2

The bid security is required to protect the Purchaser against the risk of Bidder's conduct, which would warrant the security's forfeiture.

1.16.3

The bid security shall be in Indian Rupees for offers received for supply within India and denominated in the currency of the bid or in any freely convertible foreign exchange in the case of offers received for supplies from foreign countries in equivalent Indian Rupees. The bid security shall be in one of the following forms at the bidders' option:

(a) A bank guarantee issued/confirmed by a Scheduled Commercial Bank in India in the form provided in the bidding documents and valid for 45 days beyond the validity of the bid. In case a bidder desires to submit a BG issued from a foreign bank, then the same should be confirmed by a Scheduled commercial bank in India; or

(b) Fixed Deposit receipt pledged in favour of the Lab. /Institute.

(c) A Banker's cheque or demand draft in favour of the purchaser issued by any Scheduled commercial bank in India.

(d) Bid Securing Declaration

326

1.16.4

The bid security shall be payable promptly upon written demand by the purchaser in case the conditions listed in the ITB clause 1.16.9 are invoked.

1.16.5

The bid security should be submitted in its original form. Copies shall not be accepted.



#### 1.16.6

The bid security of unsuccessful bidder will be discharged /returned as promptly as possible positively within a period of 30 days after the expiration of the period of bid validity or placement of order whichever is later, without any interest.

#### 1.16.7

The successful Bidder's bid security will be discharged upon the Bidder furnishing the performance security, without any interest.

#### 1.16.8

Bidders that are currently registered with the purchaser or registered as MSEs will continue to remain registered during the tender validity period also and are exempted from payment of EMD. In case the tenderer falls in these categories, the bidder should furnish a certified copy of its valid registration details. Except for MSEs, this exemption is valid for the trade group and monetary value of registration only. The MSEs are provided tender document free of cost and are exempted from the payment of Bid Security provided the goods are produced and the services are rendered by them and not for any trading activities undertaken by them. Further firms who are having Udyog Aadhar Memorandum are entitled to all benefits available for MSEs under the Public Procurement Policies for MSEs and can get registered with any of the following agencies:

- a) District Industries Centre
- b) Khadi and Village Industries Commission
- c) Khadi and Village Industries Board
- d) Coir Board
- e) National Small Industries Corporation
- f) Directorate of Handicraft and handloom and
- g) Any other body specified by the Ministry of MSME

#### 1.16.9

Where any aggregator has been appointed by the Ministry of MSME, themselves quote on behalf of some MSE units, such offers will be considered as offer from MSE units and all such facilities would be extended to these aggregators also.

#### 1.16.10

The bid security may be forfeited:

- (a) If a Bidder withdraws or amends or modifies or impairs or derogates its bid during the period of bid validity specified by the Bidder on the Bid Form; or

**327**

- (b) In case of a successful Bidder, if the Bidder fails to furnish order acceptance within 14 days of the order or fails to sign the contract and/or fails to furnish Performance Security within 21 days from the date of contract/ order.

#### 1.16.11

Whenever the bidder chooses to submit the Bid Security in the form of Bank Guarantee, then he should advise the banker issuing the Bank Guarantee to immediately send by Registered Post (A.D.) an unstamped duplicate copy of the Guarantee directly to the Purchaser with a covering letter to compare with the original BG for the correctness, genuineness, etc.

### 1.17. Period of Validity of Bids

#### 1.17.1

Bids shall remain valid for minimum of 90 days after the date of bid opening prescribed by the Purchaser. A bid valid for a shorter period shall be rejected by the

Purchaser as non-responsive.

1.17.2

In exceptional circumstances, the Purchaser may solicit the Bidder's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing (by post, fax or e-mail). The bid security provided shall also be suitably extended failing which the bid would be summarily ignored. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request will not be required nor permitted to modify its bid.

1.17.3

Bid evaluation will be based on the bid prices without taking into consideration the above corrections.

1.18. Format and Signing of Bid

1.18.1

The bids may be submitted in single envelop or in two parts as specified in the Invitation for Bids.

1.18.2

In case the bids are invited on single envelop basis, then the Bidder shall prepare two copies of the bid, clearly marking each "Original Bid" and "Copy Bid", as appropriate. In the event of any discrepancy between them, the original shall govern.

1.18.3

In case the bids are invited on two-bid system, the Bidder shall submit the bids in two separate parts. One part shall contain Technical bid comprising all documents listed under clause relating to Documents Comprising the Bid excepting bid form and price schedules. The other part shall contain the priced-bid comprising bid form and price schedules. The Bidder shall prepare two copies of the bid, clearly marking each "Original Bid" and "Copy Bid", as appropriate.

328

1.18.4

The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by the Bidder or a person or persons duly authorized to bind the Bidder to the Contract. All pages of the bid, except for un-amended printed literature, shall be initialled by the person or persons signing the bid detailing his/her name and contact details.

1.18.5

Any interlineations, erasures or overwriting shall be valid only if they are initialled by the persons or persons signing the bid.

**D. Submission and sealing of Bids**

1.19. Submission, Sealing and Marking of Bids

1.19.1

The bidders may submit their duly sealed bids generally by post or by hand. (Bids received by FAX/E-mail would not be considered for evaluation.)

1.19.2

In the case of bids invited on single envelop basis, the Bidders shall seal the original and each copy of the bid in separate inner envelopes, duly marking the envelopes as "original" and "copy". The envelopes shall then be sealed in an outer envelope.

1.19.3

In the case of bids invited on two-part basis, the Bidder shall seal the un-priced

commercial and technical bid comprising the documents as listed in ITB 1.10.1 excepting for "l" & "m" and the priced bid in two separate envelopes duly marked as "Technical bid" and "priced bid". Both the envelopes shall then be sealed in one outer envelope.

1.19.4

(a) The inner and outer envelopes shall be addressed to the - \_\_\_\_\_ (*Designation and Address of the officer concerned*) and deposited in the Tender box kept in Purchase Section, if delivered by hand.

(b) Bear the name and address of the bidder, Tender No., due date and a warning "Do not open before \_\_\_\_\_" to be completed with the time and date as specified in the invitation for bids.

1.19.5

If the outer envelope is not sealed and marked as required above, the Purchaser will assume no responsibility for the bid's misplacement or premature opening. In such cases, bids received in open condition within the due date and time will be accepted at the risk of the bidder if the same is presented to the Controller of Stores & Purchase before expiry of the due date and time of opening of the bids.

329

1.19.6

Firms submitting bids in a single envelope against the requirement of two-bid system would be considered for further evaluation at the risk & responsibility of the bidder. However, the opened priced bid, if prepared separate from the technical bid, would be sealed immediately by the Tender Opening Committee without disclosing the price.

1.20. Deadline for Submission of Bids

1.20.1

Bids must be received by the Purchaser at the address specified at Clause 1.19.4 (a) not later than the time and date specified in invitation for bids. In the event of the specified date for the submission of Bids being declared a holiday for the Purchaser, the Bids will be received up to the appointed time on the next working day.

1.20.2

The Purchaser may, at its discretion, extend the deadline for submission of bids by amending the bid documents in accordance with Clause relating to Amendment of Bidding Documents in which case all rights and obligations of the Purchaser and Bidders previously subject to the deadline will thereafter be subject to the deadline as extended.

1.21. Late Bids

1.21.1

Any bid received by the Purchaser after the deadline for submission of bids prescribed by the Purchaser will be rejected.

1.21.2

Such tenders shall be marked as late and not considered for further evaluation. They shall not be opened at all and be returned to the bidders in their original envelope without opening.

1.22. Withdrawal, substitution and Modification of Bids.

#### 1.22.1

A Bidder may withdraw, substitute, or modify its Bid after it has been submitted by sending a written notice in accordance with ITB Clause 1.19 duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB Sub-Clause 1.18.4 (except that no copies of the withdrawal notice are required). The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be:

- (a) Submitted in accordance with ITB Clauses 1.18 and 1.19 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," or "MODIFICATION"; and
- (b) Received by the Purchaser prior to the deadline prescribed for submission of bids, in accordance with ITB Clause 1.20.

330

#### 1.22.2

Bids requested to be withdrawn in accordance with ITB Sub-Clause 1.22.1 shall be returned unopened to the Bidders. No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Bid Form or any extension thereof.

### E. Opening and Evaluation of Bids

#### 1.23 Opening of Bids by the Purchaser

##### 1.23.1

The Purchaser will open all bids one at a time in the presence of bidders' authorized representatives who choose to attend, as per the schedule given in invitation for bids. The Bidders' representatives who are present shall sign the quotation opening sheet evidencing their attendance. In the event of the specified date of Bid opening being declared a holiday for the Purchaser, the Bids shall be opened at the appointed time and location on the next working day. In two-part bidding, the financial bid shall be opened only after technical evaluation.

##### 1.23.2

First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned to the Bidder. No Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at bid opening. Envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Bid. No Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Bid opening. Only envelopes that are opened and read out at Bid opening shall be considered further.

##### 1.23.3

The bidders' names, bid modifications or withdrawals, bid prices, discounts, and the

presence or absence of requisite bid security and such other details as the Purchaser, at its discretion, may consider appropriate, will be announced at the opening. No bid shall be rejected at bid opening, except for late bid(s). The contents of the bid forms and price schedules would however be announced only at the time of opening of Priced-bids in the case of two-bid system.

#### 1.23.4

Bids that are received late shall not be considered further for evaluation, irrespective of the circumstances.

### 331

#### 1.23.5

Bidders interested in participating in the bid opening process, should depute their representatives along with an authority letter to be submitted to the purchaser at the time of bid opening as per form Annexed at Chapter-9.

#### 1.24. Confidentiality

##### 1.24.1

Information relating to the examination, evaluation, comparison, and post qualification of bids, and recommendation of contract award, shall not be disclosed to bidders or any other persons not officially concerned with such process until publication of the Contract Award.

##### 1.24.2

Any effort by a Bidder to influence the Purchaser in the examination, evaluation, comparison, and post qualification of the bids or contract award decisions may result in the rejection of its Bid.

#### 1.25. Clarification of Bids

##### 1.25.1

To assist in the examination, evaluation, comparison and post qualification of the bids, the Purchaser may, at its discretion, ask the Bidder for a clarification of its bid. The request for clarification and the response shall be in writing and no change in prices or substance of the bid shall be sought, offered or permitted. However, no negotiation shall be held except with the lowest bidder, at the discretion of the purchaser. Any clarification submitted by a bidder in respect to its bid which is not in response to a request by the purchaser shall not be considered.

#### 1.26. Preliminary Examination

##### 1.26.1

The Purchaser shall examine the bids to confirm that all documents and technical documentation requested in ITB Clause 1.10 have been provided, and to determine the completeness of each document submitted.

##### 1.26.2

The Purchaser shall confirm that the following documents and information have been provided in the Bid. If any of these documents or information is missing, the offer shall be rejected.

(a) Bid Form and Price Schedule, in accordance with ITB Clause 1.10;

(b) All the tenders received will first be scrutinized to see whether the tenders meet the basic requirements as incorporated in the tender enquiry document. The tenders, who do not meet the basic requirements, are to be treated as unresponsive and ignored. The following are some of the important points, for which a tender may be declared as unresponsive and to be ignored, during the initial scrutiny:

- (i) The Bid is unsigned.
- (ii) The Bidder is not eligible.

332

- (iii) The Bid validity is shorter than the required period.
- (iv) The Bidder has quoted for goods manufactured by a different firm without the required authority letter from the proposed manufacturer.
- (v) Bidder has not agreed to give the required performance security or has not furnished the bid security.
- (vi) The goods quoted are sub-standard, not meeting the required specification, etc.
- (vii) Against the schedule of Requirement (incorporated in the tender enquiry), the bidder has not quoted for the entire requirement as specified in that schedule.
- (viii) The bidder has not agreed to some essential condition(s) incorporated in the tender enquiry.

#### 1.27 Bidder's right to question rejection.

##### 1.27.1

A Bidder shall have the right to be heard in case he feels that a proper procurement process is not being followed and/or his tender has been rejected wrongly. Only a directly affected bidder can represent in this regard as under:

- i) Only a bidder who has participated in the concerned procurement process i.e. pre-qualification, bidder registration or bidding, as the case may be, can make such representation;
- ii) In case pre-qualification bid has been evaluated before the bidding of Technical bids, an application for review in relation to the technical bid may be filed only by a bidder who has qualified in pre-qualification bid;
- iii) In case technical bid has been evaluated before the opening of the financial bid, an application for review in relation to the financial bid may be filed only by a bidder whose technical bid is found to be acceptable.
- iv) Following decisions of the purchaser in accordance with the provision of internal guidelines shall not be subject to review:
  - a) Determination of the need for procurement;
  - b) Selection of the mode of procurement or bidding system;
  - c) Choice of selection procedure;
  - d) Provisions limiting participation of bidders in the procurement process;
  - e) The decision to enter into negotiations with the L1 bidder;
  - f) Cancellation of the procurement process except where it is intended to subsequently re-tender the same requirements;
  - g) Issues related to ambiguity in contract terms may not be taken up after a contract has been signed, all such issues should be highlighted before consummation of the contract by the vendor/contractor; and
  - h) Complaints against specifications except under the premise that they are either vague or too specific so as to limit competition may be permissible.

333

##### 1.27.2

In case a Bidder feels aggrieved by the decision of the purchaser, he may then send

his representation in writing to the Purchaser's address as indicated in special conditions of contract (SCC) within 05 working days from the date of communication of the purchaser intimating the rejection for reconsideration of the decision by the purchaser.

#### 1.28 Responsiveness of Bids

##### 1.28.1

Prior to the detailed evaluation, the purchaser will determine the substantial responsiveness of each bid to the bidding documents. For purposes of this clause, a substantive responsive bid is one, which conforms to all terms and condition of the bidding documents without material deviations, reservations or omissions. A material deviation, reservation or omission is one that:

- (a) Affects in any substantial way the scope, quality, or performance of the Goods and Related Services specified in the Contract; or
- (b) Limits in any substantial way, inconsistent with the Bidding Documents, the Purchaser's rights or the Bidder's obligations under the Contract; or
- (c) If rectified, would unfairly affect the competitive position of other bidders presenting substantially responsive bids.

##### 1.28.2

The purchasers' determination of a bid's responsiveness is to be based on the contents of the bid itself without recourse to extrinsic evidence.

##### 1.28.3

If a bid is not substantially responsive, it will be rejected by the Purchaser and may not subsequently be made responsive by the Bidder by correction of the material deviation, reservation or omission.

##### 1.28.4

If a bidder quotes Nil Charges/consideration, the bid shall be treated as unresponsive and will not be considered.

#### 1.29 Non-Conformity, Error and Omission

##### 1.29.1

Provided that a Bid is substantially responsive, the Purchaser may waive any nonconformities or omissions in the Bid that do not constitute a material deviation.

##### 1.29.2

Provided that a bid is substantially responsive, the Purchaser may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities or omissions in the bid related to documentation requirements. Such omission shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.

334

##### 1.29.3

Provided that the Bid is substantially responsive, the Purchaser shall correct arithmetical errors on the following basis:

- (b) if there is a discrepancy between the unit price and the line item total that is obtained by multiplying the unit price by the quantity, the unit price shall prevail and the line item total shall be corrected, unless in the opinion of the Purchaser there is an obvious misplacement of the decimal point in the unit price, in which case the line item total as quoted shall govern and the unit

price shall be corrected;

(c) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and

(c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

#### 1.29.4

Provided that a bid is substantially responsive, the purchaser may request that a bidder may confirm the correctness of arithmetic errors as done by the purchaser within a target date. In case, no reply is received then the bid submitted shall be ignored and its Bid Security may be forfeited.

### 1.30 Examination of Terms & Conditions, Technical Evaluation

#### 1.30.1

The Purchaser shall examine the Bid to confirm that all terms and conditions specified in the GCC and the SCC have been accepted by the Bidder without any material deviation or reservation.

#### 1.30.2

The Purchaser shall evaluate the technical aspects of the Bid submitted in accordance with ITB Clause 1.15, to confirm that all requirements specified in Schedule of Requirements of the Bidding Documents have been met without any material deviation or reservation.

#### 1.30.3

If, after the examination of the terms and conditions and the technical evaluation, the Purchaser determines that the Bid is not substantially responsive in accordance with ITB Clause 1.28, it shall reject the Bid.

### 1.31 Conversion to Single Currency

#### 1.31.1

To facilitate evaluation and comparison, the Purchaser will convert all quoted prices expressed in various currencies to Indian Rupees at the selling exchange rate

**335**

established by any bank in India as notified in the Newspapers on the date of bid opening (techno-commercial bid in the case of two-part bidding) For this purpose, exchange rate notified in [www.xe.com](http://www.xe.com) or [www.rbi.org](http://www.rbi.org) or any other website could also be used by the purchaser.

### 1.32 Evaluation and comparison of bids

#### 1.32.1

The Purchaser shall evaluate each bid that has been determined, up to this stage of the evaluation, to be substantially responsive.

#### 1.32.2

To evaluate a Bid, the Purchaser shall only use all the factors, methodologies and criteria defined below. No other criteria or methodology shall be permitted.

#### 1.32.3

Purchase preference shall be given to all local suppliers in all procurements undertaken by the purchaser in the following manner:

(a) Where the purchaser has restricted the eligibility of suppliers to Indian suppliers only, as per para o6 of the invitation to bid/NIT. This is applicable only



for those items for which the Nodal Ministry has communicated that there is sufficient local capacity and local competition for the cost of procurement up to Rs. 50.00 lakhs.

(b) If the tendered items are not listed by the Nodal Ministry indicating the local capacity and local competition, the following procedure of evaluation shall be followed, irrespective of value:

(i) Among all qualified bids, the lowest bid will be termed as L1. If L1 is from a local supplier, the contract for full quantity will be awarded to L1.

(ii) If L1 bid is not from a local supplier, 50% of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the local suppliers, will be invited to match the L1 price for the remaining 50% quantity, subject to the local supplier's quoted price which should fall within the margin of purchase preference of 20%. The contract for that quantity shall be awarded to such local supplier, who matches the L1 price. In case such lowest eligible local supplier fails to match the L1 price or accepts less than the offered quantity, the next higher local supplier within the margin of purchase preference shall be invited to match the L1 price for the remaining quantity and so on. The contract shall be awarded accordingly. In case some quantity is still left uncovered on the part of local suppliers, the balance quantity may also be ordered to the L1 bidder.

(c) If the tendered item is not divisible, the following procedure of evaluation shall be followed:

i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is from a local supplier, the contract will be awarded to L1.

336

ii. If L1 is not from a local supplier, the lowest bidder among the local suppliers will be invited to match the L1 price, subject to local supplier's quoted price falling within the margin of purchase preference of 20%. Accordingly, the contract shall be awarded to the local supplier matching the L1 price.

iii. In case such lowest eligible local supplier fails to match the L1 price, the local supplier with the next higher bid within the margin of purchase preference shall be invited to match the L1 price. This may be repeated until all the local suppliers are given an opportunity to match the L1 price. The contract shall be awarded accordingly. In case none of the local suppliers within the margin of purchase preference match the L1 price, the contract may be awarded to the L1 bidder.

1.32.4

Further, In tender, where the items are divisible, the participating Micro and Small Enterprises (MSE) quoting price within price band of L1+15 (fifteen) per cent shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than a MSE and such MSE shall be allowed to supply up to 25 (twenty five) per cent of total tendered value. The 25 (twenty five) per cent quantity is to be distributed proportionately among these bidders, in case there are more than one MSMEs within such price band.

1.32.5

Within this 25% (Twenty five Percent) quantity, a purchase preference of 25 (twenty five) per cent out of 25 (twenty five) per cent is reserved for MSEs owned by Scheduled Caste (SC)/Scheduled Tribe (ST) entrepreneurs (if they participate in the

tender process and match the L1 price). Further, out of the total annual procurement from the MSEs, (3%) three percent from within the 25% target shall be earmarked for procurement from MSEs owned by women. Provided that, in the event of failure of such SC/ST MSE to participate in tender process or meet tender requirements and L1 price, four per cent sub-target shall be met from other MSE.

#### 1.32.6

In case the items are not divisible, then the MSE quoting price within price band L1 + 15% may be awarded for full/complete supply of total tendered quantity to MSE, considering the spirit of the policy for enhancing the Government procurement from MSEs.

#### 1.32.7

The bids shall be evaluated on the basis of final landing cost which shall be arrived as under:

For goods manufactured in India

- (i) The price of the goods quoted ex-works including all taxes already paid.
- (ii) GST and other taxes, if any which will be payable on the goods if the contract is awarded.

#### 337

- (iii) Charges for inland transportation, insurance and other local services required for delivering the goods at the desired destination.

- (iv) Wherever applicable, the cost towards the installation, commissioning, spares, extended warranty, AMC/CMC, site preparation and training including any incidental services, if any.

For goods manufactured abroad

- (i) The price of the goods, quoted on FCA (named place of delivery abroad) or FOB (named port of shipment), as specified in the bidding document.
- (ii) The charges for insurance and transportation of the goods to the port/place of destination.

- (iii) The agency commission etc., if any.

- (iv) Wherever applicable, the cost towards the installation, commissioning, spares, extended warranty, AMC/CMC, site preparation and training including any incidental services, if any.

#### 1.32.8

The comparison between the indigenous and the foreign offers shall be made on FOR destination basis and CIF/CIP basis respectively. However, the CIF/CIP prices quoted by any foreign bidder shall be loaded further as under:

- (a) Towards customs duty and other statutory levies—as per applicable rates.
- (b) Towards custom clearance, inland transportation etc. - 2% of the CIF/CIP value.

The bidder should give a clear cut breakup of EXW, FOB/FCA, CIF/CIP prices to facilitate proper comparison with the purchaser reserving the right to order on either basis, failing which the bid would be summarily ignored.

Note: Where there is no mention of packing, forwarding, freight, insurance charges, taxes etc. such offers shall be rejected as incomplete.

#### 1.32.9

Orders for imported stores need not necessarily be on FOB/FCA basis rather it can be on the basis of any of the incoterm specified in ICC Incoterms 2010 as may be

amended from time to time by the ICC or any other designated authority and favourable to the purchaser.

1.32.10

Wherever the price quoted on FOB/FCA and CIF/CIP basis are the same, the Contract would be made on CIF / CIP basis only.

1.32.11

The GCC and the SCC shall specify the mode of transport i.e., whether by air/ocean/road/rail.

338

1.32.12

There is no provision to purchase optional items. The specifications embodied in the tender documents would be the basis of evaluating the responsiveness of bids received.

1.32.13

The Purchaser shall compare all substantially responsive bids to determine the lowest valuated bid, in accordance with ITB Clause 1.32.

1.33 Contacting the Purchaser

1.33.1

Subject to ITB Clause 1.25, no Bidder shall contact the Purchaser on any matter relating to its bid, from the time of the bid opening to the time the Contract is awarded.

1.33.2

Any effort by a Bidder to influence the Purchaser in its decisions on bid evaluation, bid comparison or contract award may result in rejection of the Bidder's bid.

1.34 Post qualification

1.34.1

In the absence of pre-qualification, the Purchaser will determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated responsive bid is qualified to perform the contract satisfactorily, in accordance with the criteria listed in ITB Clause 1.14.

1.34.2

The determination will take into account the eligibility criteria listed in the bidding documents and will be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, as well as such other information as the Purchaser deems necessary and appropriate.

1.34.3

An affirmative determination will be a prerequisite for award of the contract to the Bidder. A negative determination will result in rejection of the Bidder's bid.

## F. AWARD OF CONTRACT

1.35 Negotiations

1.35.1

Normally, there shall not be any negotiation. Negotiations, if at all, shall be an exception and only in the case of items with limited source of supply. Negotiations shall be held with the lowest evaluated responsive bidder. Counter offers tantamount to negotiations and shall be treated at par with negotiations in the case of one time purchases.

339

### 1.36 Award Criteria

#### 1.36.1

Subject to ITB Clause 1.39, the Purchaser will award the contract to the successful Bidder whose bid has been determined to be substantially responsive and has been determined to be the lowest evaluated bid, provided further that the Bidder is determined to be qualified to perform the contract satisfactorily. The details of the award would be hosted on the website of the Purchaser.

### 1.37 Purchaser's right to vary Quantities at Time of Award

#### 1.37.1

The Purchaser reserves the right at the time of Contract award to increase or decrease the quantity of goods and services originally specified in the Schedule of Requirements to the extent of 25% without any change in unit price or other terms and conditions.

### 1.38 Option Clause

#### 1.38.1

The Purchaser reserves the right to increase or decrease the quantity of the required goods up to 25% (Twenty-Five) per cent at any time, till final delivery date (or the extended delivery date of the contract), by giving reasonable notice even though the quantity ordered initially has been supplied in full before the last date of the delivery period (or the extended delivery period)

### 1.39 Purchaser's right to accept Any Bid and to reject any or All Bids

#### 1.39.1

The Purchaser reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to award of Contract, without thereby incurring any liability to the affected Bidder or Bidders.

### 1.40 Notification of Award

#### 1.40.1

Prior to the expiration of the period of bid validity, the Purchaser will notify the successful bidder in writing by registered letter or by cable or telex or fax or e mail that the bid has been accepted and a separate purchase order shall follow through post.

#### 1.40.2

Until a formal contract is prepared and executed, the notification of award should constitute a binding contract.

#### 1.40.3

Upon the successful Bidder's furnishing of the signed Contract Form and performance security pursuant to ITB Clause 1.43, the Purchaser will promptly notify each unsuccessful Bidder and will discharge its bid security.

### 340

### 1.41 Signing of Contract

#### 1.41.1

Promptly after notification, the Purchaser shall send the successful Bidder the Agreement/Purchase Order.

#### 1.41.2

Within twenty-one (21) days of date of the Purchase Order, the successful Bidder shall sign, date, and return it to the Purchaser.

### 1.42 Order Acceptance

#### 1.42.1

The successful bidder should submit Order acceptance within 14 days from the date of issue of order/signing of contract, failing which it shall be presumed that the vendor is not interested and his bid security is liable to be forfeited pursuant to clause 1.16.9 of ITB.

#### 1.42.2

The order confirmation must be received within 14 days. However, the Purchaser has the powers to extend the time frame for submission of order confirmation beyond the original date. Even after extension of time, if the order confirmation is not received, the contract is liable to be cancelled provided that the purchaser, on being satisfied that it is not a case of cartelization and the integrity of the procurement process has been maintained, may, for cogent reasons, offer the next successful bidder an opportunity to match the financial bid of the first successful bidder, and if the offer is accepted, award the contract to the next successful bidder at the price bid of the first successful bidder.

### 1.43 Performance Security

#### 1.43.1

Within 21 days of receipt of the notification of award/PO, the Supplier shall furnish performance security (PS) in the amount specified in SCC, valid till 60 days after the warranty period.

#### 1.43.2

The proceeds of the performance security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.

#### 1.43.3

The Performance Security shall be denominated in Indian Rupees for the offers received for supplies within India and denominated in the currency of the contract in the case of offers received for supply from foreign countries or in equivalent Indian rupees in case the performance security is submitted by the Indian Agent.

#### 1.43.4

In the case of imports, the PS may be submitted either by the principal or by the Indian agent and, in the case of purchases from indigenous sources, the PS may be submitted by either the manufacturer or their authorized dealer/bidder.

#### 341

#### 1.43.5

The Performance security shall be in one of the following forms:

(a) A Bank guarantee or stand-by Letter of Credit issued by a Nationalized/ Scheduled bank located in India or a Foreign bank with preferably its operating branch in India in the form provided in the bidding documents. Or  
(b) A Banker's cheque or Account Payee demand draft in favour of the purchaser.

Or,

(c) A Fixed Deposit Receipt pledged in favour of the Purchaser.

#### 1.43.6

The performance security will be discharged by the Purchaser and returned to the Supplier not later than 60 days following the date of completion of the Supplier's performance obligations, including any warranty obligations, unless specified otherwise in SCC, without levy of any interest.

#### 1.43.7

In the event of any contract amendment, the supplier shall, within 21 days of receipt of such amendment, furnish the amendment to the performance security, rendering the same valid for the duration of the contract, as amended for further period of 60 days thereafter.

#### 1.43.8

The performance security must be received within 21 days. However, the Purchaser has the powers to extend the time frame for submission of Performance Security (PS). Even after extension of time, if the PS is not received, the contract is liable to be cancelled provided that the purchaser, on being satisfied that it is not a case of cartelization and the integrity of the procurement process has been maintained, may, for cogent reasons, offer the next successful bidder an opportunity to match the financial bid of the first successful bidder, and if the offer is accepted, award the contract to the next successful bidder at the price bid of the first successful bidder.

#### 1.43.9

Whenever, the bidder chooses to submit the Performance Security in the form of Bank Guarantee, then he should advise the banker issuing the Bank Guarantee to immediately send by Registered Post (A.D.) an unstamped duplicate copy of the Guarantee directly to the Purchaser with a covering letter to compare with the original BG for the correctness, genuineness, etc.

### 1.44. Pre-bid Conference (PBC)

#### 1.44.1

A Pre-bid Conference shall be held as indicated in invitation to bid, if any. All prospective bidders are requested to kindly attend the Pre-bid Conference. In order to facilitate the purchaser the proper conduct of the Pre-bid Conference, all prospective bidders are requested to kindly submit their queries (with envelope bearing Tender No. and Date on top and marked "Queries for Pre-bid Conference") so

342

as to reach the purchaser as indicated in invitation to bid. The purchaser shall answer the queries during the pre-bid conference, which would become a part of the proceedings of the Pre-bid Conference. The proceeding of the Pre Bid Conference would be hosted on the website of the purchaser. Before formulating and submitting their bids, all prospective bidders are advised to surf through the purchaser's website after the Pre-bid Conference, in order to enable them take cognizance of the revised tender conditions.

### 1.45 Integrity Pact

#### 1.45.1

Integrity Pact binds both buyers and sellers to ethical conduct and transparency in all activities from pre-selection of bidders, bidding and contracting, implementation, completion and operation related to the contract.

#### 1.45.2

The Integrity pact essentially envisages an agreement between the prospective vendors/bidders and the buyer, committing the persons/officials of both sides, not to resort to any corrupt practices in any aspect/stage of the contract. Only those vendors/bidders, who commit themselves to such a Pact with the buyer, would be considered competent to participate in the bidding process. In other words, entering into this Pact would be a preliminary qualification. The essential ingredients of the

Pact include:

- i) Promise on the part of the Purchaser to treat all bidders with equity and reason and not to seek or accept any benefit, which is not legally available;
- ii) Promise on the part of bidders not to offer any benefit to the employees of the Purchaser not available legally and also not to commit any offence under Prevention of Corruption Act, 1988 or Indian Penal Code 1860;
- iii) Promise on the part of bidders not to enter into any undisclosed agreement or understanding with other bidders with respect to prices, specifications, certifications, subsidiary contracts; etc.
- iv) Undertaking (as part of Fall Clause) by the bidders that they have not and will not sell the same material/equipment at prices lower than the bid price;
- iv) Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or associates;
- v) Bidders to disclose the payments to be made by them to agents/brokers or any other intermediary;
- vi) Bidders to disclose any past transgressions committed over the specified period with any other company in India or Abroad that may impinge on the anti-corruption principle;
- vii) Integrity Pact lays down the punitive actions for any violation.

343

1.45.3

Each page of such Integrity pact proforma would be duly signed by Purchaser's competent signatory. All pages of the Integrity Pact are to be returned by the bidder (along with the technical bid) duly signed by the same signatory who signed the bid, i.e. who is duly authorized to sign the bid and to make binding commitments on behalf of his company. Any bid not accompanied by Integrity Pact duly signed by the bidder shall be considered to be a non-responsive bid and shall be rejected straightway.

1.45.4

The SCC shall specify whether there is a need to enter into a separate Integrity pact or not.

1.45.5

The Integrity Pact would be effective from the date of invitation of bids till complete execution of the contract.

1.45.6

The names and contact details of the Independent External Monitors (IEM) on the event of the need of IP is as detailed in the SCC.

1.45.7

The modal format of IP is at Chapter-8.

344

## CHAPTER 2

### CONDITIONS OF CONTRACT

#### A GENERAL CONDITIONS OF CONTRACT (GCC)

##### Table of Contents

##### Sl. No. Clause

##### 2.1 Definitions

##### 2.2 Contract Documents

- 2.3 Code of Integrity
- 2.4 Joint Venture, Consortium or Association
- 2.5 Scope of Supply
- 2.6 Suppliers' Responsibilities
- 2.7 Contract price
- 2.8 Copy Right
- 2.9 Application
- 2.10 Standards
- 2.11 Use of Contract Documents and Information
- 2.12 Patent Indemnity
- 2.13 Performance Security
- 2.14 Inspections and Tests
- 2.15 Packing
- 2.16 Delivery and Documents
- 2.17 Insurance
- 2.18 Transportation
- 2.19 Incidental Services
- 2.20 Spare Parts
- 2.21 Warranty
- 2.22 Terms of Payment
- 2.23 Change Orders and Contract Amendments
- 2.24 Assignment
- 2.25 Subcontracts
- 2.26 Extension of time
- 2.27 Liquidated Damages Clause
- 2.28 Termination for Default
- 2.29 Force Majeure
- 2.30 Termination for insolvency
- 2.31 Termination for Convenience
- 2.32 Settlement of Disputes
- 2.33 Governing Language
- 2.34 Applicable Law
- 2.35 Notice
- 2.36 Taxes and Duties
- 2.37 Right to use Defective Goods
- 2.38 Protection against Damage
- 2.39 Site preparation and installation
- 2.40 Import and Export Licenses
- 2.41 Risk Purchase Clause
- 2.42 Option Clause
- 2.43 Integrity Pact
- 2.44 Order Acceptance

345

## GENERAL CONDITIONS OF CONTRACT (GCC)

### 2.1 Definitions

#### 2.1.1

The following words and expressions shall have the meanings hereby assigned to them:

(a) "Contract" means the Contract Agreement entered into between the Purchaser and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by



reference therein.

(b) "Contract Documents" means the documents listed in the Contract Agreement, including any amendments thereto.

(c) "Contract Price" means the price payable to the Supplier as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions there from, as may be made pursuant to the Contract.

(d) "Day" means calendar day.

(e) "Completion" means the fulfilment of the Goods and related Services by the Supplier in accordance with the terms and conditions set forth in the Contract.

(f) "GCC" means the General Conditions of Contract.

(g) "Goods" means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Purchaser under the Contract.

(h) "Related Services" means the services incidental to the supply of the goods, such as transportation, insurance, installation, training and initial maintenance and other such obligations of the Supplier under the Contract.

(i) "SCC" means the Special Conditions of Contract.

(j) "Subcontractor" means any natural person, private or government entity, or a combination of the above, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier.

(k) "Supplier" means the natural person, private or government entity, or a combination of the above, whose bid to perform the Contract has been accepted by the Purchaser and is named as such in the Contract Agreement.

(l) The "Council" means the Council of Scientific & Industrial Research (CSIR), registered under the Societies Registration Act, 1860 of the Govt. of India having its registered office at 2, Rafi Marg, New Delhi-110001, India.

(m) The "Purchaser" means any of the constituent Laboratory/Institute of the Council situated at any designated place in India as specified in SCC.

346

(n) "The final destination," where applicable, means the place named in the SCC.

## 2.2 Contract Documents

### 2.2.1

Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.

## 2.3 Code of Integrity

### 2.3.1

Without prejudice to and in addition to the rights of the Purchaser to other penal provisions as per the bid documents or contract, if the Purchaser comes to a conclusion that a (prospective) bidder/supplier, directly or through an agent, has violated this code of integrity in competing for the contract or in executing a contract, the Purchaser may take appropriate measures including one or more of the following:

a) Cancellation of the relevant contract and recovery of compensation for loss incurred by the purchaser;

b) Forfeiture or encashment of any other security or bond relating to the procurement;

c) Recovery of payments including advance payments, if any, made by the Purchaser along with interest thereon at the prevailing rate.

d) Provisions in addition to above:

1) Removal from the list of registered suppliers and banning/debarment of the bidder from participation in future procurements of the purchaser for a period not less than one year;

2) In case of anti-competitive practices, information for further processing may be filed under a signature of the Joint Secretary level officer, with the Competition Commission of India;

3) Initiation of suitable disciplinary or criminal proceedings against any individual or staff found responsible.

#### 2.4 Joint Venture, Consortium or Association

##### 2.4.1

If the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Purchaser for the fulfilment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Purchaser.

347

#### 2.5 Scope of Supply

##### 2.5.1

The Goods and Related Services to be supplied shall be as specified in Chapter 4 i.e. Specifications and allied technical details.

#### 2.6 Suppliers' Responsibilities

##### 2.6.1

The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with Scope of Supply Clause of the GCC, and the Delivery and Completion Schedule, as per GCC Clause relating to delivery and document.

#### 2.7 Contract price

##### 2.7.1

Prices charged by the Supplier for the Goods supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its bid.

#### 2.8 Copy Right

##### 2.8.1

The copyright in all drawings, documents, and other materials containing data and information furnished to the Purchaser by the Supplier herein shall remain vested in the Supplier, or, if they are furnished to the Purchaser directly or through the Supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

#### 2.9 Application

##### 2.9.1

These General Conditions shall apply to the extent that they are not superseded by provisions in other parts of the Contract.

#### 2.10 Standards

##### 2.10.1

The Goods supplied and services rendered under this Contract shall conform to the standards mentioned in the Technical Specifications, and, when no applicable standard is mentioned, to the authoritative standard appropriate to the Goods' country of origin and such standards shall be the latest issued by the concerned institution.

#### 2.11 Use of Contract Documents and Information

##### 2.11.1

The Supplier shall not, without the Purchaser's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern,

348

sample or information furnished by or on behalf of the Purchaser in connection therewith, to any person other than a person employed by the Supplier in performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far, as may be necessary for purposes of such performance.

##### 2.11.2

The Supplier shall not, without the Purchaser's prior written consent, make use of any document or information enumerated above except for purposes of performing the Contract.

##### 2.11.3

Any document, other than the Contract itself, enumerated above shall remain the property of the Purchaser and shall be returned (in all copies) to the Purchaser on completion of the Supplier's performance under the Contract if so required by the Purchaser.

#### 2.12 Patent Indemnity

##### 2.12.1

The Supplier shall, subject to the Purchaser's compliance with GCC Sub-Clause

2.12.2 Indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

(a) the installation of the Goods by the Supplier or the use of the Goods in India; and

(b) the sale in any country of the products produced by the Goods.

##### 2.12.2

If any proceedings are brought or any claim is made against the Purchaser, the Purchaser shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

#### 2.13 Performance Security

##### 2.13.1

Within 21 days of receipt of the notification of award/PO, the Supplier shall furnish performance security in the amount specified in SCC, valid till 60 days after the warranty period.

#### 2.13.2

The proceeds of the performance security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.

349

#### 2.13.3

The Performance Security shall be denominated in Indian Rupees for the offers received for supplies within India and denominated in the currency of the contract in the case of offers received for supply from foreign countries or in equivalent Indian Rupees in case the Performance Security is submitted by the Indian Agent.

#### 2.13.4

In the case of imports, the PS may be submitted either by the principal or by the Indian agent and, in the case of purchases from indigenous sources, the PS may be submitted by either the manufacturer or their authorized dealer/bidder.

2.13.5 The Performance security shall be in one of the following forms:

(a) A Bank guarantee or stand-by Letter of Credit issued by a Nationalized/Scheduled bank located in India or a bank located abroad in the form provided in the bidding documents.

Or

(b) A Banker's cheque or Account Payee demand draft in favour of the purchaser.

Or

(c) A Fixed Deposit Receipt pledged in favour of the Purchaser.

#### 2.13.6

The performance security will be discharged by the Purchaser and returned to the Supplier not later than 60 days following the date of completion of the Supplier's performance obligations, including any warranty obligations, unless specified otherwise in SCC, without levy of any interest.

#### 2.13.7

In the event of any contract amendment, the supplier shall, within 21 days of receipt of such amendment, furnish the amendment to the performance security, rendering the same valid for the duration of the contract, as amended for further period of 60 days thereafter.

#### 2.13.8

The order confirmation must be received within 14 days. However, the Purchaser has the powers to extend the time frame for submission of order confirmation and submission of Performance Security (PS). Even after extension of time, if the order confirmation /PS are not received, the contract shall be cancelled provided that the purchaser, on being satisfied that it is not a case of cartelization and the integrity of the procurement process has been maintained, may, for cogent reasons, offer the next successful bidder an opportunity to match the financial bid of the first successful bidder, and if the offer is accepted, award the contract to the next successful bidder at the price bid of the first successful bidder.

#### 2.13.9

Whenever, the bidder chooses to submit the Performance Security in the form of Bank Guarantee, then he should advise the banker issuing the Bank Guarantee to immediately send by Registered Post (A.D.) an unstamped duplicate copy of the Guarantee directly to the Purchaser with a covering letter to compare with the

original BG for the correctness, genuineness, etc.

350

## 2.14 Inspections and Tests

### 2.14.1

The inspections & test, training required would be as detailed in Chapter-4 of the Bidding Document relating to Specification and Allied Technical details.

## 2.15 Packing

### 2.15.1

The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination as indicated in the Contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods' final destination and the absence of heavy handling facilities at all points in transit.

### 2.15.2

The packing, marking and documentation within and outside the packages shall comply strictly with such special requirements as shall be provided for in the Contract including additional requirements, if any, specified in SCC and in any subsequent instructions ordered by the Purchaser.

## 2.16 Delivery and Documents

### 2.16.1

Delivery of the Goods and completion and related services shall be made by the supplier in accordance with the terms specified by the Purchaser in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.

### 2.16.2

The terms FOB, FCA, CIF, CIP, etc. shall be governed by the rules prescribed in the current edition of the Incoterms published by the International Chambers of Commerce, Paris.

### 2.16.3

The mode of transportation shall be as specified in SCC. In case the purchaser elects to have the transportation done through Air, then air lifting needs to be done through Air India only. In case Air India does not operate in the Airport of despatch, then the bidder is free to engage the services of any other Airlines.

## 2.17 Insurance

### 2.17.1

Should the purchaser elect to buy on CIF/CIP basis, the Goods supplied under the Contract shall be fully insured against any loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in SCC.

351

### 2.17.2

Where delivery of the goods is required by the purchaser on CIF or CIP basis the supplier shall arrange and pay for Cargo Insurance, naming the purchaser as beneficiary and initiate & pursue claims till settlement, on the event of any loss or damage.

### 2.17.3

Where delivery is on FOB or FCA basis, insurance would be the responsibility of the

purchaser.

#### 2.17.4

With a view to ensure that claims on insurance companies, if any, are lodged in time, the bidders and /or the Indian agent shall be responsible for follow up with their principals for ascertaining the dispatch details and informing the same to the Purchaser and he shall also liaise with the Purchaser to ascertain the arrival of the consignment after clearance so that immediately thereafter in his presence the consignment could be opened and the insurance claim be lodged, if required, without any loss of time. Any delay on the part of the bidder/Indian Agent would be viewed seriously and he shall be directly responsible for any loss sustained by the purchaser on the event of the delay.

### 2.18 Transportation

#### 2.18.1

Where the Supplier is required under the Contract to deliver the Goods FOB, transport of the Goods, up to and including the point of putting the Goods on board the vessel at the specified port of loading, shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract price. Where the Supplier is required under the Contract to deliver the Goods FCA, transport of the Goods and delivery into the custody of the carrier at the place named by the Purchaser or other agreed point shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price.

#### 2.18.2

Where the Supplier is required under the Contract to deliver the Goods CIF or CIP, transport of the Goods to the port of destination or such other named place of destination in the Purchaser's country, as shall be specified in the Contract, shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price.

#### 2.18.3

In the case of supplies from within India, where the Supplier is required under the Contract to transport the Goods to a specified destination in India, defined as the Final Destination, transport to such destination, including insurance and storage, as specified in the Contract, shall be arranged by the Supplier, and the related costs shall be included in the Contract Price.

## 352

### 2.19 Incidental Services

#### 2.19.1

The supplier may be required to provide any or all of the services, including training, if any, specified in chapter 4.

### 2.20 Spare Parts

#### 2.20.1

The Supplier shall be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the Supplier:

- (a) Such spare parts as the Purchaser may elect to purchase from the Supplier, providing that this election shall not relieve the Supplier of any warranty obligations under the Contract; and
- (b) In the event of termination of production of the spare parts:

(i) Advance notification to the Purchaser of the pending termination, in sufficient time to permit the Purchaser to procure needed requirements; and

(ii) Following such termination, furnishing at no cost to the Purchaser, the blueprints, drawings and specifications of the spare parts, if requested.

#### 2.21 Warranty

##### 2.21.1

The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.

##### 2.21.2

The Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in India.

##### 2.21.3

Unless otherwise specified in the SCC, the warranty shall remain valid for Twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the SCC, or for Eighteen (18) months after the date of shipment from the port or place of loading in the country of origin, whichever period concludes earlier.

##### 2.21.4

The Purchaser shall give notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Supplier to inspect such defects.

353

##### 2.21.5

Upon receipt of such notice, the Supplier shall, within a reasonable period of time, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.

##### 2.21.6

If having been notified, the Supplier fails to remedy the defect within a reasonable period of time; the Purchaser may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.

##### 2.21.7

Goods requiring warranty replacements must be replaced on free of cost basis to the purchaser.

#### 2.22 Terms of Payment

##### 2.22.1

The method and conditions of payment to be made to the Supplier under this Contract shall be as specified in the SCC.

##### 2.22.2

The Supplier's request(s) for payment shall be made to the Purchaser in writing, accompanied by an invoice describing, as appropriate, the Goods delivered and the Services performed, and by documents, submitted pursuant to Delivery and

document Clause of the GCC and upon fulfilment of other obligations stipulated in the contract.

#### 2.22.3

Payments shall be made promptly by the Purchaser but in no case later than thirty (30) days after submission of the invoice or claim by the Supplier. While claiming the payment, the supplier should certify in the bill/invoice that the payment being claimed strictly in terms of the contract and all obligations on the part of the supplier for claiming the payment have been fulfilled as required under the contract.

#### 2.22.4

Payment shall be made in currency as indicated in the contract.

### 2.23 Change Orders and Contract Amendments

#### 2.23.1

The Purchaser may at any time, by written order given to the Supplier pursuant to Clause on Notices of the GCC make changes within the general scope of the Contract in any one or more of the following:

(a) Increase or decrease in the quantity required, exercise of quantity opinion clause;

354

(b) Changes in schedule of deliveries and terms of delivery;

(c) The changes in inspection arrangements;

(d) Changes in terms of payments and statutory levies;

(e) Changes due to any other situation not anticipated;

#### 2.23.2

No changes in the price quoted shall be permitted after the purchase order has been issued except on account of statutory variations.

#### 2.23.3

No variation or modification in the terms of the contract shall be made except by written amendment signed by the parties.

### 2.24 Assignment

#### 2.24.1

The Supplier shall not assign, in whole or in part, its obligations to perform under the Contract, except with the Purchaser's prior written consent.

### 2.25 Subcontracts

#### 2.25.1

The Supplier shall notify the Purchaser in writing of all subcontracts awarded under this Contract if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the Supplier from any liability or duties or obligation under the contract.

### 2.26 Extension of time.

#### 2.26.1

Delivery of the Goods and performance of the Services shall be made by the Supplier in accordance with the time schedule specified by the Purchaser.

#### 2.26.2

If at any time during performance of the Contract, the Supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the Goods and performance of Services, the Supplier shall promptly notify the Purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after



receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may, at its discretion, extend the Supplier's time for performance with or without liquidated damages, in which case the extension shall be ratified by the parties by amendment of the Contract.

#### 2.26.3

Except as provided under the Force Majeure clause of the GCC, a delay by the Supplier in the performance of its delivery obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to liquidated damages Clause of the GCC unless an extension of time is agreed upon pursuant to above clause without the application of penalty clause.

355

### 2.27 Liquidated Damages

#### 2.27.1

Subject to GCC Clause on Force Majeure, if the Supplier fails to deliver any or all of the Goods or to perform the Services within the period(s) specified in the Contract, the Purchaser shall, without prejudice to its other remedies under the Contract, deduct from the Contract Price, as penalty, a sum equivalent to the percentage specified in SCC of the delivered price of the delayed Goods or unperformed Services or contract value in case the delivered price of the delayed goods or unperformed services cannot be ascertained from the contract, for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the Percentage specified in SCC. Once the maximum is reached, the Purchaser may consider termination of the Contract pursuant to GCC Clause on Termination for Default.

### 2.28 Termination for Default

#### 2.28.1

The Purchaser may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the Supplier, terminate the Contract in whole or part

- (a) If the Supplier fails to deliver any or all of the Goods within the period(s) specified in the contract, or within any extension thereof granted by the Purchaser pursuant to GCC Clause on Extension of Time; or
- (b) If the Supplier fails to perform any other obligation(s) under the Contract.
- (c) If the Supplier, in the judgment of the Purchaser has engaged in corrupt or fraudulent or collusive or coercive practices etc as defined in GCC Clause and ITB clause on code of integrity in competing for or in executing the Contract.

#### 2.28.2

In the event the purchaser terminates the contract in whole or in part, he may take recourse to any one or more of the following action:

- (a) The Performance Security is to be forfeited;
- (b) The purchaser may procure, upon such terms and in such manner as it deems appropriate, stores similar to those undelivered, and the supplier shall be liable for all available actions against it in terms of the contract.
- (c) However, the supplier shall continue to perform the contract to the extent not terminated.

### 2.29 Force Majeure

#### 2.29.1

Notwithstanding the provisions of GCC Clauses relating to extension of time,

Liquidated damages and Termination for Default the Supplier shall not be liable for **356**

forfeiture of its performance security, liquidated damages or termination for default, if and to the extent that, its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

#### 2.29.2

For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

#### 2.29.3

If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such conditions and the cause thereof within 21 days of its occurrence. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

#### 2.29.4

If the performance in whole or in part or any obligations under the contract is prevented or delayed by any reason of Force Majeure for a period exceeding 60 days, either party may at its option terminate the contract without any financial repercussions on either side.

### 2.30 Termination for Insolvency

#### 2.30.1

The Purchaser may at any time terminate the Contract by giving written notice to the Supplier, if the Supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy, which has accrued or will accrue thereafter to the Purchaser.

### 2.31 Termination for Convenience

#### 2.31.1

The Purchaser, by written notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.

#### 2.31.2

The Goods that are complete and ready for shipment within 30 days after the Supplier's receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:

#### **357**

(a) To have any portion completed and delivered at the Contract terms and prices; and/or

(b) To cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and for materials and parts previously procured by the Supplier.

### 2.32 Settlement of Disputes

#### 2.32.1

The Purchaser and the supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.

#### 2.32.2

If, after twenty-one (21) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Purchaser or the Supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under the Contract.

#### 2.32.3

The dispute settlement mechanism/arbitration proceedings shall be concluded as under:

(a) If any dispute or difference arises between the parties hereto as to the construction, interpretation, effect and implication of any provision of this agreement including the rights or liabilities or any claim or demand of any party against other or in regard to any other matter under these presents but excluding any matters, decisions or determination of which is expressly provided for in this Agreement, such disputes or differences shall be referred to an Arbitral Bench consisting of three Arbitrators, one each to be appointed by each party and the two Arbitrators shall appoint a third Arbitrator who shall be the presiding Arbitrator. A reference to the Arbitration under this Clause shall be deemed to be submission within the meaning of the Arbitration and Conciliation Act, 1996 and the rules framed thereunder for the time being in force. Each party shall bear and pay its own cost of the arbitration proceedings unless the Arbitrators otherwise decides in the Award.

(b) In the case of a dispute between the purchaser and a Foreign Supplier, the dispute shall be settled by arbitration in accordance with provision of sub-clause (a) above. But if this is not acceptable to the supplier then the dispute shall be settled in accordance with provisions of UNCITRAL (United Nations Commission on International Trade Law) Arbitration Rules.

358

#### 2.32.4

The venue of the arbitration shall be the place from where the purchase order or contract is issued.

#### 2.32.5

Notwithstanding, any reference to arbitration herein,

(a) The parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and

(b) the Purchaser shall pay the Supplier any monies due the Supplier.

### 2.33 Governing Language

#### 2.33.1

The contract shall be written in English language which shall govern its interpretation. All correspondence and other documents pertaining to the

Contract, which are exchanged by the parties, shall be written in the English language only.

#### 2.34 Applicable Law

##### 2.34.1

The Contract shall be interpreted in accordance with the laws of the Union of India and all disputes shall be subject to place of jurisdiction as specified in SCC.

#### 2.35 Notices

##### 2.35.1

Any notice given by one party to the other pursuant to this contract/order shall be sent to the other party in writing or by cable, telex, FAX, e-mail or and confirmed in writing to the other party's address specified in the SCC.

##### 2.35.2

A notice shall be effective when delivered or on the notice's effective date, whichever is later.

#### 2.36 Taxes and Duties

##### 2.36.1

For goods manufactured outside India, the Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside India.

##### 2.36.2

For goods Manufactured within India, the Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred till its final manufacture/production.

##### 359

##### 2.36.3

If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in India, the Purchaser shall make its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

##### 2.36.4

All payments due under the contract shall be paid after deduction of statutory levies (at source) (like IT, etc.) wherever applicable.

##### 2.36.5

Customs Duty – If the supply is from abroad this Institute is permitted to import goods as per notification No.51/96 – Customs and pay a concessional duty up to 5% as per notification 24/2002 – Customs on all imports.

#### 2.37 Right to use Defective Goods

##### 2.37.1

If after delivery, acceptance and installation and within the guarantee and warranty period, the operation or use of the goods proves to be unsatisfactory, the Purchaser shall have the right to continue to operate or use such goods until rectifications of defects, errors or omissions by repair or by partial or complete replacement is made without interfering with the Purchaser's operation.

#### 2.38 Protection against Damage

##### 2.38.1

The system shall not be prone to damage during power failures and trip outs. The normal voltage and frequency conditions available at site as under:

(a) Voltage 230 volts – Single phase/ 415 V 3 phase (+\_ 10%)

(b) Frequency 50 Hz.

#### 2.39 Site preparation and installation

#### 2.39.1

The Purchaser is solely responsible for the construction of the equipment sites in compliance with the technical and environmental specifications defined by the Supplier. The Purchaser will designate the installation sites before the scheduled installation date to allow the Supplier to perform a site inspection to verify the appropriateness of the sites before the installation of the Equipment, if required. The supplier shall inform the purchaser about the site preparation, if any, needed for installation, of the goods at the purchaser's site immediately after notification of award/contract.

#### 2.40 Import and Export Licenses

##### 2.40.1

If the ordered materials are covered under restricted category of EXIM policy in India the Vendor / Agent may intimate such information for obtaining necessary, license in India.

360

##### 2.40.2

If the ordered equipment is subject to Vendor procuring an export license from the designated government agency / country from where the goods are shipped / sold, the vendor has to mention the name, address of the government agency / authority. The vendor must also mention the time period within which the license will be granted in normal course.

#### 2.41 Risk Purchase Clause

##### 2.41.1

If the supplier fails to deliver the goods within the maximum delivery period specified in the contract or Purchase Order, the purchaser may procure, upon such terms and in such a manner as it deems appropriate, Goods or Services similar to those undelivered and the Supplier shall be liable to the purchaser for any excess costs incurred for such similar goods or services.

#### 2.42 Option Clause

##### 2.42.1

The Purchaser reserves the right to increase or decrease the quantity of the required goods up to 25% (Twenty-Five) per cent at any time, till final delivery date (or the extended delivery date of the contract), by giving reasonable notice even though the quantity ordered initially has been supplied in full before the last date of the delivery period (or the extended delivery period)

#### 2.43 Integrity Pact

##### 2.43.1

The SCC shall specify whether there is a need to enter into a separate Integrity pact or not.

##### 2.43.2

The names and contact details of the Independent External Monitors (IEM) on the event of the need of IP is as detailed in the SCC.

#### 2.44 Order Acceptance

##### 2.44.1

The successful bidder should submit Order acceptance within 14 days from the date of issue of order/signing of contract, failing which it shall be presumed that the vendor is not interested and his bid security is liable to be forfeited pursuant to

clause 1.16.g of ITB.