

CORRIGENDUM No.4 FOR RFQ NO and date: RCKMOU01 dated 03.08.2017				
Sl. No	Page No.	Clause No.	Existing Clause	Revised Clause
1	201/211		CAA Format of Corrigendum-1	MOU format enclosed in lieu of CAA format.
2			Addition	Performance Guarantee Format enclosed
3			Addition	Both formats enclosed for Bidder's reference only

MEMORANDUM OF UNDERSTANDING

BEWTEEN

BHEL

And

.....

AGREEMENT

This Agreement is made and entered into at Bangalore on(date) to collaborate to execute the project “Installation of 2 x 10 MW (AC) Grid interactive Solar PV Power Project integrated with 28 MWhr. Battery Energy Storage System at Attam Pahad and at Dolly Gunj, Port Blair, South Andaman “ as per Tender No. CO CONTS/0012E/PV Solar-BESS/ICB/Andaman/2017, dated 26.04.2017 floated by NLC India Limited (NLCIL)

BY AND BETWEEN

BHARAT HEAVY ELECTRICALS LTD a Govt. of Undertaking incorporated under the Indian Companies Act 1956 having its registered office at BHEL House, Siri Fort, New Delhi-110049, India(hereinafter referred to as ‘**BHEL**’ which expression shall unless repugnant or contrary to the context or meaning thereof shall include its successors and permitted assigns) of the FIRST PART.

AND

..... having its registered office at (hereinafter referred to as ‘Associate.’ which expressions shall unless repugnant to the context or meaning thereof, shall include its successors and permitted assigns) of the SECOND PART;

Each of BHEL and ‘.....’ may herein after individually be referred to as a “Party” and collectively they may be referred to as the “Parties”.

WHEREAS:

(A) ‘.....’ represents that it is a leading MANUFACTURER of and is a regular manufacturer / supplier of (description as written at B as applicable to Associate shall be elaborated)

(B) BHEL is the largest engineering and manufacturing enterprise in India, catering to core sectors of Indian economy, e.g. Power Generation and Transmission, Industry, Transportation, Oil Sector, Renewable Energy, Defense etc., having strong presence in Indian & overseas market. BHEL has vast experience of more than 5 decades and proven turnkey capabilities for executing power projects from concept -to- commissioning.

(C) AND WHEREAS BHEL desires to collaborate (as defined hereinafter) with ‘.....’, as BHEL’s Associate for the purposes of submitting bid and executing the project as per the Tender No. CO CONTS/0012E/PV Solar-BESS/ICB/Andaman/2017, dated 26.04.2017 floated by NLC INDIA LIMITED (herein after referred to as **NLCIL**) , for Design, Engineering, Manufacture, Inspection at supplier’s works, supply, insurance, transport, storage, erection, testing, commissioning and trial

power export of 2X10MW(AC) grid interactive solar PV power project integrated with a minimum of 28 MWhr. Battery Energy Storage System (BESS) (hereinafter referred to as the “PROJECT”).

1. PURPOSE:

NLCIL has invited International Competitive Bidding for design, engineering, manufacturing, system integration, pre-shipment testing at works, packing, delivery, unloading, storage, installation & commissioning, training and fine-tuning of 2 x 10 MW (AC) Grid interactive Solar PV Power Plant and integrated with 28 MWhr. Battery Energy Storage System alongwith Operation & Maintenance for 25 years at project site.

2.0 PRE-QUALIFICATION REQUIREMENTS (PQR) :

2.1(a) Bidder should have executed contracts of Design/Engineering, Supply Erection/Supervised erection, commissioning of Solar PV Power Plant(s) with cumulative capacity of 10MWp or above as on the original scheduled date of tender opening and out of which at least one Solar PV Power Plant shall be of minimum 5MWp capacity or above and should be in successful operation for at least one year within the last 7 years as on the original scheduled date of tender opening.

AND

2.1(b) Bidder should have executed contracts of Design/Engineering, Supply, Erection/ Supervised erection, commissioning of Battery Energy storage system with Cumulative capacity of 2.5 MWhr. or above as on the original scheduled date of tender opening and out of which at least one Battery Energy Storage System shall be of minimum 1.0 MWhr. capacity or above and should be in successful operation for at least one year within the last 7 years as on the original scheduled date of tender opening.

2.2` Bidder who doesn't fulfill the qualifying requirements stipulated in clause 2.1 (a) and (b) above by himself can also participate provided the bidder collaborates with not more than two firms and together they fully meet the qualifying requirements stipulated in clause 2.1 (a) and (b) above and the Collaborator (s) should furnish along with the bid valid collaboration agreement to execute this project and a back-up Bank Guarantee as required in the relevant clauses.

As BHEL, on its own is not meeting the PQR, BHEL has decided to collaborate with a suitable firm as BHEL's Associate and together fully meet the qualifying requirements stipulated above as per Clause 2.2 of the tender by NLC India Limited.

In order to select the techno-commercially best and price wise lowest party and enter into an agreement to collaborate, BHEL had called for Tender No. RCKMOU01 dated 03.08.2017. As an outcome of the evaluation of proposals received, had been selected by BHEL to collaborate with BHEL as its Associate to execute the PROJECT.

As per the tender requirement of NLCIL, this Agreement to collaborate to execute the PROJECT is signed between BHEL and in order to bind both the parties to the Terms & Conditions and agreement reached hereupon.

The following has been understood and agreed upon by both parties:

- i. BHEL shall Bid for subject project and it is hereby understood that shall collaborate with BHEL **as their Associate and preferred** partner by way of preferential and lowest pricing, for jointly bidding for this PROJECT. As a guarantee to this agreement, shall submit to BHEL, a bank guarantee amounting to 1% of the’s share either in the form of a BG or by way of Demand Draft (DD, which shall be returned to Associate in case of award of contract and receipt of order from NLCIL or NLCIL finally awarding the contract to any other Bidder or NLCIL deciding to shelve the project.
- ii. The scope of supply, work and services of are as submitted by them in response and in full compliance to the Tender specifications **and subsequent corrigenda** of NLCIL, and is enclosed as Annexure-1 to this agreement. However, agrees that in the view of NLCIL, any additional supplies, works or services that are deemed necessary for complying to Tender specifications , shall be provided by without any implications on Price, Delivery or Guarantees to BHEL.
- iii. BHEL will be submitting an EMD in form of a BG for Rs.4,60,00,000/- to NLCIL as EMD for participating in referred NLCIL tender. M/s _____, who has been selected to collaborate with BHEL for Bidding for referred NLCIL tender, on their part, agrees to furnish a back-up guarantee to BHEL in the form of a BG (from BHEL approved Bank as per List enclosed) in proportion to their share, for the EMD
- iv. In case BHEL is selected by NLCIL for award of contract, agrees to furnish an on-demand back-up bank guarantee for a value equal to 5% (five percent) of their share of work, to NLCIL as a part of the Contract Performance Guarantee (CPG).
- v. In case BHEL is awarded the contract by NLCIL, this agreement shall form the basis for working together and shall be a back to back agreement for placement of purchase order by BHEL on....., for **Battery Energy Storage System (BESS) and auxiliaries and associated services** as per the Scope of Supply, Works and Services (Enclosed at Annexure-1).
- vi. M/s. hereby agrees that their proposal shall remain valid till 243 days from date of bid opening by NLCIL and validity shall be further extended by’ as required by NLCIL and BHEL till a confirmed Purchase order is issued by BHEL on
- vii. Subsequent to submission of Bid, NLCIL shall evaluate the Bids and later may call Bidders for negotiation or to participate in Reverse Auction. M/s agrees that at that stage the price quoted by shall be negotiated by BHEL and shall again review their prices and furnish most competitive lowest prices at that stage to enable BHEL to bag the order.
- viii. The terms and conditions stipulated by NLCIL shall apply on both BHEL and’ and have been confirmed for compliance by These terms & conditions become an integral part of this agreement and are enclosed as Annexure-2.
- ix. The Penalties / Liquidated Damages, if any, levied by NLCIL shall be borne and shared by BHEL and in accordance with **and in proportion to** the value of share or scope of work determined under the contract.

- x. The Commercial Conditions of Contract, as listed in the tender documents, are enclosed as Annexure-3 to this agreement and shall be adhered to by both Parties as and where applicable for respective scope of work of parties.
- xi. The Time schedule stipulated by NLCIL is enclosed to this agreement as Annexure-4, and BHEL and NLCIL shall be jointly responsible for completion of all tasks as per the work schedule.
- xii. The Warranty and Guarantee conditions of contract shall be applicable on back-to-back basis as per the Tender conditions of contract by both Parties as and where applicable for respective scope of work of parties.

2. DIVISION OF SCOPE OF WORK FOR THE PROJECT:

SCOPE OF WORK FOR BHEL will comprise of:

Design, Engineering, Manufacture, Inspection at supplier's works, supply, insurance, transport, storage, erection, testing, commissioning and trial power export of 2X10MW(AC) grid interactive solar PV power project with associated 33KV Power System complete for grid interconnection at the take-off points of Electricity Department of Andaman & Nicobar Administration with all accessories on Lump-sum Turnkey basis at AttamPahad and Dolly Gunj Port Blair, South Andaman including Operation and Maintenance of Solar PV Power Project for twenty- five years including one year warranty period

SCOPE OF WORK FOR will comprise of:

Design, Engineering, Manufacture, Inspection at supplier's works, supply, insurance, transport, storage, erection, testing, commissioning of a minimum of 28 MWHr. Battery Energy Storage System (BESS) including Battery Management System and its accessories and integrating with the 2X10MW(AC) grid interactive solar PV power project and associated 33KV Power System (to mitigate and smoothen the solar power output fed into the grid) at the take-off points of Electricity Department of Andaman & Nicobar Administration with all accessories on Lump-sum Turnkey basis at AttamPahad and Dolly Gunj, Port Blair, South Andaman. The scope of work also includes Operation and Maintenance of Battery Energy Storage System for the twenty-five years including one year warranty period. Any technical issues that arises during such period leading to mal function in system operation with respect to source response and load response shall also be in the scope of

3. CONFIDENTIALITY

Either party shall keep other party's information confidential. The information which needs to be kept confidential shall be marked as "confidential" by the disclosing party while making disclosure. This confidentiality obligation of either party shall remain for a period of 5 years from expiry of the agreement.

4. LIMITATION OF LIABILITY:

"Subject to any other clause relating to the liability of the parties, in no event parties will be liable for any consequential damages and the aggregate liability of either of the parties under this contract shall in no event exceed 100% of individual value except in cases of criminal neglect or willful misconduct.

5. ARBITRATION

5.1 This Agreement shall be governed, construed and interpreted in accordance with the laws of India and subject to clause 5.2 below, the courts at Bangalore, India shall have exclusive jurisdiction.

5.2 In the event of any disagreement or dispute arising out of this Agreement, the Parties shall use their best endeavours to resolve such disagreement or dispute through good-faith discussions. If, for any reason, the Parties are not able to resolve such disagreement or dispute within thirty (30) calendar days after receipt of a request to commence discussions, such disagreement or dispute shall be exclusively and finally settled by arbitration to be conducted in accordance with the provisions of Arbitration and Conciliation Act 1996 of India or any statutory modification thereof by sole arbitrator being jointly appointed by the Parties. If the Parties fail to agree on the nomination of the arbitrator, the arbitrator shall be appointed in accordance with the said Act. The seat of arbitration shall be Bangalore, India. The language of arbitration shall be English and the documents shall be submitted in English. The Parties hereto expressly agree that the arbitration award shall be final and binding upon the Parties.

In agreement to the above, this agreement has been signed as under by representatives of both BHEL and

M/s

.

BHEL

PERFORMANCE GUARANTEE¹

Guarantee No.: []

To: [Name and Address of Beneficiary]²

[Date of Issuance]

Dear Sirs,

Whereas Bharat Heavy Electricals Limited, having its Registered at 'BHEL House', Siri Fort,

New Delhi – 110 049 and inter-alia its office at.....

(hereinafter called "Beneficiary" which expression shall include its successors and assigns) and [name and address of Applicant] (hereinafter called "Applicant" which expression shall include its successors and assigns) have entered into a consortium agreement dated _____ (herein after referred to as the Contract) for [the subject matter] as further described in the Contract³.

AND WHEREAS the Consortium of **BHEL and the Applicant** wish to participate in the **NIT No:**

for

(hereinafter referred to as the 'tender') for _[NAME AND ADDRESS OF THE CUSTOMER] (hereinafter called the "CUSTOMER")

AND WHEREAS a Bank Guarantee for **INR** _____ valid till ____ has been submitted by BHEL, the lead member of the Consortium, to the Customer along with the tender.

And WHEREAS the Contract contains an obligation on the part of the Applicant to provide a performance guarantee ("Performance Guarantee") for an amount of Rs. _____, being an amount equal to the _____ as provided in the Contract, to BHEL.

At the request of the Applicant, we [name and address of Issuer at place of Issuance] (hereinafter called "Issuer" or "Bank" which expression shall include its successors and assigns) issue this Performance guarantee in favour of the Beneficiary for an amount not to exceed in the aggregate [Currency/Amount] [equivalent of ____ percent of the Contract Price] ("Guaranteed Amount")⁴.

We, _____, the Issuer, do hereby guarantee and undertake to pay to the

Beneficiary immediately, on the same day, after receipt by the Issuer of a demand in writing from BHEL demanding any / all moneys to the extent of [INR/USD] _____ (in figures & words) without any demur, reservation, recourse, contest or protest and without any reference to the Applicant. The Issuer undertakes to the Beneficiary to pay the amount of each complying demand presented to the Issuer at [Address of Place for Presentation] 5on or before [: M] 6our close of business on the Expiration Date (as described below).

Any such demand made by BHEL on the Bank by serving a written notice, shall be conclusive and binding, without any proof whatsoever, as regards to the amount due and payable, notwithstanding any dispute (s) pending before any court, tribunal, arbitrator or any other authority and / or any other matter or thing whatsoever, as the Bank's liability under these presents being absolute and unequivocal.

The Bank hereby agree and acknowledge that this bank guarantee is irrevocable and continues to be enforceable until [insert date]. This bank guarantee shall not be determined, discharged or affected by the liquidation, winding up, dissolution or insolvency of the Applicant or the Bank and shall remain valid, binding and operative against the Bank.

The Bank also agrees that BHEL at its option shall be entitled to enforce this bank guarantee against the Bank as a principal debtor, in the first instance, without proceeding against the Applicant and notwithstanding any security of other guarantee that BHEL may have in relation to the Applicant's liabilities.

The Bank further agrees that BHEL shall have the fullest liberty without the Bank's consent and without affecting in any manner the Bank's obligations hereunder to vary any of the terms and conditions of the Contract or to extend time for satisfactory performance of the Contract by the said Applicant and to enforce, or to forebear to enforce any of the terms and conditions relating to the Contract and the Bank shall not be relieved from its liability by reason of any such variation, or extension being granted to the Applicant or any forbearance, act or omission on the part of the BHEL or any indulgence shown by BHEL to the Applicant or any such matter or thing whatsoever which under the applicable laws may, but for this provision, have effect of relieving the Bank.

Any demand for payment including its accompanied documents must be signed by your authorized officer(s)/ representative(s).

Payment shall be effected by wire transfer to an account of the Beneficiary [**as follows: Account Name, Routing No. of Beneficiary's Bank and Beneficiary's Account Number**] .

The Guaranteed Amount shall be reduced pro-rata the value of shipment or the fulfillment of Project under the Contract. We shall reduce the Guaranteed Amount as per the Applicant's statement with relevant documents (e.g. Acceptance certificate, proof of delivery, construction progress report or other certificates that can clearly prove reduced terms), and we will notify you the Guaranteed Amount after such reduction in a timely manner.⁷

This Performance Guarantee shall be valid from the date of issuance, and shall expire on _____[enter date] ("Expiration Date"):

This guarantee shall continue and hold good until _____(date) and shall be extended from time to time on the request of BHEL for such period as may be desired by BHEL.

A This Performance Guarantee shall be governed by, and construed in accordance with, the laws of [India and it is subject to the exclusive jurisdiction of the competent court of New Delhi.].

[Issuer's Name]

By its undersigned officer:

Type/Printed Name

Title