

**SECTION II:**  
**INSTRUCTIONS TO TENDERERS**

**TABLE OF CONTENTS**

<b>A.</b>	<b>Introduction</b> .....	<b>2</b>
1.	Eligible Tenderers.....	2
2.	Cost of Tendering: .....	2
<b>B.</b>	<b>The Tender Documents</b> .....	<b>2</b>
3.	Contents of Tender Documents .....	2
4.	Clarification of Tender Documents .....	2
5.	Amendment of Tender Documents .....	3
<b>C.</b>	<b>Preparation of Tenders</b> .....	<b>3</b>
6.	Language of Tender.....	3
7.	Documents Constituting the Tender.....	3
8.	<b>Tender Form</b> .....	<b>3</b>
9.	Tender Prices .....	3
10.	Tender Currency.....	5
11.	Documents Establishing Tenderer's Eligibility and Qualifications .....	5
12.	Documents Establishing Goods' Eligibility and Conformity to Tender Documents .....	5
13.	Earnest Money Deposit:.....	6
14.	Period of Validity of Tenders .....	6
15.	Format and Signing of Tender.....	7
<b>D.</b>	<b>Submission of Tenders</b> .....	<b>7</b>
16.	Sealing and Marking of Tenders .....	7
17.	Deadline for Submission of Tenders .....	8
18.	Late Tenders.....	8
19.	Modification and Withdrawal of Tenders .....	8
<b>E.</b>	<b>Tender Opening and Evaluation of Tenders</b> .....	<b>8</b>
20.	Opening of Tenders by the Purchaser.....	8
21.	Clarification of Tenders .....	9
22.	Preliminary Examination .....	9
23.	Evaluation and Comparison of Tenders .....	9
24.	Contacting the Purchaser.....	10
<b>F.</b>	<b>Award of Contract</b> .....	<b>10</b>
25.	Post qualification.....	10
26.	Award Criteria .....	11
27.	Purchaser's right to vary Quantities at Time of Award .....	11
28.	Purchaser's Right to Accept Any Tender and to Reject Any or All Tenders .....	11
29.	Notification of Award .....	11
30.	Signing of Contract .....	11
31.	Performance Security .....	11
32.	Corrupt or Fraudulent Practices .....	12

## **SECTION II : INSTRUCTIONS TO TENDERERS**

### **A. Introduction**

#### **1. Eligible Tenderers**

- 1.1. Tenderers 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 Tenders.
- 1.2. Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices issued by Government of Karnataka.
- 1.3. The Tenderer shall provide satisfactory evidence acceptable to the Purchaser to show that:  
  
"The Tenderer is the Original Equipment Manufacturer (OEM) or Authorized Indian dealer or supplier of the OEM of the Equipment/Plant."

#### **2. Cost of Tendering:**

- 2.1. The Tenderer shall bear all costs associated with the preparation and submission of its tender, and BMRCL, hereinafter referred to as "the Purchaser", will in no case be responsible or liable for these costs, regardless of the conduct or outcome of the tender process.

### **B. The Tender Documents**

#### **3. Contents of Tender Documents**

- 3.1. The goods required, tendering procedures and contract terms are prescribed in the tender documents. In addition to the Invitation for Tenders, the tender documents include:
  - (a) Instruction to Tenderers (ITT) ;
  - (b) General Conditions of Contract (GCC) ;
  - (c) Special Conditions of Contract (SCC) ;
  - (d) Schedule of Requirements;
  - (e) Technical Specifications;
  - (f) Tender Form and Price Schedules;
  - (g) Earnest Money Deposit Form;
  - (h) Performance Security Bank Guarantee Form;
  - (i) Performance Statement Form;
  - (j) Manufacturer's Authorization Form;
  - (k) Capability and Quality Control Form
  - (l) Service Support Details Form
- 3.2. The Tenderer is expected to examine all instructions, forms, terms, and specifications in the tender documents. Failure to furnish all information required by the tender documents or submission of a tender not substantially responsive to the tender documents in every respect will be at the Tenderer's risk and may result in rejection of its tender.

#### **4. Clarification of Tender Documents**

- 4.1 A prospective Tenderer requiring any clarification of the tender documents may notify the Purchaser in writing or by telex or cable or fax at the Purchaser's mailing address indicated in the Invitation for Tenders. The Purchaser will respond in writing to any request for clarification of the tender documents which it receives no later than 15 days prior to the deadline for

submission of tenders prescribed by the Purchaser. Written copies of the Purchaser's response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers which have received the tender documents.

## **5. Amendment of Tender Documents**

- 5.1. At any time prior to the deadline for submission of tenders, the Purchaser may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, modify the tender documents by amendment.
- 5.2. All prospective Tenderers who have received the tender documents will be notified of the amendment in writing or by cable or by fax, and will be binding on them.
- 5.3. In order to allow prospective Tenderers reasonable time in which to take the amendment into account in preparing their tenders, the Purchaser, at its discretion, may extend the deadline for the submission of tenders.

## **C. Preparation of Tenders**

### **6. Language of Tender**

- 6.1. The tender prepared by the Tenderer, as well as all correspondence and documents relating to the tender exchanged by the Tenderer and the Purchaser, shall be written in English language. Supporting documents and printed literature furnished by the Tenderer may be in another language provided they are accompanied by an accurate translation of the relevant passages in the English language in which case, for purposes of interpretation of the Tender, the translation shall govern.

### **7. Documents Constituting the Tender**

- 7.1. The tender prepared by the Tenderer shall comprise the following components:
  - (a) A Tender Form and a Price Schedule completed in accordance with ITT Clauses 8, 9 and 10;
  - (b) Documentary evidence established in accordance with ITT Clause 11 that the Tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
  - (c) Documentary evidence established in accordance with ITT Clause 12 that the supply of goods and ancillary services are conform to the tender documents; and
  - (d) Earnest Money Deposit (EMD) furnished in accordance with ITT Clause 13.

### **8. Tender Form**

- 8.1. The Tenderer shall complete the Tender Form and the Price Schedule furnished in the tender documents, indicating the goods to be supplied, their country of origin, quantity and prices.

### **9. Tender Prices**

- 9.1. The Tenderer shall indicate on the Price Schedule the unit prices and total tender prices of the goods it proposes to supply under the Contract in Indian Rupees only. Tenderers shall quote for the complete requirement of goods and services specified on a single responsibility basis, failing which such tenders will not be taken into account for evaluation and will not be considered for award.
- 9.2. Tenderer shall quote his price inclusive of Excise duty, insurance, transportation upto destination, packing and forwarding, handling and any other charges leviable and payable to

the authorities but excluding Entry Tax and VAT which shall be paid separately on submission of documentary proof of such payments made to the concerned authorities. It should be noted that,

- (a) **Entry Tax** on plant and equipment, spares etc, shall be paid on actual subject to proof of payment.
- (b) **VAT/CST** on the Supply and Commissioning of equipment/plant at BMRCL Depot shall be shown separately in the running bills and will be paid in accordance with the provisions of the Karnataka Value Added Tax Rules.
- (c) VAT on Spares etc supplied shall be paid by BMRCL separately.
- (d) **Customs Duty:** If the machinery / Plant is to be imported, it should be done against Bidder's import license. Custom Duty, Port handling and associated expenses shall be included in the quoted price in Indian Rupees. Purchaser will not make any payment separately for such duties and expenses.

Income Tax at source will be deducted at the rates as per the income tax act provisions. However, the successful Tenderer may take up the matter with Income Tax authorities and furnish lower deduction certificate issued by the jurisdictional Income Tax authorities. If such certificate is not obtained, BMRCL shall deduct Income Tax (TDS) at the applicable rate.

Service Tax is not applicable for this project from 1st July 2012 as per para 14 of Notification No. 25/2012-Service Tax dated 20.06.2012 issued by the Government of India, Ministry of Finance (Department of Revenue) and hence Tenderers shall not include Service Tax either in the Contract price or claim separately.

The Tenderer shall also give breakdown of his Price clearly giving the Excise Duty along with applicable rate in the form given as attachment to Tender Total which has been included in the price quoted.

Presently, there is 'No' waiver or exemption from Custom Duty, Excise Duty, Taxes, Royalties, Cess, Entry Tax and other levies payable to various authorities. However, under Chapter 98.01 of Customs Tariff Act, BMRCL is eligible for concessional rate of custom duty. Hence the Tenderer shall quote price considering the normal rate of duty as applicable at the time of submission of Tender and pass on the benefit of concessional custom duty to BMRCL. The successful Tenderer shall provide all documents in respect of payment of taxes & duties and render assistance to BMRCL in claiming refund if any.

The successful Tenderer shall maintain complete records of duties, other taxes and levies, etc; payable to various authorities in relation to the Works and submit the receipts/records for verification as and when demanded in writing by the Purchaser.

In case of introduction of New Legislation or change in the existing structure of Tender of Central/State Taxes, Duties, Levies and cess etc after the latest date of submission of Tender, the New Legislation or change in the existing structure of Central/State Taxes, Duties, Levies and cess etc shall prevail and the Contractor shall produce the relevant notification issued by Authorities for change (increase or decrease) in the Tax/Duty/Levy etc; for consideration.

- 9.3. The Tenderer shall ascertain all applicable Central Taxes and Duties and avail eligible exemptions, Concessions including MODVAT/CENVAT benefits available for such projects and accordingly take them in to consideration for the Tender pricing.
- 9.4. Prices quoted by the Tenderer shall be fixed during the Tenderer's performance of the Contract and not subject to variation on any account. A tender submitted with an adjustable price quotation will be treated as non-responsive and rejected, pursuant to ITT Clause 22.

**10. Tender Currency**

- 10.1. Prices shall be quoted in Indian Rupees only.

**11. Documents Establishing Tenderer's Eligibility and Qualifications**

- 11.1. Pursuant to ITT Clause 7, the Tenderer shall furnish, as part of its Tender, documents establishing the Tenderer's eligibility to tender and its qualifications to perform the Contract if its tender is accepted.
- 11.2. The documentary evidence of the Tenderer's qualifications to perform the Contract if its tender is accepted, shall establish to the Purchaser's satisfaction:
- (a) That, in the case of a Tenderer offering to supply goods under the contract which the Tenderer did not manufacture or otherwise produce, the Tenderer has been duly authorized (as per authorization form in Section XIII) by the goods' Manufacturer or producer to supply the goods in India.
  - (b) That the Tenderer has the financial, technical, and production capability necessary to perform the Contract and meets the criteria outlined in the Qualification requirements specified in Section VII. To this end, all tenders submitted shall include the following information:
    - (i) The legal status, place of registration and principal place of business of the company or firm or partnership, etc.;
    - (ii) Details of experience and past performance of the tenderer on equipment offered and on those of similar nature within the past three years and details of current contracts in hand and other commitments (suggested proforma given in Section XII);

**12. Documents Establishing Goods' Eligibility and Conformity to Tender Documents**

- 12.1. Pursuant to ITT Clause 7, the Tenderer shall furnish, as part of its tender, documents establishing the eligibility and conformity to the tender documents of all goods and services which the Tenderer proposes to supply under the contract..
- 12.2. The documentary evidence of conformity of the goods and services to the tender 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 equipment/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 for a period of two years, following commencement of the use of the goods by the Purchaser; and
  - (c) A Clause-by-Clause 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.
- 12.3. For purposes of the commentary to be furnished pursuant to ITT Clause 12.2(c) above, the Tenderer shall note that standards for workmanship, material and equipment, and references to brand names or catalogue numbers designated by the Purchaser in its Technical Specifications are intended to be descriptive only and not restrictive. The Tenderer may substitute alternative standards, brand names and/or catalogue numbers in its tender, provided that it demonstrates to the Purchaser's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

**13. Earnest Money Deposit:**

- 13.1. Pursuant to ITT Clause 7, the Tenderer shall furnish, as part of its tender, a Earnest Money Deposit (EMD) in the amount as specified in Section-V - Schedule of Requirements.
- 13.2. The Earnest Money Deposit is required to protect the Purchaser against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to ITT Clause 13.7.
- 13.3. The Earnest Money Deposit shall be denominated in Indian Rupees and shall be in any one of the following form:
- I. A crossed Demand Draft/Pay Order/Banker's cheque in favour of the "**Bangalore Metro Rail Corporation Ltd.**" from a Nationalized Indian Bank or from a scheduled commercial Bank, payable at Bangalore. OR
  - II. An irrevocable Bank Guarantee issued from an Indian Scheduled bank (excluding Cooperative Banks) or from a Scheduled Foreign Bank as defined in Section 2(e) of RBI Act 1934 read with Second Schedule drawn on and payable at a designated branch in Bangalore (*specify the name of the branch and address*) in the form given in Section IX to the Tender documents, updated Earnest Money Deposit Bank Guarantee format is available in [www.bmrc.co.in/Tender](http://www.bmrc.co.in/Tender) document.

The Earnest Money Deposit shall be valid for a period as specified in Appendix to Tender Form (Section VIII) and remain deposited with the Purchaser from the date of opening of Tenders. If the validity of the offer is extended, the Earnest Money Deposit (EMD) shall also be duly extended, failing which, the offer after the expiry of the aforesaid period shall not be considered by the Purchaser.

The Earnest Money Deposit shall be submitted in its original form; copies will not be accepted; and No interest will be payable by the Purchaser on the Earnest Money Deposit.

- 13.4. Any tender not secured in accordance with ITT Clauses 13.1 and 13.3 above will be rejected by the Purchaser as non-responsive, pursuant to ITT Clause 22.
- 13.5. Unsuccessful Tenderer's tender securities will be discharged/returned as promptly as possible but not later than 30 days after the expiration of the period of tender validity prescribed by the Purchaser or the extended period of Tender validity, pursuant to ITT Clause 14.
- 13.6. The successful Tenderer's Earnest Money Deposit (EMD) will be discharged upon the Tenderer signing the unconditional acceptance of the Purchase Order (PO) or Letter of Acceptance (LoA) communicated by the Purchaser in pursuant to ITT clause 30 and furnishing the Performance Security pursuant to ITT Clause 31.
- 13.7. The Earnest Money Deposit (EMD) may be forfeited:
- (a) If a Tenderer (i) withdraws or amends or impairs or derogates its tender during the period of tender validity specified by the Tenderer on the Tender Form; or (ii) does not accept the correction of errors pursuant to ITT Clause 22.2; or
  - (b) In case of a successful Tenderer, if the Tenderer fails:
    - (i) To sign the PO/LoA in accordance with ITT Clause 30; or
    - (ii) To furnish performance security in accordance with ITT Clause 31.

**14. Period of Validity of Tenders**

- 14.1. Tenders shall remain valid for 135 days after the deadline for submission of tenders prescribed by the Purchaser, pursuant to ITT Clause 17. A tender valid for a shorter period shall be rejected by the Purchaser as non-responsive.
- 14.2. In exceptional circumstances, the Purchaser may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing (or by cable or telex or fax). The Earnest Money Deposit provided under ITT Clause 13

shall also be suitably extended. A Tenderer may refuse the request without forfeiting its Earnest Money Deposit. A Tenderer granting the request will not be required nor permitted to modify its tender.

#### 15. **Format and Signing of Tender**

- 15.1. The Tenderer shall prepare the tender, clearly marking each "Original Tender" and "Copy Tender", as appropriate. In the event of any discrepancy between them, the original shall govern.
- 15.2. The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the Tenderer or a person or persons duly authorized to bind the tenderer to the Contract. The latter authorization shall be indicated by written power-of-attorney accompanying the tender. All pages of the tender shall be initialed by the person or persons signing the tender.
- 15.3. Any interlineations, erasures or overwriting shall be valid only if they are initialed by the persons or persons signing the tender.

#### D. **Submission of Tenders**

#### 16. **Sealing and Marking of Tenders**

- 16.1. All offers shall be either type written or written neatly in indelible ink. "Earnest Money Deposit" (EMD) shall be kept, marked as "Earnest Money Deposit (EMD) for Tender No....." and sealed in a separate envelope. The Tenderers shall seal the original and each copy of the tender in separate inner envelopes, duly marking the envelopes as "original" and "copy". He shall then place all these inner envelopes in an outer envelope.

Any individuals signing the Tender or other documents connected therein should specify whether he is signing: -

- (i) as sole proprietor of the firm or as attorney of the sole proprietor;
- (ii) as a partner or partners of the firm;
- (iii) as a Director, Manager or Secretary in the case of a limited company with a copy of Power of Attorney duly authorized by a resolution passed by the Board of Directors or in pursuance of the authority conferred by Memorandum of Association.

The original power of attorney or other documents empowering the individual or individuals to sign should be furnished to the Purchaser for verification, if required.

All prices and other information like discounts etc; having a bearing on the price shall be written both in figures and words in the prescribed offer form price schedule/pricing document.

- 16.2. The inner and outer envelopes shall:
- (a) be addressed to the Purchaser as given in Appendix to Tender Form.
  - (b) bear the Project Name, the Invitation for Tenders (IFT) title and number and a statement "Do not open before — hours on —."
  - (c) The Earnest Money Deposit shall be submitted in a **separate envelope** marked "Earnest Money Deposit (EMD) for Tender No. ...." "Do not open before — hours on —."
- 16.3. The inner envelopes shall also indicate the name and address of the Tenderer to enable the tender to be returned unopened in case it is declared "late".
- 16.4. If the outer envelope is not sealed and marked as required by ITT Clause 16.2, the Purchaser will assume no responsibility for the tender's misplacement or premature opening.
- 16.5. Telex, cable or facsimile tenders will be rejected.

- 16.6. Offers shall be as per the "Instruction to Tenderers" and "Conditions of Contract" given in the Tender documents. Each page of the Tender shall be signed and stamped by the Authorized Signatory of the Tenderer.
- 16.7. The Tenderer should avoid ambiguity in his offer.
- 16.8. Tender documents (including Purchaser's clarification and addenda if any) untamped, signed and stamped on right hand bottom corner of each page shall be submitted along with the Tender.
- 16.9. Tender document is not transferable and the party to whom Tender has been sold can only quote/submit their offer against the Tender. Tenderer cannot authorize any other party on his behalf. All correspondence will be made with the Tenderer to whom Tender document has been sold.

#### **17. Deadline for Submission of Tenders**

- 17.1. Tenders must be received by the Purchaser at the address specified in Appendix to Tender Form not later than the time and date specified in the Invitation for Tenders (Section I). In the event of the specified date for the submission of Tenders being declared a holiday for the Purchaser, the Tenders will be received upto the appointed time on the next working day.
- 17.2. The Purchaser may, at its discretion, extend this deadline for submission of tenders by amending the tender documents in accordance with ITT Clause 5, in which case all rights and obligations of the Purchaser and Tenderers previously subject to the deadline will thereafter be subject to the deadline as extended.

#### **18. Late Tenders**

- 18.1. Any tender received by the Purchaser after the deadline for submission of tenders prescribed by the Purchaser, pursuant to ITT Clause 17, will be rejected and/or returned unopened to the Tenderer.

#### **19. Modification and Withdrawal of Tenders**

- 19.1. The Tenderer may modify or withdraw its tender after the tender's submission, provided that written notice of the modification or withdrawal is received by the Purchaser prior to the deadline prescribed for submission of tenders.
- 19.2. The Tenderer's modification or withdrawal notice shall be prepared, sealed, marked and dispatched in accordance with the provisions of ITT Clause 16 not later than the deadline for submission of tenders.
- 19.3. No tender may be modified subsequent to the deadline for submission of tenders.
- 19.4. No tender shall be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the Tenderer on the Tender Form. Withdrawal of a tender during this interval may result in the Tenderer's forfeiture of its Earnest Money Deposit, pursuant to ITT Clause 13.7.

#### **E. Tender Opening and Evaluation of Tenders**

#### **20. Opening of Tenders by the Purchaser**

- 20.1. The Purchaser will open all tenders, in the presence of Tenderer's representatives who choose to attend, at the time and date as specified in the Appendix to Tender Form. The Tenderer's representatives who are present shall sign a register evidencing their attendance. In the event of the specified date of Tender opening being declared a holiday for the Purchaser, the tenders shall be opened at the appointed time and location on the next working day.



- 20.2. The Tenderers' names, tender modifications or withdrawals, tender prices, discounts, and the presence or absence of requisite Earnest Money Deposit (EMD) and such other details as the Purchaser, at its discretion, may consider appropriate, will be announced at the opening. No tender shall be rejected at tender opening, except for late tenders (which shall be returned unopened to the Tenderer pursuant to ITT Clause 18) or Tenders not accompanied by an acceptable Earnest Money Deposit (EMD).
- 20.3. Tenders (and modifications sent pursuant to ITT Clause 19.2) that are not opened and read out at tender opening shall not be considered further for evaluation, irrespective of the circumstances.
- 20.4. The Purchaser will prepare minutes of the tender opening.
- 20.5. Tenderers should ensure that the Earnest Money Deposit (EMD) envelope is available separately and not kept in "Original" or "Copy" of the Tender. If the Earnest Money Deposit (EMD) is kept elsewhere, the Tender will be summarily rejected.**

## **21. Clarification of Tenders**

- 21.1. During evaluation of tenders, the Purchaser may, at its discretion, ask the Tenderer for a clarification of its tender. The request for clarification and the response shall be in writing and no change in prices or substance of the tender shall be sought, offered or permitted.

## **22. Preliminary Examination**

- 22.1. The Purchaser will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order. Tenders from Agents, without proper authorization from the manufacturer as per Section XIII, shall be treated as non-responsive.
- 22.2. Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected. If there is a discrepancy between words and figures, the amount in words will prevail. If the supplier does not accept the correction of errors, its tender will be rejected and its Earnest Money Deposit (EMD) may be forfeited.
- 22.3. The Purchaser may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation, provided such a waiver does not prejudice or affect the relative ranking of any Tenderer.
- 22.4. Prior to the detailed evaluation, pursuant to ITT Clause 23, the Purchaser will determine the substantial responsiveness of each tender to the tender documents. For purposes of these Clauses, a substantially responsive tender is one which conforms to all the terms and conditions of the tender documents without material deviations. Deviations from or objections or reservations to critical provisions such as those concerning Performance Security (GCC Clause 6), Warranty (GCC Clause 14), Force Majeure (GCC Clause 24), Limitation of liability (GCC Clause 28), Applicable law (GCC Clause 30), and Taxes & Duties (GCC Clause 32) will be deemed to be a material deviation. The Purchaser's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.
- 22.5. If a tender is not substantially responsive, it will be rejected by the Purchaser and may not subsequently be made responsive by the Tenderer by correction of the non-conformity.

## **23. Evaluation and Comparison of Tenders**

- 23.1. Preliminary Examination of Tenders

- a. The Purchaser will evaluate and compare the Tenders which have been determined to be substantially responsive pursuant to ITT Clause 22. No Tender will be considered if complete requirements covered in the schedule is not included in the Tender.
- b. If the same item of equipment is appearing in different sub-items in Price Schedule, the unit rate of the equipment shall be same at all places in principle and if they are shown as different at different places, the minimum of all the unit rates for the same item shall be acceptable unless otherwise such difference will be reasonably justifiable and acceptable to the Engineer. The rates quoted by the Tenderer will be adjusted accordingly. If the Tenderer does not accept the corrected amount, his Tender will be rejected, and the Tender Guarantee will be forfeited.

23.2. Deleted

23.3. The Tenders received will be evaluated by the Purchaser to ascertain the lowest acceptable Tender in the interest of the Purchaser, as specified in the specification and Tender documents. Evaluation criteria not mentioned herein but mentioned specifically in the technical specifications will be taken into consideration in the evaluation of offers.

23.4. The amount quoted by the Tenderer is for finished items of the Equipment/Plant all in cost comprising of the Basic rate, Excise Duty, Packing and Forwarding Charges, insurance, freight and handling charges up to the destination which will be reckoned for relative positioning of bids.

All offers will be arranged in ascending order of all in cost.

After arranging the offers as above, technically unsuitable offers will be passed over. Offers not conforming to Tender schedule, offers from defaulters etc; may also be passed over.

23.5. The quoted price shall be inclusive of Excise duty, insurance, transportation upto destination, packing and forwarding, handling and any other charges leviable and payable to the authorities but excluding Entry Tax and VAT which shall be paid separately on submission of documentary proof of such payments made to the concerned authorities as defined in ITT clause 9.

## **24. Contacting the Purchaser**

24.1. Subject to ITT Clause 21, no Tenderer shall contact the Purchaser on any matter relating to its tender, from the time of the tender opening to the time the Contract is awarded. If the tenderer wishes to bring additional information to the notice of the Purchaser, it should do so in writing.

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

## **F. Award of Contract**

### **25. Post qualification**

25.1. In the absence of prequalification, the Purchaser will determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated responsive tender meets the criteria specified in ITT Clause 11.2(b) and is qualified to perform the contract satisfactorily.

25.2. The determination will take into account the Tenderer's financial, technical and production capabilities. It will be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT Clause 11, as well as such other information as the Purchaser deems necessary and appropriate.

25.3. An affirmative determination will be a prerequisite for award of the Contract to the Tenderer. A negative determination will result in rejection of the Tenderer's tender, in which event the Purchaser will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform the contract satisfactorily.

**26. Award Criteria**

- 26.1. Subject to ITT Clause 28, the Purchaser will award the Contract to the successful Tenderer whose tender has been determined to be substantially responsive and has been determined as the lowest evaluated tender, provided further that the Tenderer is determined to be qualified to perform the Contract satisfactorily.

**27. Purchaser's right to vary Quantities at Time of Award**

- 27.1. The Purchaser reserves the right at the time of Contract award to increase or decrease by up to 50 percent of the quantity of goods and services originally specified in the Schedule of Requirements without any change in unit price or other terms and conditions.

**28. Purchaser's Right to Accept Any Tender and to Reject Any or All Tenders**

- 28.1. The Purchaser reserves the right to accept or reject any tender for a part or whole if the quantity offered and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected Tenderer or Tenderers.

**29. Notification of Award**

- 29.1. Prior to the expiration of the period of tender validity, the Purchaser will notify the successful Tenderer in writing by registered letter or by fax, to be confirmed in writing by registered letter, that its tender has been accepted, through a Purchase Order (PO) or a formal Letter of Acceptance.
- 29.2. The notification of award will constitute the formation of the Contract.
- 29.3. Upon the successful Tenderer's furnishing of Performance Security pursuant to ITT Clause 31, the Purchaser will promptly notify the name of the winning Tenderer to each unsuccessful Tenderer and will discharge its Earnest Money Deposit, pursuant to ITT Clause 13.
- 29.4. If, after notification of award, a Tenderer wishes to ascertain the grounds on which its tender was not selected, it should address its request to the Purchaser. The Purchaser will promptly respond in writing to the unsuccessful Tenderer.

**30. Signing of Contract**

- 30.1. At the same time as the Purchaser notifies the successful Tenderer that its tender has been accepted, the Purchaser will send the Tenderer the Purchase Order (PO) or a formal Letter of Acceptance (LOA).
- 30.2. Within 10 days from the date of issue of PO/LOA, the successful Tenderer shall sign and date the PO/LOA and return it to the Purchaser as a token of his unconditional acceptance.

**31. Performance Security**

- 31.1. Within 20 days of the receipt of notification of award from the Purchaser through PO/LOA, the successful Tenderer shall furnish the Performance Security in accordance with the General Conditions of Contract, in the Performance Security Form provided in the tender documents or in another form acceptable to the Purchaser.
- 31.2. Failure of the successful Tenderer to comply with the requirement of ITT Clause 30.2 or ITT Clause 31.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the Earnest Money Deposit, in which event the Purchaser may make the award to the next lowest evaluated Tenderer or call for new tenders.

**32. Corrupt or Fraudulent Practices**

- 32.1. BMRCL requires that Tenderers/ Suppliers/ Contractors observe the highest standard of ethics during the procurement and execution of Government financed contracts. In pursuance of this policy, BMRCL :
- (a) defines, for the purposes of this provision, the terms set forth as follows :
    - (i) “corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and
    - (ii) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of BMRCL/Government, and includes collusive practice among Tenderers (prior to or after tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive BMRCL of the benefits of free and open competition;
  - (b) will reject a proposal for award if it determines that the Tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;
  - (c) will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a Government financed contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a Government financed contract.
- 32.2. Furthermore, Tenderers shall be aware of the provision stated in sub-clause 4.4 and sub-clause 23.1 of the General Conditions of Contract.