

INSTRUCTIONS TO TENDERERS

1 GENERAL INSTRUCTIONS

- 1.1. On behalf of the Delhi Metro Rail Corporation Ltd., New Delhi, India, Controller of Stores (hereinafter referred to as the Purchaser), invites electronic tenders for the supply as set forth in the Notice Inviting Tender, 'Techno Commercial Bid Details' form and 'Financial Rate Page for Supply' form of the electronic tender uploaded on the Indian Railways E-Procurement System website (www.ireps.gov.in), herein after referred to as IREPS website. The tenders are invited in terms of 'DMRC Conditions of Contract'.

'Instructions to Tenderers for Electronic Tenders' and 'Conditions of Contract' uploaded on the IREPS website, and other conditions incorporated in the tender documents. The instructions contained herein are also applicable for all electronic tenders invited by the Office of Controller of Stores/DMRC.

- 1.2. Electronic tender document consists of:-

- a. Conditions of contract
- b. Instructions to Tenderers for Electronic Tenders
- c. Form of Tender
- d. NIT and
- e. Schedule of Requirement
- f. Submit Payment Details' form
- g. 'Techno Commercial Bid Details' form, including attached documents, if any
- h. 'Financial Rate Page for Supply' form
- i. "Special conditions of Contract", if any included with the tender.

Wherever, special conditions are indicated under the heading "Special Conditions of Contract", these will supersede the corresponding conditions given in other tender documents.

In case of any conflict between the above documents the order of precedence will be as under:

1. "Special Conditions of Contract".
2. Schedule of requirements.
3. Instructions to Tenderers along with annexures.
4. DMRC Conditions of Contract

- 1.3. The contract, if placed, shall be governed by latest versions (along with all corrections slips) of:

- a. Conditions of Contract
- b. Instructions to Tenderers for Electronic Tenders
- c. All other documents mentioned in Para 1.1 and 1.2 above)

All the above documents are available on the IREPS website (www.ireps.gov.in).

- 1.4 **Clarification of Tendering Documents; and Pre-Tender Meeting:-**

A prospective Tenderer requiring any clarification of the tendering documents may notify the Purchaser in writing. Similarly, if a Tenderer feels that any important provision in the documents will be unacceptable, such an issue should be raised at

this stage. **The Purchaser will respond in writing to any request for clarification or modification of the tendering documents that it receives no later than Ten (10) 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 not identification of its source) will be uploaded on IREPS website.

1.5 Amendment of Tendering Documents

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, amend the tendering documents.

The amendment will be uploaded or by cable to all prospective tenderers that have purchased the tendering documents and will be binding on them. Tenderers are required to immediately acknowledge receipt of any such amendment, and it will be assumed that the information contained therein will have been taken into account by the Tenderer in its tender.

- 1.6 Vendors interested in participating against an electronic tenderer required to obtain 'Class-III Digital Signature Certificate with Company Name' from any Certifying Authority' licensed by Controller of Certifying authorities (CCA). The details of the certifying authorities are available on CCA website www.cca.gov.in. The vendors will also have to get themselves registered on IREPS website (www.ireps.gov.in). Vendors can submit their log in registration request on line by clicking on the New Vendors link available on Home Page of IREPS website, and after signing the same digitally using their own Digital Signature Certificate. Log in registration to the web site is available on free of charge basis. The registration request, after due verification, will be accepted and Password will be sent to them to their registered e-mail account. Detailed instructions regarding registration process are available in 'User's Manual for Vendors' which can be accessed through Learning Center link available on the Home page of IREPS website.

Vendors interested in participating against an electronic tender are advised in their own interest to obtain the digital signatures, and get themselves registered on IREPS website well in advance of the tender closing date. DMRC shall not provide any assistance to the vendor in this regard, and shall not be responsible for failure of the vendor to submit their offer against any electronic tender on this account.

- 1.7 Offers received in the electronic tender box available in the IREPS website (www.ireps.gov.in) will only be considered against electronic tenders.
- 1.8 Manual offers delivered by post/fax or in person, or offers sent by e-mail or telex shall not be accepted against electronic tenders, even if such offers are received in time. All such offers shall be considered as invalid offers and shall be rejected summarily, without any consideration.
- 1.9 The digital signature of the tenderer on the E-tender form will be considered as confirmation that the tenderer has read, understood and accepted all the documents referred to in Para 1.2 and 1.3 above, unless special deviation is quoted by the tenderer in the Technical deviation & Commercial Deviation templates in 'Techno-commercial Bid Details' form. Deviations quoted elsewhere in the tender form shall not be considered, and Purchaser's decision thereon shall be final and binding.

- 1.10 All mandatory fields in pre-designed templates of 'Techno Commercial Bid Details' form and 'Financial Rate Page for Supply' form marked with asterisk (*) shall be filled in by the tenderer.
- 1.11 The stores offered should be in accordance with stipulated drawings and specifications as given in the 'Techno Commercial Bid Details' form and 'Financial Rate Page for Supply' form and attachments attached with the electronic tender.
- 1.12 The details of deviations, if any, from tender specification and other conditions should be clearly indicated in the Technical Deviation and Commercial Deviation templates provided on 'Techno-commercial Offer' form. Alternatively, the tenderer can submit the details of deviations as per the format given in Annexure -5 of tender document.
- All implicit and explicit deviations, remarks and comments mentioned elsewhere in the tenderer's proposal shall be treated as NULL and VOID and considered withdrawn unconditionally. Tenderers may note that conditions deviating from the tender conditions/ description/specifications may render the offer liable to be ignored.
- 1.13 Tenderers are required to quote in the same rate unit (i.e. Number, set etc.) as given in the tender schedule. Any deviation in this aspect shall render the offer liable to be ignored.
- 1.14 Currency of Offer: The price should be quoted only in Indian Rupees. The offers submitted in other currencies shall not be considered.
- 1.15 Validity of Offer: The offer shall be kept valid for acceptance for a period of 90 days or as specified in the Special Conditions of Contract from the date of opening of the tender. In case the tenderer stipulates validity period of less than as specified in the Special Conditions of Contract, the offer is liable to be treated as unresponsive and ignored.
- 1.16 Tenderers are advised to confirm "Compliance to special tender condition/Checklist" in the template Special Conditions/Checklist for Bidders on 'Techno Commercial Bid Details' form by putting a tick mark in the check box provided against each SpecialCondition/Checklist, and in case of a "No" must furnish reason for non-compliance with that Special Condition/Checklist in the remark entry box provided therein. Tenderers may note that non-compliance to the Special Conditions/Checklist, without stating valid reasons in the relevant remark entry box may render the offer liable to be ignored.
- 1.17 Should a tenderer have a relative employed in Executive capacity in the Stores Department of the DMRC, or in the case of a partnership firm or company incorporated under the Indian Company Law should a partner or a relative of the partner be employed in Executive capacity in Stores Department of DMRC, the authority inviting tenders shall be informed of the fact at the time of submission of tenders, failing which the tender may be rejected, or if such fact subsequently comes to light the contract may be rescinded.

2.0 QUALIFYING REQUIREMENTS OF TENDERERS

2.1 General Qualifying requirements: The Bidder shall provide a satisfactory evidence acceptance to Purchaser to show that :-

- (a) He is manufacturer (who regularly manufactures the item offered and has adequate technical knowledge and practical experience) of the tendered item or authorized channel partner of the manufacturer. In case offer from their authorized Channel Partner then they should submit a tender specific letter of authorization from their OEM as Annexure 4.
- (b) Deleted
- (c) Deleted
- (d) Deleted
- (e) He satisfies the provisions mentioned in "Special Conditions of Tender (Reference Clause)" contained in "Special Conditions of Tender".

2.2 Financial Eligibility Criteria for Work Experience: *The Bidder / OEM {themselves or through reseller(s)}, should have executed project for supply and installation / commissioning of same or similar Category Products (of Offered Make) during preceding 3 financial years (i.e. current year and three previous financial years) as on opening of bid, as per following criteria:-*

- a) Single order of at least 35% of estimated bid value; or*
- b) Two orders of at least 20% each of estimated bid value; or*
- c) Three orders of at least 15% each of estimated bid value*

***(Similar Category Products means: Supply of Brazing Rod in any Metro or Indian Railway)
(Total bid value: Rs 55,64,575.00 All Inclusive)"***

- i) Proof for Past Performance and Project Experience clause:-** For fulfilling the experience criteria the following documents may be considered as valid proof for meeting the experience criteria:-
 - a) "Contract/Purchase Order/LOA, copy along with Invoice(s) with self-certification by the bidder that service/supplies against the invoices have been executed. In addition bidders shall be required to submit any of the following documents, Execution Certificate/Supply acceptance Certificate/Completion Certificate/performance certificate/Self-Certified CRAC (Consignee Receipt and Acceptance Certificate) to verify the supply credentials. Documents shall be properly signed and stamped/Digitally signed by the respective organisation".**
 - b) In case the supply is executed for Private Client,** In addition to above documents required against past experience bill of quantities, bill wise details of payment received certified by C.A. containing the details of TDS (Tax deducted at source) referring the relevant entry/ies in the T.D.S certificates (26AS), T.D.S certificates for all payments received and copy of final/last bill paid by client shall also be submitted. All the

documents or certifications, which are provided by CA after 1st July, 2019, must contain UDIN thereon and the particulars of certifications must be same as mentioned on document/certification and submitted to ICAI on its website which can be verified online on <https://udin.icai.org/search-udin>.

- c) **In case of any composite supply** (supply involving other than same/similar items also or same/similar item being a part of the whole item), in such case the value of same/similar item shall be submitted that can be considered for qualification of past performance/experience.
- d) **For completed works**, Value of work done shall be updated to last day of the month previous to the month of tender/bid closing price level assuming 5% inflation for Indian Rupees every year and 2 % for foreign currency portions per year. The exchange rate of foreign currency shall be applicable 28 days before the bid/closing date of tender/bid.
- e) **The tenderer shall submit details of supplies executed by them in the below format of for the SUPPLY to be considered for qualification of past performance/Experience criteria.**

SN	Details of Purchase Order/Contract/LOA	Details of Invoices	Other documents	Total Value of Same/similar items
1				
2				

2.3 Eligibility Criteria of Minimum Average Annual Financial Turnover:

For Regular/Bulk order the Average Annual Financial Turnover during the last 3 years, ending 31st March of the previous financial year should be at least as specified in special condition of contract (SCC). As a proof in this regard the tenderer is required to submit duly audited Annual financial statements (Balance sheet, profit & loss account etc.) for the last 3 years or a report from a recognized bank or a financial institution on financial position.

In case the offer is from a JV then the averages annual turnover of JV/ Consortium will be based on percentage participation of each member (for e.g. If member-1 in a JV of two partners has percentage participation = M and member-2 has percentage participation = N, and the averages annual turnover of member-1 is A and that of member-2 is B, then average annual turnover of JV will be = $(AM+BN)/100$

2.4 Deleted

- 2.5. Relaxation of in Eligibility Criteria norms for offers from Micro and Small Enterprises:** In compliance to Government of India's instructions to relax the condition of prior turnover and prior experience with respect to Micro and Small Enterprises in all public procurements subject to their offer meeting of quality and technical specifications of tender, DMRC has decided that in case of offers from Micro and Small Enterprises, the value/financial limits applicable for Eligibility criteria for work experience for bulk ordering and Eligibility criteria for Average Annual

Turnover for bulk ordering (as mentioned in paras/sub paras in Para 2.2 and Para 2.3 above) shall be 75% of the corresponding values for these criteria as mentioned in Para 2.2 and Para 2.3 above (subject to their offer meeting of quality and technical specifications).

2.6 Deleted

2.7 In addition to the above, further information regarding his capacity, capability, if required by the Purchaser, shall be promptly furnished by the tenderer and he would offer all facilities to representative of Purchaser for accessing capacity, capability by actual visit to his works/office.

2.8 Tenderer not submitting the requisite information may note that his offer is liable to be ignored. In case the tenderers do not submit the requisite documents/evidence in regard to qualifying requirements as mentioned above along with their e-offer the tender will be decided on the basis of their past supply performance records/credentials as available with COS Office, DMRC.

2.9 In case the tenderer participates as an authorised channel partner of OEM then the performance as required above shall be that of the OEM/principal which has authorised the channel partner. It may so happen that the agent has credentials of past supply for a different principal but this will not be considered as performance for placing bulk order in case of change of OEM/principal. Further, in such cases the purchaser also reserves the right to examine the credentials of the authorised channel partner also.

2.10 The evidence/documents submitted by the tenderer for meeting the qualifying requirement, if found false/fake/forged/manipulated at any stage during evaluation of offers and or even during the currency of Contract, the purchaser reserve the right to summarily reject the offer or terminate the Contract at his risk and cost and take action as per applicable law including banning of the business dealing etc.

3.0 Benefits/Preferential treatment to Micro and Small Enterprise (MSEs) as per the Government of India's Public Procurement Policy for goods produced and services rendered by Micro and Small Enterprise (MSEs)

3.1 The Government of India's Public Procurement policy for goods produced and services rendered by Micro and Small Enterprise (MSEs) is a mandatory consideration against this tender. This Policy envisages extending certain benefits/preferential treatment to MSEs and making efforts for development of appropriate vendors and enhancement of their participation in procurement by Government of India and its agencies. In order to avail themselves of such benefits and preferential treatment, the MSEs must be registered with any of the following:

- (i) District Industries Centres
- (ii) Khadi and Village Industries Commission
- (iii) Khadi and Village Industries Board
- (iv) Coir Board
- (v) National Small Industries Corporation
- (vi) Directorate of Handicraft and Handloom
- (vii) Any other body specified by Ministry of MSME

3.2 In order to extend the benefits/preferential treatment to Micro and Small Enterprise (MSEs) as per the Public Procurement Policy for goods produced and services

rendered by Micro and Small Enterprise (MSEs) the following provisions shall be applicable in this tender:

(A) Benefits/Preferential treatments available to MSEs

- (i) Tender sets shall be provided free of cost to MSEs registered for the tendered item with any of the agencies as given in Para 3.1 above,
- (ii) MSEs registered for the tendered item with any of the agencies as given in Para 3.1 above will be exempted from payment of Earnest Money.
- (iii) In tenders, participating MSEs registered for the tendered item with any of the agencies as given in Para 3.1 above and quoting a price within price band of L-1 + 15% shall be allowed to supply a portion of the requirement by bringing down their price to L-1 price in a situation where L-1 price is from someone other than MSE and such MSEs can together ordered up to 25% value out of the net procurable quantity. Out of total 25% share of MSEs, sub-target for procurement from MSEs owned by SC/ST shall be 4% (within the overall 25% share of all MSEs) and the sub-target for MSEs owned by women shall be 3% (within the overall 25% share for all MSEs)

(B) Conditions to be fulfilled by MSEs for availing benefits/preferential treatments indicated in Para (A) above

- (I) MSEs, who are interested in availing themselves of benefits/preferential treatment mentioned in Para (A) above, shall invariably enclose with their offer the proof of their being MSE registered for the tendered item with any of the agencies mentioned below:-
 - (i) District Industries Centres
 - (ii) Khadi and Village Industries Commission
 - (iii) Khadi and Village Industries Board
 - (iv) Coir Board
 - (v) National Small Industries Corporation
 - (vi) Directorate of Handicraft and Handloom
 - (viii) Any other body specified by Ministry of MSME
- (II) The MSEs must also indicate the terminal validity date of their registration.
- (III) The MSEs may also note that the onus for providing all the documents/details in regard to their registration as MSEs for the tendered item with any of the agencies mentioned in Para 3.1 above and providing further proof of their sub classification as MSEs owned by SC/ST or MSEs owned by women shall rest with the MSEs themselves and they must invariably attach proof/documents with their offer in this regard.

Offers failing to comply to stipulations in Para B(I) to Para B(III) above will not be liable for consideration of benefits detailed in MSE notification of Government of India dated 23.03.2012".

3.3 MSE firms may please note that in case of order being awarded to them, they will be required to deposit Performance BG/Security Deposit as per Para 900 to Para 913 of the conditions of contract.

3.4 The benefits/preferential treatment to Micro and Small Enterprise (MSEs) as per the Government of India's Public Procurement Policy for goods produced and services rendered by Micro and Small Enterprise (MSEs) and the provisions for Relaxation of Eligibility Criteria norms for offers from Micro and Small Enterprises (mentioned in Para 2.5 above) shall be applicable only in case when the MSEs directly participate

in the tendering. Traders and agents shall not be allowed to avail the benefits extended under this policy (even if they are quoting with authorization from some MSE). **Regarding the classification of firm as Micro or Small Enterprise (MSE) the details as mentioned in Gazette Notifications dated 26/06/20 and 01/06/2020 issued by the Ministry of Micro, Small and Medium Enterprises shall be applicable.**

- 3.5** In case the MSE bidder who has availed the benefits/preferential treatment as mentioned in Para 3.2 (A) above
- either withdraws his offer during the period of bid validity or
 - fails to submit the required performance security within the specified time (in case of his being the successful bidder) or
 - fails to execute the contract placed on them

then the bidder shall be debarred from participating in future tenders for a period of one year from the date of discharge of tender/date of cancellation of contract. Thereafter, on expiry of the period of debarment, the bidder may be permitted to participate in the procurement by DMRC but in that case the benefits/preferential treatment envisaged for MSEs bidders shall not be applicable in his case. Further, DMRC may advise the authority based on whose registration the MSE status had been claimed/availed by the firm to take suitable action against such firm/bidder.

4.0 Provisions in compliance to Public Procurement (Preference to Make in India) Order-2017 issued by Government of India:

- 4.1** In order to promote manufacturing and production of goods and services in India for enhancing income and employment, Govt. of India has issued **Public Procurement (Preference to Make in India) Order-2017**. This order is one of the mandatory considerations against this tender and towards this objective the following terms have been specifically defined below (as per the Public Procurement (Preference to Make in India) Order itself) :

Local Content	<i>Local content</i> means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured(excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.
'Class-I Local supplier'	<i>'Class-I Local Supplier'</i> means a supplier or service provider, whose goods, services or works offered for procurement, has local content equal to or more than 60%.
'Class-II local supplier'	<i>'Class-II Local Supplier'</i> means a supplier or service provider, whose goods, services or works offered for procurement, has local content equal to or more than 20% but less than 60%.
'Non-Local Supplier'	<i>'Non - Local Supplier'</i> means a supplier or service provider, whose goods, services or works offered for procurement,haslocalcontentlessthan20%.
L-1	<i>'L-1'</i> means the lowest tender or lowest bid or the lowest quotation received in a tender, bidding process or other procurement solicitation as adjudged in the evaluation process as per the tender or other procurement solicitation.
Margin of Purchase Preference	<i>'Margin of purchase preference'</i> means the maximum extent to which the price quoted by a "Class-I local supplier" may be above the L-1 for the purpose of purchase preference. Margin of purchase preference shall be 20%.
Nodal Ministry	Nodal Ministry <i>'Nodal Ministry'</i> means the Ministry or Department identified pursuant to this order in respect of a particular item of goods or services or works.

4.1.1 The local content requirement to categorize a supplier as either 'Class-I local supplier' or 'Class-II local supplier' or 'Non-local supplier' shall be as defined in the Para 4.1 above.

4.1.2 However, if any nodal Ministry/Department finds that for any particular item, pertaining to their nodal ministry/department, the definition of Local Content. as defined in the Make In India Order (and as brought out in Para 4.1 above) is not workable/ has limitations, it may notify alternate suitable mechanism for calculation of local content for that particular item. The Nodal **Ministry may also** annually review the local content requirements with a view to increasing them, subject to availability of sufficient local competition with adequate quality. However, such provision(s) in the notification issued by Nodal/Department Ministry, if any, shall be applicable in a tender only if the same is specifically included in Special Conditions of Contract.

4.2 Eligibility of 'Class-I Local Supplier'/'Class-II Local Supplier'/'Non- local suppliers' for different types of procurement

- (a) In procurement of all goods, services or works in respect of which the Nodal Ministry/Department has communicated that there is sufficient local capacity and local competition, only 'Class-I local supplier', as defined under the Order, shall be eligible to bid irrespective of purchase value (Specific remarks in this regard shall also be included in the Special conditions of Contract along with the stipulation that in tender cases of such goods/services/works (for which Ministry/Department has communicated that there is sufficient local capacity) Para 4.3 below shall not be applicable. However, all other tender conditions (including the conditions mentioned in Para 4.4 shall continue to be applicable).
- (b) In procurement of all goods, services or works, not covered by sub-para 4.2(a) above, and **the estimated value of purchases is less than Rs. 200 Crore, Global tender enquiry shall not be issued (except with the approval of Competent Authority). In such tenders only 'Class-I local supplier' and 'Class-II local supplier', as defined in Para 4.1 above, shall be eligible to bid.**

In case if Global Tender enquiries are issued with the approval of Competent Authority, 'Non-local suppliers' shall also be eligible to bid along with 'Class-I local suppliers' and 'Class-II local suppliers'.

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

4.2 Purchase preference to 'Class-I local supplier' in procurement cases in which eligibility of different kind of suppliers (i.e. Class-I Local Supplier / Class-II Local Supplier/ Non-Local Supplier is as per Para 4.2 (b) above

4.3.1 Subject to the provisions of Make in India Order and to any specific instructions issued by the Nodal Ministry/Administrative Ministry in pursuance of this Order, purchase preference shall be given to 'Class-I local supplier' in procurement cases covered in Para 4.2(b) above in the manner specified hereunder.

A	<p>In the procurements of goods or works which are covered by Para 4.2(b) above and which are divisible in nature, the 'Class I Local Supplier' shall get purchase preference over 'Class-II Local supplier' as well as 'Non-Local Supplier', as per following procedure:</p> <ul style="list-style-type: none"> i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract for full quantity will be awarded to L1 ii. If L1 bid is not a 'Class-I local supplier', 50% of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the 'Class-I local supplier' will be invited to match the L1 price for the remaining 50% quantity subject to the Class-I local supplier's quoted price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such 'Class-I local supplier' subject to matching the L1 price. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price or accepts less than the offered quantity, the next higher 'Class-I local supplier' within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and so on, and contract shall be awarded accordingly. In case some quantity is still left uncovered on Class-I local suppliers, then such balance quantity may also be ordered on the L1 bidder
B	<p>In the procurements of goods or works which are covered by pars 4.2(b) above and which are not divisible in nature, and in procurement of services where the bid is evaluated on price alone, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:</p> <ul style="list-style-type: none"> i. Among all qualified bids the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract will be awarded to L1. ii. If L1 is not 'Class-I local supplier', the lowest bidder among the Class-I local supplier' will be invited to match the L1 price subject to Class-I local supplier's quoted price failing within the margin of purchase preference, and the contract shall be awarded to such 'Class-I local supplier' subject to matching the L1 price iii. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price, the 'Class-I local supplier' with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly. In case none of the 'Class I local supplier' within the margin of purchase preference matches the L1 price, the contract may be awarded to the L1 bidder

4.3.2 Class-II local supplier will not get any purchase preference in any procurement case.

4.4 Certifying of Local Content by tenderers and Verification of Local Content

- i. The 'Class-I Local Supplier'/Class-II Local Supplier at the time of tender, bidding or solicitation shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I Local supplier/ 'Class-II local supplier', as the case may be. They shall also give details of the location(s) at which the local value addition is made. In this regard the supplier/bidder shall mandatorily fill the specific percentage of Local Content in the additional field of Local content (in percentage) included in the format of all e-tenders on IREPS website (further if any format/annexure is included in the Special Conditions of Contract to indicate local content activity-wise/component-wise and give details of the location(s) at which local value addition for the activity/component is made they shall also mandatorily fill the same). In cases of procurement for a value upto Rs 10 Crore no further certification from any other agency would be required and the case shall be

finalised based on the local content indicated/certified by the bidder and provisions of Public Procurement (Preference to Make in India), Order 2017.

- ii. In cases of procurement for a value in excess of Rs. 10 Crores, the 'Class-I local supplier & 'Class-II local supplier shall **also be mandatorily 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
- iii. False declarations will be in breach of the code of integrity under Rule 175(1) I (h) of General Finance Rules for which a bidder or its successors can be debarred for up to 2 years as per Rule 151(III) of General Financial Rules along with such other actions as may be permissible under law.
- iv. A supplier who has been debarred by any procuring entity for violation of this order shall not be eligible for preference under this order for procurement by any other procuring entity for the duration of the debarment. In respect of procuring entities other than the one which has carried out the debarment, the debarment shall take effect prospectively from the date of uploading on the website(s) in such a manner that ongoing procurements are not disrupted.
- v. **Complaints and Fees for Complaints:** Complaints in regard to provisions of Public Procurement (Preference to Make in India) Order-2017 can be filed with the Office of Controller of Stores, DMRC, Metro Bhawan, New Delhi. The fees for filing a complaint under the order shall be Rs 10,000/- per case and the same shall be deposited with the office of GM/Finance/O&M in DMRC. Any complaint not accompanied with the requisite complaint fees shall not be entertained. Further, the Controller of Stores, if he deems fit may also subsequently ask for deposition of further amount from complainant, if felt necessary, to cover cost of verification.

4.5 **Exemption of Small Purchases from provisions of Public Procurement (Preference to Make in India) Order-2017:** Notwithstanding anything contained in Para 4.1 to Para 4.4 above all the Procurements cases where the estimated value to be procured is less than Rs 5 Lakhs shall be exempt from provisions of the tender in regard to Public Procurement (Preference to Make in India) Order-2017. However, it shall be ensured by the procuring entities that procurement is not split up for the purpose of avoiding these provisions.

5.0 **TENDER DOCUMENT COST**

No Cost of tender is required to be submitted against this tender.

6.0 **EARNEST MONEY**

- 6.1 Tenderers are required to deposit Earnest Money equivalent to the amount mentioned in the Special Condition of Contract before the closing date and time of the tender. Failure to do so, shall render the offer liable to be rejected. **The Earnest Money shall be accepted only through Electronic mode through payment gateway facility available on the IREPS website for DMRC like net Banking, Debit card, Credit card etc.**
- 6.2 Manual payment through Demand draft, Banker's cheque, Deposit receipts, Guarantee Bond etc. are not allowed.
- 6.3 The Earnest Money shall remain deposited with the Purchaser for the period of

validity of the offer from the date of opening of tenders.

- 6.4 No interest will be payable by the Purchaser on the Earnest Money/Tender Guarantee.
- 6.5 The Earnest Money deposited is liable to be forfeited if the tenderer withdraws or amends, impairs or derogates from the tender in any respect within the period of validity of his offer.
- 6.6 The Earnest Money of the successful tenderer will be returned after the Contract Performance Guarantee as required (clause-0900 of the conditions of contract) is furnished.
- 6.7 If the successful tenderer fails to furnish a Contract Performance Guarantee as specified in clause 0900 of the Condition of Contract, then the Earnest Money shall be liable to be forfeited by the Purchaser.
- 6.8 The Earnest Money of all unsuccessful tenderers will be returned by the Purchaser.
- 6.9 *Following categories of Sellers shall however, be exempted from furnishing Bid Security:*
- i. Micro and Small Enterprises (MSEs) who are holding valid Udyam Registration and are manufacturer of the offered Product or Service (Primary Product / Service - in case of bunch bid with total value wise evaluation) and give specific confirmation to this effect at the time of bid submission and claim EMD exemption and whose credentials are validated online through Udyam Registration website of Ministry of MSME and also through supporting document uploaded during bidding process and validated by the Buyer. State Government Buyers may, however, choose to exempt only MSEs from the State of Bid Inviting Authority by specifying the same in ATC of the Bid. In case no such ATC is included, eligible MSEs of all states are exempted.*
 - ii. Start-ups as recognized by Department for Promotion of Industry and Internal Trade (DPIIT), holding valid Startup Recognition Certificate which is to be uploaded while bidding and claiming EMD exemption and to be validated by the Buyer. Bidder to ensure that turnover for any of the financial years has not exceeded beyond limits prescribed in the certificate / Start Up scheme of DPIIT.*
 - iii. KVIC, ACASH, WDO, Coir Board, TRIFED and Kendriya Bhandar.*
 - iv. Sellers who have got their credentials verified through the process of Vendor Assessment by Vendor Assessment Agencies for the Primary Product / Primary Service for which Bid / RA has been invited and holding valid Vendor Assessment or Vendor Assessment Exemption Report / confirmation (Seller to upload VA report / VAE confirmation to be validated by the Buyer).*
 - v. Sellers / Service Providers holding valid BIS License for the Primary Product Category whose credentials are validated through BIS database and through uploaded supporting documents to be validated by the buyer.*
 - vi. Central / State PSUs. vii. Seller / Service Provider registered with designated Agency / Authority as specified in the bid document by the Buyer – such bidder shall have to upload scanned copy of relevant valid registration document in place of Bid Security document while bidding*

However, the MSEs who are interested in availing themselves of this exemption from payment of Earnest Money must invariably enclose with their offer the proof of their being registered for the tendered item/category (or for items specified as similar item in qualifying requirements of tenderers/mentioned in tender document) with any of the agencies mentioned above and must also indicate the terminal validity date of their registration. In case any offer fails to submit the proof of registration (with any of the agencies mentioned above) or indicate the terminal validity date of their registration (with any of the agencies mentioned above) the exemption from payment of Earnest Money shall not be applicable for such offer which shall be dealt as per other provisions of tender in regard to Earnest Money.

In line with conditions in Para 3.4 above Traders and agents in any case are not eligible for exemption from payment of Earnest Money (even if they are quoting with authorization from some MSE). Regarding the classification of firm as Micro or Small Enterprise (MSE) the details as mentioned in Gazette Notifications dated 26/06/20 and 01/06/2020 issued by the Ministry of Micro, Small and Medium Enterprises shall be applicable.

- 6.10 Firms seeking exemption from submission of EMD on account of their being MSE as per above provisions have to follow all of the following steps to avail the exemption from submission of Earnest Money.

- 6.10.1 Tenderers shall search for the relevant tender using the links
- i) quick search or
 - ii) advance search provided in their home page after logging into the system using their valid Username, Password & Digital Signature.
 - a) On retrieving the tender details, they shall click on the Submit Payment Details icon under Actions column to access the Submit Payment Details Page. The tenderers shall then choose the appropriate exemption category available under Submit EMD link on the Submit Payment details page. The tenderer shall thereafter digitally sign and submit the details by clicking the Sign & Submit button available on the page. Tenderers may note that Submit EMD link becomes available only after the tenderer has submitted tender document cost (if applicable) for the tender (or has chosen the exemption category for tender document cost, if applicable).
 - b) The tenderer will have to attach scanned copy of the proof of their being registered for the tendered item/category (or for items specified as similar item in qualifying requirements of tenderers/mentioned in tender document) with any of the agencies mentioned in Para 6.10 above in the Attach Documents template on 'Techno Commercial Bid Details form'

- 6.11 Deleted.

- 6.12 Offers of the tenderers who do not submit Earnest Money and are also not exempted from submission of Earnest Money shall be summarily rejected.

7.0 SUBMISSION OF OFFERS

7.1 Procedure for submission of electronic offers

7.1.1 The tenderers should visit IREPS website at the address www.ireps.gov.in and submit online offers after logging into the website using their login ID, Password and Digital Signature. Tenderers can submit their online offers only after they have submitted tender document cost, if applicable (or have chosen the exemption category for tender document cost, if applicable). Tenderers can submit online electronic offers after filling the details in the following pre-designed templates. Document cost (or have chosen the exemption category for tender document cost, if applicable). Tenderers can submit online electronic offers after filling the details in the following pre-designed templates.

1.0 Submit Payment Details Document cost (or have chosen the exemption category for tender document cost, if applicable). Tenderers can submit online electronic offers after filling the details in the following pre-designed templates.

2.0 Techno Commercial Bid Details (Bid Process page)

- | | | |
|----|---------------------------------|---------------|
| 1. | Eligibility Criteria | (Elig.*) |
| 2. | Terms and Conditions | (T&C*) |
| 3. | Commercial Deviation | (Com.Dev.) |
| 4. | Technical Deviation | (Tech.Dev.) |
| 5. | Special Conditions & Check List | (CheckList*) |
| 6. | Technical Specifications | (Tech.Spec.) |
| 7. | Performance Statement | (Perf.) |
| 8. | Attach Documents | (Attach Doc.) |
| 9. | Financial Offer | (Fin.Offer) |

Templates named above super scribed with asterisk (*) will require digital signatures for submission.

Tenderers shall be able to access the 'Financial Offer' link for entering into the 'Financial Rate Page for Supply' only after they fill in the details in the asterisk (*) marked templates on the 'Techno Commercial Bid Details' form and digitally sign and submit the same.

Tenderers may note that the IREPS software is continuously being upgraded and the forms referred above may be subject to changes. Tenderers are advised to keep themselves updated with the latest changes, by referring to the latest versions of user manuals available on the website, and by taking note of the messages sent by the IREPS administrator from time to time. Tenderers should also make themselves fully acquainted with all the available templates/forms, before they submit their offer. No claim shall be entertained from a tenderer, on account of non-familiarity with the any of the templates and forms available on the IREPS website.

7.1.2 The electronic offers shall be digitally signed by the tenderer. To ensure confidentiality and security, the offers will be auto encrypted using highest level of digital security before transmission on internet channels. Electronic such offers are received in a time locked electronic tender box, where they remain encrypted till stipulated tender opening date/ time. All the details of the digital certificate as

obtained from the C.A., showing the identity of the person who is authorized to sign and submit an electronic offer will get auto attached along with the electronic offer, and can be verified by DMRC at a later stage, to establish the identity of the person who has digitally signed and submitted his electronic offers. This is similar to an authenticated copy of the document which authorizes the signatory to commit on behalf of the firm.

- 7.1.3 Every online tender submitted duly signed with a valid Digital Signature Certificate and received before closing date & time of tender shall be acknowledged by the system and HTML receipt will be generated indicating tender ID as well as date and time of receipt of the tender.
- 7.1.4 Electronic offer once digitally signed and submitted for one or all the item/ items cannot be accessed or revised later and shall remain fully secured confidentially stored into time locked E-tender box in an encrypted form till the due date and time of opening.
- 7.1.5 Revised bids: Vendors can submit a revised commercial offer ("Financial Rate Page for Supply' form) any time before the stipulated closing date and time and in such case the last revised offer submitted at a later time and date shall be considered as the offer, superseding all the previously submitted offers for that item/ items of the tender.
- 7.1.6 Alternative bids: The vendors are also allowed to submit alternative offer (for different make, specification, slab discount etc.)
- 7.1.7 Late Offers: The Indian Railway E- procurement application software does not permit vendors to submit their offers after the designated tender closing date and time.
- 7.1.8 The tenders are uploaded in IREPS website well in advance of closing time to give sufficient time to the vendors to participate in the tender. Vendors are advised in their own interest to submit their offers well in advance before the tender closing time. DMRC shall not be responsible for non- participation of vendors due to any technical problems such as network connectivity etc. on the tender opening day.

7.2 Goods & Service Tax (GST)

- (i) The bidders should ensure that they are GST compliant and their quoted tax structure/rates are as per GST law.
- (ii) The bidders are required to indicate the rate of GST applicable for the tendered item in their bids separately in the rate page provided in the IREPS System. The offer shall be evaluated on the GST rate as quoted by each bidder and same will be used for determining the interse ranking. While submitting the offer, it shall be the responsibility of the bidder to ensure that they quote correct GST rate and HSN Number.
- (iii) Purchaser shall not be responsible for any misclassification of HSN No. or incorrect GST rate if quoted by the bidder. The purchaser will not reimburse any GST paid by the supplier due to misclassification.
- (iv) Where the successful bidder invoices the Goods at GST rate or HSN No. which is different from that incorporated in the Purchase Order, payment shall be made

as per GST rate which is lower of the GST rate incorporated in the purchase order or billed.

- (v) Vendor is informed that she/he would be required to adjust her/his basic price to the extent required by higher tax billed as per invoice to match the all inclusive price as mentioned in the purchase order.
- (vi) Any amendment to GST rate or HSN No. in the Contract shall be as per the Contractual conditions and Statutory Amendments in the quoted GST rate and HSN No. under SVC.
- (vii) The bidder while submitting their bids shall give the following declaration:
" we agree to pass on such additional set offs/input tax credits as may become available in future under the GST provisions in respect of all inputs used in the manufacture of the tendered item on the date of supply, by way reduction in price and advise the purchaser accordingly".
- (viii) The suppliers while submitting their bills for payment shall give the following declaration:
"We hereby declare that additional set off/ input tax credit to the tune of Rs ____ has accrued and accordingly the same is being passed on to the purchaser and to that effect the payable amount may be adjusted".
- (ix) In case the successful tenderer is not liable to be registered under the CGST/IGST/UTGST/SGST Act, DMRC shall deduct the applicable GST from his/their bills under Reverse Charge Mechanism (RCM) and deposit the same to the concerned tax authority.
- (x) Any statutory variation in the form of revision of rate of GST applicable for the tendered item or introduction of any new tax on the tendered item will be on the account of the purchaser during the original contractual delivery period.

8.0 DELIVERY SCHEDULE

- 8.1** The tenderers should quote the delivery period/delivery schedule carefully, because the time and date for the delivery of stores shall be the essence of the contract and delivery must be completed not later than the date so specified. The attention of the tenderers is invited to clauses 0700, 0701 and 0702 of the IRS Conditions of Contract, which shall govern the contract.
- 8.2** The delivery period and delivery schedule as per DMRC's requirement are indicated in the respective fields in the electronic tender. Tenderers are advised to adhere to the delivery period/delivery schedule stipulated in the tender, as deviation from the same may render their offer liable to be ignored. Tenderers should invariably quote firm delivery period in their quotation. If the quoted delivery period spreads over several months, the date of commencement, monthly rate of delivery and the date of completion of delivery must be indicated.
- 8.3** In the case of "ex-stock" offers, the despatch of stores is to be effected within 7 days of the receipt of order. Wherever the stores are subject to inspection by RITES/RDSO etc. before despatch, extra time of 3 weeks will be allowed to cover time in

inspection.

8.4 In case of local delivery, the date of delivery to consignee will be taken as date of delivery. For outstation despatches, if sent by lorry, the date of receipt of material by consignee will be taken as date of delivery.

8.5 No transit time shall be allowed beyond the delivery date stipulated in the contract.

8.6 Time Preference Clause: It should be noted that if a contract is placed on a higher tenderer as a result of invitation of tender, in preference to the lower acceptable offer, in consideration of offer of earlier delivery, the contractor will be liable to pay to the Government the difference between the contract rate and of the lowest acceptable tender on the basis of final price F.O.R destination including all elements of freight, GST and other incidentals in case of failure to complete supplies in terms of such contract within the date of delivery specified in tender and incorporated in the contract. This is in addition and without prejudice to other rights under the terms of contract.

9.0 DELIVERY TERMS

9.1 The purchaser will prefer free delivery by road at consignee's end as per delivery schedule given in Special Conditions of Tender.

9.2 Tenderers are required to clearly indicate the freight charges in the relevant field in the 'Financial Rate Page for Supply' form. The freight charges to be paid shall in no case exceed the freight charges quoted by the tenderer in the relevant field in the "Financial Rate Page for Supply" form.

9.3 In case an offer is submitted on 'FOR-Station of despatch' basis, 'FOR: Ex-Works' basis or 'FOR- Ex-Godown basis' and 'Nil' freight charges are quoted by the tenderer in the relevant field on the 'Financial Rate Page for Supply' form, the supplier shall agree to dispatch the stores by rail/road on free delivery to consignee. No freight charges shall be payable in such cases.

9.4 In case an offer on "FOR- Station of dispatch" basis is accepted with mode of dispatch by rail, the supplier shall agree to book the stores by goods train for wagonload consignments and passenger/parcel train for smalls. Reimbursement of freight element, permitted as per contract conditions may be claimed through bill.

9.5 The purchaser will not pay separately for transit insurance and supplier will be responsible till the entire stores contracted for are received by the consignee in good condition at destination.

10.0 INSPECTION

Inspection term shall be as mentioned in Clause no. 1600 of COC.

11.0 PAYMENT TERMS

- 11.1 The standard payment terms subject to recoveries, if any, shall be as mentioned in Clause no. 1800 of the Conditions of Contract.
- 11.2 Payment shall be made through Cheque or E-Payment.
- 11.3 For the purpose of payment through E-payment, Tenderer has to give the details of bank account and other details as given in Annexure 1 to tender document along with scan copy of cross cancelled cheque.

12.0 OPENING OF ELECTRONIC TENDERS

- 12.1. The tender shall be opened electronically by DMRC official(s), authorized to do so by DMRC, by logging on the IREPS website with their Login ID and Password by authenticating themselves through their Digital Signature Certificate, as well as applying secure decryption key of DMRC for decryption of electronic offers.
- 12.2 The tender shall normally be opened on the stipulated closing date, after the stipulated opening time. In case the closing date falls on a holiday, the tender shall be opened on the next working day. However, due to unavoidable reasons, the tender may not be opened on the stipulated closing date, and may be opened on a later date. However, no revision or modification of the offer shall be allowed after the closing date and time, even if there is any delay in the tender opening.
- 12.3 Immediately after the opening of tender, financial and Techno-commercial tabulation statements are generated by the IREPS module. Vendors who have submitted valid offers against electronic tenders against 'Open' and 'Special Limited' tenders are not required to come to DMRC office to witness the tender opening process and know the offer details, as they will be able to access the tabulation statements and bids, immediately after tender opening, by visiting the IREPS website and logging in with their Login ID, Password and Digital Signature.
- 12.4 Clarifications from Tenderers: After opening of tender, if necessary, the purchaser may obtain clarification on the offers by requesting for such information from any of the tenderers as considered necessary. Tenderer will, however, not be permitted to change the substance of the offers after the tender have been opened.

13.0 EVALUATION OF OFFERS

- 13.1 The Commercial offer details shall be submitted by vendors using 'Financial Rate Page for Supply' form having separate entry box for each element of rate. The vendors must fill in basic rate and other rate components such as GST, unconditional discount on basic rate, if any, packing charges on basic rate, forwarding charges, freight charges, other charges, if any, in the boxes provided in the 'Financial Rate Page for Supply' form. The all inclusive rate per unit shall be calculated automatically considering all the elements of rate components, as filled by vendor before submitting the offer, and will be displayed before vendor submits his digitally signed electronic offers. Tenderers can edit any or all rate entries before submission and before digitally signing their electronic offers. Tenderers are therefore advised to check, and revise any or all the entries in the rate page before the same is digitally signed and submitted.

All offers will be evaluated after taking into account the all inclusive destination rate per unit, which will also be displayed to the vendor before submission of his electronic offer.

- 13.2 Tenderers should quote financial terms and conditions in the nominated fields of 'Financial Rate Page for Supply' form only. Any financial terms and conditions mentioned in the fields other than the nominated fields will be ignored and will not be considered for purpose of evaluation of offer to determine the inter-se ranking of the offer. Tenderers are advised not to quote any terms and conditions having financial bearing in any other template of 'Techno Commercial Bid Details' form except the 'Financial Rate Page for Supply' form, or in the Remarks field of the 'Financial Rate Page for Supply' form, as these will not be considered for evaluation of the offer. Similarly, any financial terms and conditions enclosed as attachments will be ignored and not considered for purpose of evaluation of offer to determine the inter-se ranking of the offers. However, DMRC at their own discretion may avail the benefit of such conditions while placing purchase order, if the offer is considered for placement of order.

Nothing extra shall be payable over and above the all inclusive rate shown in the financial offer, except on account of Price Variation clause, and Statutory Variation, if applicable. Digital Signature of the tenderer on the E-tender form shall be construed as confirmation that the tenderer has read and accepted this condition.

- 13.3 The tenderers shall quote specific freight charges in the relevant field of financial rate page. Ambiguous remarks like 'freight extra at actuals', 'freight shall be charged extra', 'Railway freight shall be charged extra' etc., mentioned in the 'PVC and remarks' field or elsewhere in the electronic offer or attachments shall not be considered for evaluation, and may render the offer liable to be ignored. However, freight charges shall not be payable if the offer is considered.
- 13.4 Rates quoted by the tenderers with discounts, if any, linked to quantity will be considered for determining inter-se position of the offers. Discounts with conditions attached to early payment, early Receipt Notes etc. will be ignored for calculating inter-se position. However, Railways may avail the discounts linked to early payment, early Receipt notes etc. if otherwise firm's offer is found to be acceptable.
- 13.5 The tenders will be evaluated by the Purchaser on free delivery to destination basis, to ascertain the best and lowest acceptable tender, as specified in the specifications and tender documents. Wherever more than one consignee/item are involved, unless specified otherwise in the tender document, tender would be evaluated and the inter-se ranking of the offer would be made for each item and/or each consignee separately.
- 13.6 The offer shall be evaluated on the GST rate/taxes//duties as quoted by the bidder and same will be used for determining the interse ranking and the interse ranking arrived at in such manner shall be taken as Final.
- 13.7 In case of reduction in taxes & duties, they will be paid as per rate thereof

prevailing on the date of supply.

Statutory variation in taxes & duties shall be allowed only where the tenderers have specifically sought such statutory variation in their offer(s). Only such variation shall be admissible which takes place after the submission of bid. No claim on account of statutory variation shall be admissible on account of misclassification by the supplier/contractor.

- 13.8 Claim for any taxes & duties not stipulated in the quotation will not be admitted at any stage on any ground whatsoever.
- 13.9 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price, which is obtained by multiplying the unit price and quantity, or between subtotals and the total price, the unit or subtotal 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 Tenderer does not accept the correction of errors, its Tender will be rejected and EMD/Tender Security will be forfeited.
- 13.10 The DMRC may waive any minor informality, nonconformity or irregularity in a Tender that does not constitute a material deviation, whether or not identified by the Tenderer in Annexure 5, 6 to its tender, and that does not prejudice or affect the evaluation of any Tenderer as a result of the technical and commercial evaluation.

14.0 ACCEPTANCE OF TENDER

- 14.1 Purchaser may accept a tender for a part or whole of the quantity offered, reject any tender without assigning any reason and may not accept the lowest or any tender
- 14.2 The Purchaser reserves the right to increase or decrease the quantity up to 25% of the quantity offered by the successful tenderer. The contractor is bound to accept the increase or decrease in the category tendered quantity upto 25% under this clause as ordered at the time of placement of contract and/or during the currency of the contract. Further, the purchaser shall be entitled to operate +25% option clause in one or more than one installment as long as the total variation in quantity does not exceed the limit of 25% of the ordered quantity.

While operating this clause the quantity shall be rounded off to the next whole no. less than 0.5 shall be ignored and 0.5 or more shall be rounded off to the next whole number.
- 14.3 Acceptance of tender will be communicated by Cable, e-mail, Telex, Telegram, Express Letter or formal acceptance of tender. In case where acceptance is indicated by Cable, Telex, Telegram, Express Letter or formal acceptance of tender will be forwarded to the Contractor as soon as possible, but the Cable, Telex, Telegram, Express Letter should be deemed to conclude the contract.

14.4 Splitting of tendered quantity

14.4.1 Cases of no prior decision to split the order-

Normally full order shall be placed on L-1 firm. However, if it is discovered that the quantity to be ordered is more than what L-1 alone is capable of supplying and there was no prior decision to split the quantities, then the quantity being finally ordered may be distributed among the other tenderers in a manner that will be fair, transparent and equitable. The manner of splitting will take specific note of the following parameters-

- (i) Past Performance of tenderers
- (ii) Capacity of tenderers
- (iii) Delivery requirements in the tender
- (iv) Quantity under procurement
- (v) Vital/safety nature of the items

14.4.2 Cases of pre-decided split ordering -Wherever pre-decided split ordering is mentioned in the tender document/Special conditions of Contract in advance so as to have more than one source of supply on account of delivery requirement in tender, past performance and capability of bidders, quantity under procurement and vital/safety nature of items, the same shall be dealt as per the provisions included in Special Conditions of Contract of that specific tender itself.

15.0 CARTEL FORMATION

- 15.1** Wherever all or most of approved firms quote equal rates and cartel formation is suspected, DMRC reserves the right to place order on one or more firms with exclusion of the rest without assigning any reason thereof.
- 15.2** Firms are expected to quote for quantity not less 50% of tendered quantity. Offers for quantity less than 50% of tendered quantity will be considered unresponsive and are liable to be rejected.
- 15.3** The firms who quote in cartel are likely to be deleted from the list of approved sources. In case cartel formation is suspected. DMRC, however, reserve the right to order on one more firm any quantity.

16.0 EFFECT AND VALIDITY OF OFFER

- 16.1** The submission of any offer connected with these specifications and documents shall constitute an agreement that the tenderer shall have no cause of action and claim, against the Purchaser for rejection of offer. The Purchaser shall always be at liberty to reject or accept any offer or offers at his sole discretion and any such action will not be called into question and the tenderer shall have no claim in that regard against the Purchaser.
- 16.2** The offer shall be kept valid for acceptance for a minimum period of as specified in Special Condition of Contract.
- 16.3** Offers shall be deemed to be under consideration immediately after they are opened and until such time the official intimation of award of contract is made by the Purchaser to the Tenderer. While the offers are under such consideration, tenderers and or their representatives or other interested parties are advised to refrain from contacting the Purchaser by any means. If necessary, the Purchaser will obtain clarifications on the offers by requesting for such information from any or

all the tenderers, either in writing or through personal contacts, as may be considered necessary. Tenderers will not be permitted to change the substance of their offers the offers have been opened.

17.0 Special Conditions to deal with cases of “Manufacture under license/ technology collaboration agreements with phased indigenization.”

(A) *In case the offer is from an Indian bidder and the offered product is being manufactured in India under a license from a foreign manufacturer who holds intellectual property rights and where there is a technology collaboration agreement/ transfer of technology agreement for indigenous manufacture of a product developed abroad with clear phasing of increase in local content then such bidders are exempted from meeting the stipulated local content as specified in the tender for Class-I Local Supplier and Class-II Local supplier. In case if Local Content applicable on the date of submission of offer is equal to or more than that prescribed for Class-I Local Supplier, offer would also be eligible for Purchase Preference as per Make in India Order 2017.*

(B) This Special condition/Clause of Technology Transfer Agreement/Technology collaboration agreement/License Agreement shall be applicable only for the goods and that too only for those goods for which the Nodal Ministry has NOT communicated sufficient local capacity/competition (this aspect will be clearly specified in the Special Conditions of Contract) . For all the tenders of Works and Services as well as tenders for goods for which the Nodal Ministry has communicated sufficient local capacity/competition this special clause of Technology Transfer Agreement will not be applicable.

(C)The Technology Transfer Agreement/Technology collaboration agreement/License Agreement should essentially cover/include the following

- i) Technology Transfer Agreement/Technology collaboration agreement/Licence Agreement should be a legally bound, valid agreement, on mutually agreed consideration (to be brought out in agreement) in which the Nature and Scope of the Agreement between the parties are clearly specified. It should be signed by Chairman/Head/MD of the Foreign OEM and Head/MD/CEO of the Indian Company in presence of two witnesses of either parties. The Board Resolution of the either companies authorizing the signatories to this effect should also be submitted for ascertaining the legal Enforceability aspect of the agreement.
- ii) An undertaking jointly signed by both the foreign OEM and Indian Manufacturer the product shall be manufactured in India under a license from a foreign OEM, who holds intellectual property rights.
- iii) It should invariably have an undertaking from the foreign OEM that the process of manufacturing, testing and commissioning and the corresponding quality assurance program for all the activities of the machinery/equipment/plant which is similar to the one to be supplied against this/present tender from the proposed

plant in India (of the Indian Manufacturing partner) have been checked and validated by them.

- iv) an undertaking for an assurance from the foreign OEM that they shall provide technical support for manufacturing supply, testing, commissioning and after sale service up to the end of a defect liability period (DLP) for the item supplied against this/present tender.
- v) Confidentiality/Intellectual Property Protection Clause including issues relating to patents right, trademarks, local legislations on importation of technology, foreign exchange, if any.
- vi) Arbitration or Dispute Settlement clause.
- vii) Time Frame/Schedule of Performance against the Contract: Foreign OEM to sign an undertaking concerning technical performance stating that it will be carried out correctly and on time.
- viii) Termination of Contract clause: Termination of a technology transfer agreement may be possible due to several reasons not necessarily as a result of a legal dispute alone such as force majeure, change in legislations that deal with key aspects of agreement etc.
- ix) Exchange of Currency control and Transfer of Payment clause
- x) The agreement should clearly specify the manner and time frame in which the technology for manufacture will be transferred by Foreign OEM to his Indian counterpart in a predetermined phased manner so that local content progressively increases and ultimately the product gets manufactured in India

Note 1: There is a possibility that that the Technology Transfer Agreement/Technology collaboration agreement/License Agreement entered into by Foreign OEM and his Indian counterpart may not cover all the above aspects and they may have entered into another major/detailed contract which stipulates the above mentioned working conditions including the financial considerations. Although such major/detailed contract, if any, between the Foreign OEM and his Indian counterpart may not have a direct bearing on the rights and liabilities under the tender/contract with the Purchaser, however, for proper knowledge and evaluation, ensuring the effective and appropriate performance of the contract and understanding the arrangement between the Foreign OEM and his Indian counterpart (and its ramifications for Purchaser), the copy of such contract documents containing information on above aspects (in particular pertaining to Dispute Resolution, Terminations, Time Frame, Intellectual Property Rights/Licensing, Methodology of Transfer of Technology and time frame in which the technology for manufacture will be transferred by Foreign OEM to his Indian counterpart) should also be submitted along with the offer by the

bidder (to verify that terms of contract between Purchaser and the Indian Company are in consonance with terms of contract between the Foreign OEM and his Indian Counterpart).

Note 2: In case all the points mentioned above are not covered in the Technology Transfer Agreement/Technology collaboration agreement/Licence Agreement (except for situation in Note 1 above) the benefit of being considered under this clause shall not be applicable to the bidders seeking to do so.

- (D) In all cases where the contract is placed utilizing the provisions of this Special condition/Clause of Technology Transfer Agreement/Technology collaboration agreement/Licence Agreement, the Contract shall be placed by DMRC only on the Indian party However, since in such cases the offer of the Indian Counterpart is considered mainly on the strength/credentials/assurance of Foreign OEM thus if there is a breach of contract in such cases then the Purchaser reserves the right to consider even the Foreign OEM for debarment from future tenders of DMRC.
- (E) In case if the Foreign OEM party in the Technology Transfer Agreement/Technology collaboration agreement/Licence Agreement, is from a country sharing the land border with India then this special tender clause of Technology Transfer Agreement/Technology collaboration agreement/Licence Agreement shall be applicable only if the Foreign OEM fulfils the requirement of registration/provisions as mentioned in the tender condition pertaining to "Restriction of Bidders from Countries sharing land border with India"