

Oil and Natural Gas Corporation Ltd

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Circular No. 57 /2020

No: MAT/PMC/13(108)/2020 Dated:26.11.2020

Sub: Eligibility and Experience Criteria in Indigenous Tenders for Service Contracts.

Reference is invited to Government guidelines for not inviting Global Tender Enquiry for tender upto Rs.200 Crores.

The issue with regard to Eligibility and Experience Criteria in Indigenous Tenders for Service Contracts for Specialized services was discussed in EPC meeting (16/2020) held on 25.11.2020 and it has been decided that following provisions may be incorporated in Indigenous Tender for specialized services only on case to case basis with the approval of concerned Director:

i) Eligibility criteria:

Only the Companies incorporated in India which maintain minimum 20% local content for the offered services are eligible to participate. With regard to calculation of local content and submission of documents during bidding & execution of contract, provision of Purchase Preference Policy (Linked with Local content) shall be applicable. If such local content is not maintained during execution of contract, ONGC reserves the right to invoke the PBGs submitted by the bidding and supporting companies.

In case of bid from Consortium of Companies, leader of Consortium must be a company incorporate in India and Consortium shall maintain minimum 20% local content.

- ii) Provisions with regard to submission of bid based on the experience of Supporting company (BEC clauses B.1.2.2, B.1.2.3 and B.1.2.4 as applicable in ICB tender for Services Contracts), except the following:
 - a. Requirement of minimum Turn-over of USD 1 billion for Ultimate Controlling Company in BEC Clause B.1.2.3.
- iii) To incorporate provision with regard to conversion of financial figures in INR and submission of financial statement by supporting company, as applicable in BEC-ICB tenders.

Provisions to be incorporated in Bid Evaluation Criteria (Services-Indigenous) towards SI. (i) & (ii) are attached as Annexure-1 to the Circular. 'Criteria to ascertain Financial Capability' in such cases as per SI. (iii) stands modified as Annexure-2 to the Circular.

Similar provisions can also be incorporated in Indigenous Tenders for Hiring of Rigs and LSTK with the approval of Concerned Director.

Above guidelines should be meticulously followed by all concerned

ED-Chief MM Services

<u>Distribution:</u> (Through ONGC's intranet website 'ongcreports.net').

All concerned may download the circular from the site. Hard copies are not distributed separately.

Copy to:

1. EO to CMD, ONGC, New Delhi.

2. CEA to Director (F)/ Director (Offshore)/ Director (Exploration)/ Director (HR)/ Director (T&FS)/Director (Onshore), New Delhi.

3. CVO, ONGC, New Delhi.

[The clauses mentioned below are to be incorporated in Technical Rejection Criteria of Bid Evaluation Criteria (Services-Indigenous) for Specialized Services only, with the approval of Concerned Director.]

B.1.2 Eligibility criteria:

Only the Companies incorporated in India which maintain minimum 20% local content for the offered services are eligible to participate. With regard to calculation of local content and submission of documents during bidding & execution of contract, provision of Purchase Preference Policy (Linked with Local content) shall be applicable. If such local content is not maintained during execution of contract, ONGC reserves the right to invoke the PBGs submitted by the bidding and supporting companies.

In case of bid from Consortium of Companies, leader of Consortium must be a company incorporate in India and Consortium shall maintain minimum 20% local content.

B.1.2.2 Eligibility criteria in case bid is submitted on the basis of technical experience of another company (supporting company) which holds more than fifty percent of the paid up share capital of the bidder company either directly or through intermediate subsidiaries or vice versa.

Offers of those bidders (not under consortium arrangement) who themselves do not meet the technical experience criteria as stipulated in the BEC and are quoting based on the experience of another company (supporting company) can also be considered. In such case the supporting company should hold more than fifty percent of the paid up share capital of the bidding company either directly or through intermediate subsidiaries or vice versa.

However, the supporting company should on its own meet the technical experience as stipulated in the BEC and should not rely on any other company or through any other arrangement like Technical collaboration agreement.

In that case as the bidding company is dependent upon the technical experience of another company with a view to ensure commitment and involvement of the companies involved for successful execution of the contract, the participating bidder should enclose the following Agreements / Guarantees/Undertakings along with the techno-commercial bid:

- (i) An Agreement (as per format enclosed at Appendix A-1) between the bidder and the supporting company.
- (ii) Guarantee (as per format enclosed at Appendix A-2) by the supporting company to ONGC for fulfilling the obligation under the Agreement.
- (iii) Undertaking by Supporting Company to provide a Performance Bank Guarantee (as per format and instructions enclosed at Appendix A-3), equivalent to 50% of the value of the PBG which is to be submitted by the bidding company, in case the supported bidding company is the successful bidder.

In cases where foreign based supporting company does not have Permanent Establishment in India, the bidding company can furnish performance Bank Guarantee for an amount which is sum of PBG amount to be submitted by the bidder and additional PBG amount required to be submitted by the supporting company subject to the condition that supporting company have 100% paid up equity share capital of the bidder either directly or through intermediate subsidiaries Or vice versa.

In such case bidding company shall furnish an undertaking that their foreign based supporting company is not having any Permanent Establishment in India in terms of Income Tax Act of India.

(iv) Undertaking from the supporting company to the effect that in addition to invoking the PBG submitted by the contractor, the PBG provided by supporting company shall be invoked by ONGC due to non-performance of the contractor.

Note:

In case Supporting company fails to submit Bank Guarantee as per (iii) above, EMD/SD submitted by the bidder shall be forfeited.

B.1.2.3 Eligibility criteria in case bid is submitted on the basis of technical experience of such companies that are controlled by a 'ultimate controlling company':

(For the purpose of this clause 'ultimate controlling company' is the one that holds more than fifty percent of the paid up share capital of each of the companies viz. the bidding company, all the supporting companies, intermediate company and 'any other company' mentioned in the clause.)

Offers of those bidders (not under consortium arrangement) who themselves do not meet the technical experience criteria stipulated in the BEC can also be considered based on the experience of the company within the 'ultimate controlling company' subject to meeting of the following conditions;

- i. Provided that the supporting company and the bidding company are both controlled by an ultimate controlling company either directly or through its intermediate company or through 'any other company' within the ultimate controlling company.
- ii. Provided that the supporting company on its own and not through any other arrangement like Technical collaboration agreement meets the technical experience criteria stipulated in the BEC.
- iii. Provided that with a view to ensure commitment and involvement of the ultimate controlling company for successful execution of the contract, the bidding company shall enclose an agreement (as per format enclosed at Appendix A-4) between them, their ultimate controlling company and the supporting company.
- iv. Undertaking by Supporting Company or Ultimate Controlling Company that in case of award, an additional PBG (as per format and instructions enclosed at Appendix A-3), equivalent to 50% of the value of the PBG by the bidding company, shall be submitted either by Supporting Company which supports the bidding company or the Ultimate Controlling Company, in case the supported bidding company is the successful bidder.

In cases where foreign based supporting company or the Ultimate Controlling Company do not have Permanent Establishment in India, the bidding company can furnish performance Bank Guarantee for an amount which is sum of PBG amount to be submitted by the bidder and additional PBG amount required to be submitted by the supporting company or the Ultimate Controlling Company subject to the condition that supporting company or the ultimate controlling company, as the case may be, has 100% paid up equity share capital of the bidder either directly or through intermediate subsidiaries Or vice versa.

In such case bidding company shall furnish an undertaking that their foreign based supporting company or the Ultimate Controlling Company are not having any Permanent Establishment in India in terms of Income Tax Act of India.

- v. In case of contracts involving multifarious activities such as (a) manufacturing /supply (b) installation and commissioning (c) servicing and maintenance of any equipment, then in that case, the bidding company can draw on the experience of multiple supporting company(ies) specializing in each sphere of activity, i.e. (a) manufacturing/supply (b) installation and commissioning (c) servicing and maintenance. However, all the supporting companies and the bidding company should be controlled by a ultimate controlling company, either directly or through its intermediate company or through 'any other company' within the ultimate controlling company.
- vi. In case of scenario at (v) above, separate agreement for such activity(s) among each supporting, bidding company or the ultimate controlling company shall be submitted (as per format enclosed at Appendix A-4). However, in such cases, additional PBG as per clause (iv) above shall be furnished by the ultimate controlling company.

Note:

In case Supporting Company which supports the bidding company or the Ultimate Controlling Company, fails to submit Bank Guarantee as per (iv) above, EMD/SD submitted by the bidder shall be forfeited.

Note for clause No. B.1.2.2 and B.1.2.3

- (i) A certificate from the Statutory Auditor or Company Secretary or one of the Directors of the bidding company to establish the relationship and equity percentage holding between bidder and the supporting company or bidding company, intermediary company, supporting company or the ultimate controlling company as the case may be.
- ii) Authorisation letter from one of the Directors of Supporting Company authorising the signatories to execute the corporate guarantee, duly certified by the Company Secretary of the Supporting Company.

The above certificates/ undertakings / Authorization letter should be of a date after NIT date.

B.1.2.4(Applicable for Cases where Supply of material is also involved along with rendering of Services)

In cases where scope of work involves rendering services and supply of material also, the offer from a bidder who meets the experience criteria either on its own or based on the experience of the supporting company shall be accepted subject to meeting the condition laid down at Clause B.1.2.2.

In case bidder is not able to execute supply of material portion of the scope of work on its own, then it shall be allowed to supply material through other company provided that the bidder and the company supplying material belongs to same group of companies and

either

both are controlled by a Ultimate controlling company* either directly or through intermediate subsidiaries or vice versa.

or

the company supplying the material have 100% paid up equity share capital of the bidder either directly or through intermediate subsidiaries or vice versa.

(* Herein a 'ultimate controlling company' is the one that holds hundred percent of the paid up share capital of the bidding company and company supplying material either directly or through its intermediate company or through 'any other company' within the ultimate controlling company)

The order on direct sale basis for supply of material shall be placed by ONGC directly on such group company of the bidder. However, the bidder shall be fully responsible for delivering the material at site including customs clearance and without any interruption in operation and without any additional cost to ONGC. In case of suspension of work due to non-availability of the material, zero rate shall be applicable for the service portion also and the bidder shall be responsible for all the consequences arising out of non-availability/delayed supply of the material including but not limited to forfeiture of Performance Bank Guarantee submitted by the successful bidder/contractor/supporting company(ies).

For this purpose, the following information/document shall be submitted by the bidder alongwith techno-commercial bid:

- (I) The details of the group company supplying the material,
- (II) The role and scope of work to be performed by Bidder and aforesaid group company of the bidder
- (III) A certificate from the Statutory Auditor or Company Secretary or one of the Directors of the bidding company to establish the relationship and equity percentage holding between bidder and the group company supplying the material and Ultimate controlling company, as applicable.

Note:

- i) Para No. B.1.2.2 and B.1.2.3 of the existing BEC for Indigenous tenders may be renumbered accordingly.
- ii) Formats as mentioned as Appendix-A1, A2, A3 & A4 in above clause shall be as applicable for ICB Tenders.

Annexure-2

(Modified clause for 'Criteria to Ascertain Financial capability' to be incorporated in Bid Evaluation Criteria (Services-Indigenous) for Specialized Services only, where provisions as mentioned under Annexure-1 are to be incorporated.)

SI. No.	Existing clause	Modified clause	Remarks
6.0	Criteria for ascertaining Financial Capability of the bidders	Criteria for ascertaining Financial Capability of the bidders	
	(To be incorporated in BEC of tender documents in respect of Hiring of Services where annualized value of the tender is above Rs. 10 Crore.)	(To be incorporated in BEC of tender documents in respect of Hiring of Services where annualized value of the tender is above Rs. 10 Crore.)	
	All the below mentioned applicable Financial Criteria shall be met by the bidders, as applicable for procurement of Service contracts:	All the below mentioned applicable Financial Criteria shall be met by the bidders, as applicable for procurement of Service contracts:	
	 Turnover of Bidders: 50% of annualized bid value or more. Net-worth of Bidder: 15% of annualized bid value or more. 	 Turnover of Bidders: 50% of annualized bid value or more. Net-worth of Bidder: 15% of annualized bid value or more. 	
	The turnover of bidders to be considered for evaluation shall be the average turnover of the last two years as brought out at note (iv) below.	The turnover of bidders to be considered for evaluation shall be the average turnover of the last two years as brought out at note (iv) below.	
	Subject to provisions under second paragraph of Note (i)-a, Net-worth shall be based on the latest Audited Consolidated Annual Financial Statements of the bidder with all its subsidiaries.	Subject to provisions under second paragraph of Note (i)-a, Net-worth shall be based on the latest Audited Consolidated Annual Financial Statements of the bidder with all its subsidiaries.	1)
	The basis of hid value shall be the	In case the financial statements submitted by the bidder are in currencies other than INR, the closing currency exchange rate as prevailing on the date of publication of NIT as per "Daily" Closing exchange rate published on Thomson Reuters internet site https://in.reuters.com/markets/ currencies, upto three places of decimal, shall be considered for converting it into INR. The exchange rates presently appearing on the right hand corner of the exchange rate chart of the said internet site shall be considered as closing rate for the day. The basis of hid value shall be the price	Underlined portion added.
	The basis of bid value shall be the	The basis of bid value shall be the price	

price quoted by the bidder including duty and taxes, if any, which is taken into consideration for evaluation. However, in case Customs duty in respect of foreign bidders is not a part of their quotation, it shall not form basis for determining the bid value.

In case of Two Bid System, in the unpriced bid, the bidder will submit a 'certificate of compliance' (as per format attached at Annexure- work center to indicate relevant annexure No.) to the effect that the financial parameters of the bidder are equal to or more than required value as applicable. ln case information contained the in 'certificate of compliance', is found to be incorrect later on after opening of price bids, then their bids will be rejected in case the bidder is not actually meeting the required financial criteria."

Notes:

Bidder can either be a single entity which includes Incorporated Joint Venture or a consortium.

- (i) Following documents to be submitted by the bidder:
- (a) The bidder shall submit its Audited consolidated financial statement with all its subsidiaries which shall be the basis for meeting the requirement under Financial Criteria.

quoted by the bidder including duty and taxes, if any, which is taken into consideration for evaluation. However, in case Customs duty in respect of foreign bidders is not a part of their quotation, it shall not form basis for determining the bid value.

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Notes:

Bidder can either be a single entity which includes Incorporated Joint Venture or a consortium.

- (i) Following documents to be submitted by the bidder:
- (a) The bidder shall submit its Audited consolidated financial statement with all its subsidiaries which shall be the basis for meeting the requirement under Financial Criteria.

In cases where the supporting company are not required to prepare consolidated financial statement as per the statute of the country of the supporting company as applicable, the bidder shall provide justification for the same along with certificate from a practising Chartered Accountant or equivalent to this effect. In such cases the bidder shall submit the consolidated financial account as per the accounting standards of the country of the supporting company as the case may be, duly certified by the practicing chartered accountant or equivalent.

Underlined portion added,

- (b) Confirmation to the effect whether the bidder is quoting on his own financial capability or on the financial capability of his supporting company (refer note vi(a) below)
- Net worth shall mean: " Share (ii) capital + Reserves created out of profits and securities premium revaluation (excluding account reserves) - deferred expenditure -Miscellaneous Expenditure to the extent not written off and carried forward Loss - Reserves created out of write back of depreciation and amalgamation".
- (iii) The Consolidated Financial Statements should be audited by the auditors appointed under the statute like Companies Act etc. wherever applicable. In cases where Statutory Audit is not required as per law, Consolidated Financial statement should be audited by practising Chartered Accountant or equivalent.

Bidder will provide a statement containing the value of each financial parameter required in the tender based on bidder's audited consolidated financial statement as defined in BEC.

(iv) For the purpose of ascertaining parameter of Turnover of the bidder. average turnover from operation of the bidder for the previous two financial years shall be considered. Average turnover from operation of the bidder for the previous two financial years shall be calculated by dividing the turnover from operation of previous two years bv two. irrespective of the fact that quoted turnover for one particular year is for a period of less than 12 months or complete 12 months. The bidder will provide a copy each of audited consolidated annual Financial Statement of bidder with all its subsidiaries for previous two financial years for ascertaining their turnover. The date (i.e the financial year closing date) of the immediate previous year's

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- (iii) The Consolidated Financial Statements should be audited by the auditors appointed under the statute like Companies Act etc. wherever applicable. In cases where Statutory Audit is not required as per law, Consolidated Financial statement should be audited by practising Chartered Accountant or equivalent.

Bidder will provide a statement containing the value of each financial parameter required in the tender based on bidder's audited consolidated financial statement as defined in BEC.

(iv) For the purpose of ascertaining parameter of Turnover of the bidder, average turnover from operation of the bidder for the previous two financial years shall be considered. Average turnover from operation of the bidder for the previous two financial years shall be calculated by dividing the turnover from operation of previous two years by two, irrespective of the fact that quoted turnover for one particular year is for a period of less than 12 months or complete 12 months. The bidder will provide a copy each of audited consolidated Financial annual Statement of bidder with all its subsidiaries for previous two financial years for ascertaining their turnover. The date (i.e the financial year closing date) of the immediate previous year's audited consolidated annual Financial audited consolidated annual Financial Statement should not be older than eighteen (18) months from the bid closing date.

- (v)-(a) A bidder (other than consortium) which is not able to meet the financial criteria by itself, can also submit its bid on the basis of financial capability of a Supporting Company provided each of the following conditions are fulfilled:-
 - 1. The bidder is supported by a supporting company which holds more than fifty percent of the paid up equity share capital of the bidder either directly or through intermediate subsidiaries.
 - 2. The supporting company by itself and not through any other arrangement satisfies the financial criteria of the BEC.
 - 3. Supporting Company shall furnish additional PBG equivalent to 50% of the amount of PBG submitted by bidder as per the format provided at Annexure-A.

In cases where foreign based supporting company does not have Permanent Establishment in India, the bidding company can furnish Performance Bank Guarantee for an amount which is sum of PBG amount to be submitted by the bidder and additional PBG amount required to be submitted by the supporting company subject to the condition that supporting company has 100% paid up equity share capital of the bidder either directly or through intermediate subsidiaries.

In such case bidding company shall furnish an undertaking that their foreign based supporting company is not having any Permanent Establishment in India in terms of Income Tax Act of India.

Statement should not be older than eighteen (18) months from the bid closing date.

- (v)-(a) A bidder (other than consortium) which is not able to meet the financial criteria by itself, can also submit its bid on the basis of financial capability of a Supporting Company provided each of the following conditions are fulfilled:-
 - 1. The bidder is supported by a supporting company which holds more than fifty percent of the paid up equity share capital of the bidder either directly or through intermediate subsidiaries.
 - 2. The supporting company by itself and not through any other arrangement satisfies the financial criteria of the BEC.
 - 3. Supporting Company shall furnish additional PBG equivalent to 50% of the amount of PBG submitted by bidder as per the format provided at Annexure-A.

In cases where foreign based supporting company does not have Permanent Establishment in India, the bidding company can furnish Performance Bank Guarantee for an amount which is sum of PBG amount to be submitted by the bidder and additional PBG amount required to be submitted by the supporting company subject to the condition that supporting company has 100% paid up equity share capital of the bidder either directly or through intermediate subsidiaries.

In such case bidding company shall furnish an undertaking that their foreign based supporting company is not having any Permanent Establishment in India in terms of Income Tax Act of India.

- 4. In such cases, all applicable financial parameters viz. Turnover, Net-worth & Working Capital of the supporting company only will be considered for evaluation and the financial capability of the bidding entity will not be considered for evaluation.
- (v)-b. Documents to be submitted by the bidder, along with its technocommercial bid, in case it is taking financial support from a supporting company:
 - 1. Audited Consolidated Annual financial statement as detailed above in respect of the supporting company. Bidder will provide a statement containing the value of each financial parameter required in the tender based on supporting company's audited consolidated financial statement as defined in BEC.
 - 2. A Corporate Guarantee from the supporting company in the prescribed format at Annexure-B (to be suitably modified as per tender).
 - 3. A certificate from the Statutory Auditor or Company Secretary or one of the Directors of the bidding company to establish the relationship and equity percentage holding between bidder and the supporting company.
 - 4. Authorisation letter from one of the Directors of Supporting Company authorising the signatories to execute the corporate guarantee, duly certified by the Company Secretary of the Supporting Company.
 - 5 Undertaking shall be given by Supporting Company to submit additional PBG equivalent to 50% of the amount of PBG submitted by bidder as per the format provided at Annexure-A.

 Note:

- 4. In such cases, all applicable financial parameters viz. Turnover, Net-worth & Working Capital of the supporting company only will be considered for evaluation and the financial capability of the bidding entity will not be considered for evaluation.
- (v)-b. Documents to be submitted by the bidder, along with its technocommercial bid, in case it is taking financial support from a supporting company:
 - 1. Audited Consolidated Annual financial statement as detailed above in respect of the supporting company. Bidder will provide a statement containing the value of each financial parameter required in the tender based on supporting company's audited consolidated financial statement as defined in BEC.
 - 2. A Corporate Guarantee from the supporting company in the prescribed format at Annexure-B (to be suitably modified as per tender).
 - 3. A certificate from the Statutory Auditor or Company Secretary or one of the Directors of the bidding company to establish the relationship and equity percentage holding between bidder and the supporting company.
 - 4. Authorisation letter from one of the Directors of Supporting Company authorising the signatories to execute the corporate guarantee, duly certified by the Company Secretary of the Supporting Company.
 - 5. Undertaking shall be given by Supporting Company to submit additional PBG equivalent to 50% of the amount of PBG submitted by bidder as per the format provided at Annexure-A.

 Note:

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In case Supporting company fails to submit Bank Guarantee as above, EMD/SD submitted by the bidder shall be forfeited.

6. Undertaking from the supporting company to the effect that in addition to invoking the PBG submitted by the contractor, the PBG provided by supporting company shall be invoked by ONGC due to non-performance of the contractor.

The above certificates/ undertakings should be of a date after NIT date.

Wherever the consortium bids vi. are allowed and the bid is from a Consortium, the bidder is required to provide Memorandum Understanding (MOU) executed by the consortium partners in the unpriced bid. The MOU should indicate the scope of work to be performed by the respective consortium members expressed as percentage of bid Each consortium partner value. should themselves individually meet financial criteria parameters the net-worth turnover. namely proportion to the percentage of work to be performed by them subject to minimum of 50% (of annualised bid value) for the leader of the consortium and 20% (of annualised bid value) for other members of the Support from consortium. parent/supporting company is not allowed to meet the financial criteria.

In the tender, if there is vii. specific provision allowing bidders to quantity for each auote part item/category/group (evaluation in case being done that wise/category wise/ group wise), then bidder should meet financial criteria required for the item/category/group and being offered by the bidder. In case the bidder quotes for more than one item/category/group, then the bidder has to comply with the financial parameters after adding up all the In case Supporting company fails to submit Bank Guarantee as above, EMD/SD submitted by the bidder shall be forfeited.

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vii. In the tender, if there is specific provision allowing bidders to quote part quantity for each item/category/group (evaluation in that case being done item wise/category wise/ group wise), then bidder should meet financial criteria required for the item/category/group and being offered by the bidder. In case the bidder quotes for more than one item/category/group, then the bidder has to comply with the financial parameters after adding up all the item/category/group quoted by them in

item/category/group quoted by them in the tender.

viii. Above financial criteria shall also be applicable for cases where delivery/contract period for supply of goods/services/turnkey projects is less than one year, treating the bid value as the annualized bid value.

ix. The above criteria are to be incorporated in the BEC's of all ongoing (where technical bids are yet to be opened) and future tenders, in respect of Goods/ Services / Turnkey Contracts valuing more than the specified value, with immediate effect.

The financial criteria will not be applicable for the following types of tenders irrespective of value:

- ➢ OEM / PAC Purchases
- ➤ Nomination Purchases
- > Tenders for hiring Consultancy Services.

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The financial criteria will not be applicable for the following types of tenders irrespective of value:

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