



PMC Cell – MM

Oil and Natural Gas Corporation Ltd Corporate Materials Management

2nd Floor, Tower-A, Pandit Deendayal Upadhyaya Urja Bhawan,
5, Nelson Mandela Marg, Vasant Kunj, New Delhi -110 070
Tel – (011)26752002 Fax – (011) 26129091

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Sub: Criteria for ascertaining Financial Capability of the bidders in various tenders.

Reference is invited to the provisions on Financial Criteria of BECs for procurement of Goods, Services and LSTK contracts notified vide Circular 01/2011 Dated: 04.01.2011 (as amended from time to time).

EPC, in its meeting (04/2017) held on 06.02.2017 has reviewed aforesaid provisions of Financial Criteria. In accordance with the decisions taken in the aforesaid meeting of EPC, revised provisions on Financial Criteria of BECs for procurement of Goods, Services and LSTK contracts are enclosed at Appendix-1.

The statement provided by the bidder as required at para two of note (iii) and (vi)-b.1 in respect of Financial Criteria shall also be cross verified by the Tender Committee from the financial statement submitted by the bidder.

Above guidelines should be meticulously followed by all concerned.

Ashwini Nagia
01/03/2017.

(Ashwini Nagia)
ED-Chief MM Services

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3. CVO, ONGC, PDU Urja Bhawan, Vasant Kunj, New Delhi.

Criteria for ascertaining Financial Capability of the bidders in various tenders

(To be incorporated in BEC of tender documents in respect and procurement of goods where value of the tender is above Rs. 25 Crores and in BEC of tender documents of Turnkey Contracts and Hiring of Services where annualized value of the tender is above Rs. 10 Crore.)

Financial Criteria for Lump Sum Turnkey (LSTK contracts) / Service Contracts and Supply of Goods:

All the below mentioned applicable criteria shall be met by the bidders, as applicable for procurement of Goods/Service / LSTK contracts:

1. **Turnover of Bidders.**

For Goods: : 30% of bid value or more.

For LSTK / Service contracts : 50% of annualized bid value or more.

2. **Net-worth of Bidder**

For Goods : Positive

For LSTK / Service contracts : 15% of annualized bid value or more.

3. **Working Capital** : 15% of annualized bid value or more.
(Applicable for LSTK/
Service Contracts)

4. **Debt equity ratio** : Debt equity ratio of the bidder should not be more than
(Applicable for LSTK 2:1.
Contracts)

The turnover of bidders to be considered for evaluation, shall be the average turnover of the last two years as brought out at note (vi) below.

Net-worth, working capital and debt equity ratio, shall be based on the latest Audited Consolidated Annual Financial Statements of the bidder with all its subsidiaries.

In case the financial statements submitted by the bidder are in currencies other than INR, BC selling rate declared by State Bank of India prevailing on the date of publication of NIT shall be considered for converting it into INR.

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.
- (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)

(ii) Net worth shall mean: " Share capital + Reserves created out of profits and securities premium account (excluding revaluation 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 Financial Statements should be audited by the auditors appointed under the statute like Companies Act etc. wherever applicable. In cases of foreign bidders and where Statutory Audit is not required as per law, Financial statement should be audited by Chartered Accountant Firm or equivalent (In case of Foreign bidder).

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) Working Capital shall mean "Current Assets minus Current liabilities" as per latest year's audited consolidated annual Financial Statements.

If the bidder's working capital is inadequate in meeting the tender requirements, then the bidder can make good this shortfall through a line of credit confirming the availability of unutilized line of credit for meeting the shortfall from his banker, through a letter specifically mentioning the tender number. The line of credit should be from Scheduled Commercial Bank working in India or foreign bank in India.

(v) Debt equity ratio shall mean Long term borrowings/ Net-worth

(vi) 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 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 audited consolidated annual Financial Statement should not be older than eighteen (18) months from the bid closing date.

(vi)-(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
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**.
4. In such cases, all applicable financial parameters viz. Turnover, Net-worth, Working Capital, D/E ratio of the supporting company only will be considered for evaluation and the financial capability of the bidding entity will not be considered for evaluation.

(vi)-b. Documents to be submitted by the bidder, along with its techno-commercial 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 of the bidder as well as of the supporting company to establish the relationship and equity percentage holding between bidder and the supporting company. The certificates should be duly certified by the Company Secretary or one of the Directors of the company concerned.
4. A Resolution passed by the Board of 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 stating that more than 50% share-holding between Supporting Company and Bidding Company shall be maintained till the execution / completion of the contract.
6. 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.
7. 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.

vii. Wherever the consortium bids are allowed and the bid is from a Consortium, the bidder should indicate in the un-priced bid, the percentage of work to be performed by the respective consortium members. Each consortium partner should themselves individually meet the financial criteria parameters namely turnover, net-worth & working capital in 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 consortium. For this purpose, the bidder should indicate in the un-priced bid, the percentage of work to be performed by the respective consortium members. The Debt/Equity ratio has to be individually met by all consortium members as prescribed above. Support from parent/supporting company is not allowed to meet the financial criteria.

viii. 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 the tender.

ix. 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 annualised bid value.

x. The above criteria are to be incorporated in the BEC's of all ongoing 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

**Proforma of Bank Guarantee towards Performance Security by the Supporting
Company of the bidding company.
PERFORMANCE GUARANTEE**

Ref. No. _____ Bank Guarantee No _____
Dated _____

To,

Oil & Natural Gas CORPORATION

India

Dear Sirs,

1. In consideration of Oil & Natural Gas CORPORATION Limited, incorporated under the Companies Act, 1956, having its Registered Office at _____ -- New Delhi-110001, India and one of its offices at _____ (hereinafter referred to as 'ONGC', which expression shall, unless repugnant to the context or meaning thereof, include all its successors, administrators, executors and assignees) having entered into a CONTRACT No. _____ dated _____ (hereinafter called 'the CONTRACT' which expression shall include all the amendments thereto) with M/s _____ having its registered/head office at _____ (hereinafter referred to as the 'CONTRACTOR') which expression shall, unless repugnant to the context or meaning thereof include all its successors, administrators, executors and assignees).

Further, M/s _____ (Name of the Supporting company) having its registered/head office at _____ (hereinafter referred to as the 'SUPPORTING COMPANY') which expression shall, unless repugnant to the context or meaning thereof include all its successors, administrators, executors and assignees) has agreed to provide support to the CONTRACTOR for successful completion of the contract as mentioned above, entered between ONGC and the CONTRACTOR and ONGC having agreed that the 'SUPPORTING COMPANY' shall furnish to ONGC a performance guarantee for Indian Rupees/US\$ towards providing support to the CONTRACTOR for successful completion of the contract as mentioned above,

2. We (name of the bank) _____ registered under the laws of _____ having head/registered office at _____ (hereinafter referred to as "the Bank", which expression shall, unless repugnant to the context or meaning thereof, include all its successors, administrators, executors and permitted assignees) do hereby guarantee and undertake to pay immediately on first demand in writing any/all moneys to the extent of Indian Rs./US\$ (in figures) _____ (Indian Rupees/US Dollars (in words) _____) without any

demur, reservation, contest or protest and/or without any reference to the 'SUPPORTING COMPANY'. Any such demand made by ONGC on the Bank by serving a written notice shall be conclusive and binding, without any proof, on the bank as regards the amount due and payable, notwithstanding any dispute(s) pending before any Court, Tribunal, Arbitrator or any other authority and/or any other matter or thing whatsoever, as liability under these presents being absolute and unequivocal. We agree that the guarantee herein contained shall be irrevocable and shall continue to be enforceable until it is discharged by ONGC in writing. This guarantee shall not be determined, discharged or affected by the liquidation, winding up, dissolution or insolvency of the 'SUPPORTING COMPANY' and shall remain valid, binding and operative against the bank.

3. The Bank also agrees that ONGC at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance, without proceeding against the 'SUPPORTING COMPANY' and notwithstanding any security or other guarantee that ONGC may have in relation to the 'SUPPORTING COMPANY's' liabilities.

4. The Bank further agrees that ONGC shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said CONTRACT or to extend time of performance by the said CONTRACTOR(s) from time to time or to postpone for any time or from time to time exercise of any of the powers vested in ONGC against the said CONTRACTOR(s) and to forbear or enforce any of the terms and conditions relating to the said agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said CONTRACTOR(s) or for any forbearance, act or omission on the part of ONGC or any indulgence by ONGC to the said CONTRACTOR(s) or any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.

5. The Bank further agrees that the Guarantee herein contained shall remain in full force during the period that is taken for the performance of the CONTRACT and all dues of ONGC under or by virtue of this CONTRACT have been fully paid and its claim satisfied or discharged or till ONGC discharges this guarantee in writing, whichever is earlier.

6. This Guarantee shall not be discharged by any change in our constitution, in the constitution of ONGC or that of the 'SUPPORTING COMPANY'.

7. The Bank confirms that this guarantee has been issued with observance of appropriate laws of the country of issue.

8. The Bank also agrees that this guarantee shall be governed and construed in accordance with Indian Laws and subject to the exclusive jurisdiction of Indian Courts of the place from where the purchase CONTRACT has been placed.

9. Notwithstanding anything contained herein above, our liability under this Guarantee is limited to Indian Rs./US\$ (in figures) _____ (Indian Rupees/US Dollars (in words) _____) and our guarantee shall

remain in force until _____.(indicate the date of expiry of bank guarantee)

Any claim under this Guarantee must be received by us before the expiry of this Bank Guarantee. If no such claim has been received by us by the said date, the rights of ONGC under this Guarantee will cease. However, if such a claim has been received by us within the said date, all the rights of ONGC under this Guarantee shall be valid and shall not cease until we have satisfied that claim.

In witness whereof, the Bank through its authorised officer has set its hand and stamp on this day of20__ at

WITNESS NO. 1

(Signature)
Full name and official
address (in legible letters)
stamp

(Signature)
Full name, designation and
address (in legible letters) with Bank

Attorney as per power of
Attorney No.....
Dated

WITNESS NO. 2

(Signature)
Full name and official
address (in legible letters)

GURANTEE BY THE SUPPORTING COMPANY/GUARANTOR

THIS DEED OF GUARANTEE executed at this day of by M/s (mention complete name) a company duly organized and existing under the laws of (insert jurisdiction/country), having Corporate Identity Number ----- and its Registered Office at hereinafter called "the Guarantor and or the Supporting company "which expression shall, unless excluded by or repugnant to the subject or context thereof, be deemed to include its successors and permitted assigns.

WHEREAS

1. M/s Oil & Natural Gas Corporation Limited, a company duly incorporated under the Companies Act 1956, having Corporate Identity Number -----and its Registered Office at ----- and having an office, amongst others, at (insert purchase centre address) hereinafter called "ONGC " which expression shall unless excluded by or repugnant to the context thereof, be deemed to include its successor and assigns, has invited tender number for on

2. M/s (mention complete name), a company duly organized and existing under the laws of (insert jurisdiction/country), having Corporate Identity Number -----and its Registered Office at (give complete address) hereinafter called "the Bidder and or Contractor as the context may require which expression shall, unless excluded by or repugnant to the subject or context thereof, be deemed to include its successor and permitted assigns, _have in response to the above mentioned tender, submitted their bid bearing number to ONGC.

3. The Bidder does not meet the financial criteria required under the aforesaid tender.

4. The Guarantor Company holds more than 50 % paid up equity capital of the Bidder.

5. The Guarantor Company meets all the financial criteria parameters stipulated under the aforesaid tender and wishes to support the Bidder to make it eligible to submit its bid.

ONGC is willing to consider the bid of the Bidder Company only if the bid is accompanied with a guarantee from the Guarantor Company guaranteeing financial support for satisfactory performance of the work covered under the said tender including any change therein as may be deemed appropriate by ONGC Corporation at any stage.

The Guarantor represents that they have read the terms and conditions and understood the requirement of the above said tender and are capable of and committed to provide financial support as may be required by the Bidder Company for successful execution of the same.

Accordingly, at the request of the Bidder Company and in consideration of and as a requirement of the aforesaid tender, the Guarantor hereby gives this guarantee to ONGC and undertakes as follows:

1. The Guarantor is providing Performance Bank Guarantee (BG No. _____ dated _____ issued by _____) of INR....., to ONGC as guarantee for performance by the Bidder / Contractor. The Guarantor hereby expressly agrees that if in the opinion of ONGC, the Bidder / Contractor has failed to perform its obligations under the contract in any manner, ONGC shall have unfettered right to invoke the said Bank guarantee. The guarantor hereby agrees that decision of ONGC about performance of the bidder / contractor shall be final and shall not be questioned by the Guarantor.

Guarantor shall have no objection to invocation of the Performance Bank Guarantee submitted by the Guarantor.

2. The Guarantor agrees that the Guarantee herein contained shall remain valid and enforceable till the satisfactory execution and completion of the work (including discharge of the warranty obligations) under the contract that may be awarded to the Bidder/ Contractor.
3. The Guarantor represents that this Guarantee has been issued after due observance of the appropriate laws in force in India. The Guarantor hereby undertakes that the Guarantor shall obtain and maintain in full force and effect all the governmental and other approvals and consents that are necessary and do all other acts and things necessary or desirable in connection therewith or for the due performance of the Guarantor's obligations hereunder.
4. The Guarantor also agrees that this Guarantee shall be governed and construed in accordance with the laws in force in India and shall be subject to the exclusive jurisdiction of the courts of, India.
5. The Guarantor hereby declares and represents that this Guarantee has been given without any undue influence or coercion from any person and that the Guarantor has fully understood the implications of the same.
6. The Guarantor represents and confirms that the Guarantor has the legal capacity, power and authority to issue this Guarantee and that giving of this Guarantee and the performance and observations of the obligations hereunder do not contravene any existing law or any judgement.

For & on behalf of (Supporting Company)
M/s _____

Witness:

1. Signature _____
Full Name _____
Address _____

Signature _____
Name _____
Designation _____
official seal _____

2. Signature _____
Full Name _____
Address _____

Instructions:

- (i) The above agreement shall be acceptable, only if signed by any of the following officials (who are empowered to sign such agreements) from the respective companies:
- CEO, (or)
 - any of the full time Directors at the Board level, (or)
 - Proprietor in case of Sole Proprietorship concerns, (or)
 - all Partners (or any of the Partners holding power of attorney on behalf of other Partners) in case of Partnership concerns, (or)
 - any official holding valid authorization for signing such agreements.

