SPECIAL CONDITIONS FOR BIDDING

The following Special Conditions (SC) shall supplement the SCC (Section-vii). Whenever there is a conflict, the provisions herein shall prevail.

1. Quoted Rate should be on the basis of free delivery at consignee's stores (FCS) i.e Hyderabad/Jamshoro and Nawabshah in local currency without involving any foreign exchange.
2. The quoted FCS price shall be firm and final valid for 120 days after opening date of tender and not be escalated / enhanced / adjusted for any reason what so ever.
3. The bidder can quote against any LOT with full quantity. The Evaluation and Comparison of the bids will be carried out LOT wise, and subsequently contract will be awarded to Most advantageous bidder against each individual Lot.
4. The Purchaser may cancel tender or any LOT before / at the time of award of contract without any change in the Unit price or other terms and conditions of the contract.
5. The conditional bids / rates shall not be accepted.
6. HESCO reserves the right to increase / decrease the tender / P.O quantities upto 15% at the time of issuance of Letter of Intent (LOI) / Purchase Order, till the completion of supply.
7. Bids having less than 100% of the total tendered / lot / item quantities (whereas applicable) will not be accepted.
8. Document Legibility Requirement: The firm shall ensure that all documents uploaded with the bid are clear, complete and readable. In case any document is illegible, unclear incomplete or otherwise not readable, the bidder shall be solely responsible for any consequences, including any adverse impact on the responsiveness or evaluation of its bid arising due to such deficiency.
9. In order to be considered, the bid must be accompanied by a Bid Security of fixed amount mentioned in the bid schedule valid for 148 days from tender opening date (as per instructions in bid schedule proforma). The bid security from any schedule bank of Pakistan will be acceptable. The bid(s) not accompanied with above mentioned bid security will be considered non-responsive and also conditional tenders/bids/rate or tender without bid money will not be accepted.

10. Performance security in shape of Bank Guarantee / CDR equal to 05% (Five percent) of the total value of contract / P.O (including 18% GST) shall be furnished with the acceptance of LOI within 14 days from any scheduled bank of Pakistan in favour of CEO HESCO by the successful bidder(s) after the issuance of Letter of Intent (LOI). Performance Security may be Extended / renewed on time to time basis.

    i. The amount of performance security (or guarantee), as a percentage of the Contract Price, shall be: 5% of the total bid price (including GST) Time period of validity: shall be 24 months from the date of completion of supply.

    ii. After delivery and acceptance of the Goods, the Performance Security (or guarantee) shall be withheld to cover the Supplier's obligations in accordance with the Warranty Clause. The Performance Security (or guarantee) shall be extended by the firm in case any defect or replacement of material is claimed until the expiry/extended warranty period.

    iii. Note: The performance security from any insurance company will not be acceptable

11. The new manufacturers / entrants should have the compliance of Chief Engineer (D&S) NTDCL Lahore letter No. 3187-97 dated 20.10.2015.(where applicable)

12. **SPECIFICATIONS / PROTOTYPE:**

    The material shall be strictly according to standard specifications (amended-to-date). For items necessitating prototype approval;

    i. If the firm do not possess the prototype approval for the offered material, (if applicable under approved specification). The firm shall have to obtain prototype approval from the office of Chief (Technical Services) PPMC Islamabad before start of mass production. Drawings and prototype samples for prototype testing shall be offered within 15-days from the date of issue of Purchase Order to Chief (Technical Services) PPMC Islamabad. All expenses shall be borne by the manufacturer.

    ii. The delivery period shall start from the date of issuance of Purchase order.

    iii. If the prototype sample fails, the material shall be improved and re-offered for prototype testing to Chief (Technical Services) PPMC Islamabad. The time taken for improvement in sample and re-submission of drawings will not entitle the manufacturer to claim extension in delivery period on this account.

iv. Any changes suggested in the material and drawings during prototype testing for compliance of specifications and purchase orders shall have to be incorporated without any extra price claim.

13. **PAYMENT CLAUSE:**

The payment will be made directly by the Chief Financial Officer HESCO Hyderabad within (30) days on the presentation of the following documents:

i. Invoice of the supplied material in triplicate.

ii. Delivery Challan duly acknowledged and signed by the consignee.

iii. GRN issued by concerned Deputy Manager, Regional Store HESCO.

iv. Warranty Certificate.

v. Inspection Certificate issued by Chief Engineer, (MI) PPMC or his authorized representative.

vi. Confirmation letter of acceptance of performance Bond/Security by the Manager (MM) HESCO.

vii. Confirmation letter by the Manager (MM) HESCO against each invoice claim regarding the adequacy of the validity of the Performance guarantee with respect to supplies / delivery.

viii. Certificate to the effect that the billed amount has not been claimed or received earlier (Non-payment certificate).

ix. Professional Tax paid certificate by the firm.

x. All Federal & Provincial Taxes will be applied as per prevailing laws.

xi. Copy of General Sales Tax/Excise Duty Invoice.

xii. The manufacturer/supplier in its invoices shall also give an undertaking, in case of omission of any deductible amount; HESCO's claim at any later stage (through pre-audit / post audit) shall be acceptable to them.

xiii. As per directions of FBR dated. 3.9.2015 conveyed vide C.E (Operation) PEPCO vide letter No. 1918-28 dated. 17.09.2015, the payment to the registered persons may be linked with the active taxpayer status of the suppliers as per FBR database. If any registered supplier is not in ATL his payment should be stopped till he files his mandatory returns and appears on ATL of FBR.

xiv. ***PARTIAL DELIVERIES AND PARTIAL PAYMENTS ARE ALLOWED.***

xv. The amount of 18% sales tax will be reimbursed by the Chief Financial Officer HESCO Hyderabad as under:

   i. Sales Tax return cum payment Challan for the month of delivery of material.

   ii. Copy of GRN duly stamped and signed by the respective consignees.

   iii. Sales Tax Invoice as per GRN above.

   iv. Any increase/decrease in the existing tariff of custom duty/Sales tax or any other tax is imposed or charged by the Government of Pakistan/Provincial Government, the same will be adjusted by the Chief Financial Officer, HESCO Limited, Hyderabad on presentation of documentary evidence.

   v. In case the manufactures who pay lump-sum Sales Tax, they shall also submit an affidavit on non-judicial paper separately that "Challan includes the amount of Rs.___________of Sales Tax for supply of material to HESCO against P.O. No._______ dated._________

14. The offered material shall be supplied strictly as per WAPDA/PEPCO/PPMC specification (Amended-to-date) mention in bid schedule.

15. Previous performance will be taken into account while evaluation of the bids. In case of non-satisfactory performance, the bid will lead to non-responsiveness.

16. All routine tests and type tests as per specification (if applicable) mentioned in bid schedule shall be carried out.

17. The delivery period shall be reckoned from the date of issuance of purchase order.

18. **LATE BID:** Bidder will be himself responsible for ensuring that his bid is submitted in accordance with the instructions stated herein. Any bid security not received before or on the closing date and time for submission of bids will not be considered even if it becomes late as a result of circumstances beyond the bidder's control.

19. **FAILURES AND TERMINATION:**

A) If you fail to deliver the stores or any consignment thereof within specified delivery period, the purchaser shall be entitled at his option either: -

i) To recover from your liquidated damages levied at the rate of two percent (2%) per month or a fraction thereof subject to a maximum of ten (10%) of the purchase order price.

ii) To purchase from elsewhere without notice to you at your risk and cost, the stores not delivered without canceling the purchase order in respect of the consignment not yet due for delivery or

iii) To cancel the procurement at your risk and cost in the event of event of action being taken under (ii) or (iii) above, you shall be liable for any loss which the purchaser may suffer on the account, but you shall not be entitled to any gain on repurchase made against the supply order.

B) If during the course of execution of purchase order, you are black listed by WAPDA / HESCO or any other DISCO under PPMC then HESCO may proceed with all or any of the actions detailed below: -

i) To allow the purchase order to run its course till completed in accordance with terms and conditions of the contract.

ii)To stop further supplies with or without financial repercussions.

iii) To cancel the purchase order with or without reservation or rights.

20. **FORCE MAJEURE:**

The right of HESCO while terminating the contract for breach of contract or imposing liquidated damages, the HESCO shall give due consideration to the circumstances leading to the breach of contract or delay on which you had no hold, which are:

i) Act of God. Act of State,

ii) War or any act of the enemy.

iii) Lock outs, Riots or Civil commotion.

iv) Injunction granted by a court of competent jurisdiction not resulting from any fault of the manufacturer /supplier.

v) Restriction imposed by the Government on the import of any material relating to the manufacturer of goods.

vi) Non-receipt of raw material from abroad for reasons beyond the control of the manufacturer.

vii) Port delays due to bunker-age or light-age.

viii) Diversions of supplies by the Carrier without any fault or knowledge of manufacturer or supplier provided further that the manufacturer or supplier has given notice to HESCO within 14 days of the happening of any such event.

21. **WARRANTY:**

i) The warranty period shall be for a period of **24 months** from the date of completion of supply. The Supplier shall be held responsible for all the losses and the unacceptable Goods shall be substituted with the acceptable Goods free of cost.

ii) Upon receipt of notice for correction of defects under the warranty period the manufacturer/supplier shall, within 45 days (or the period specified in Specification) and with all reasonable speed, repair or replace the defective Goods or parts thereof. The cost of lifting the defective Goods its subsequent repair or replacement and returning back to HESCO stores shall be borne by the supplier.

iii) If the supplied Goods or its part(s) is/are damaged during the warranty and need repair, its warranty period will be protected. The warranty period shall effectively remain active from the date of intimation of defective goods to the manufacturer/supplier and shall resume again once the defect has been removed and goods supplied back to HESCO stores. **For Example:** An item has a warranty period of 12 months. Its warranty starts on 1st January and it gets defective after its successful use/commissioning after 6 months on 5th July. The manufacturer/supplier is intimated about the defect on 7th

July. The remaining warranty is 5 months and 23days. This remaining warranty period shall remain reserved. The item is lifted for repair on 15th July and returned to HESCO stores on 7th August. The remaining warranty of 5 months and 23 days will resume from 7th August.

Note: Warranty period exceeding 12 Months; where the warranty period of any supplied goods is more than 12 months, the same procedure shall apply. The warranty period consumed before the occurrence of a defect shall be deducted from the total warranty period, and the balance / remaining warranty period shall be kept protected during the period the Goods remain under repair or replacement.

iv) If the Goods under warranty period already repaired are damaged again (second time) the procedure mentioned for the first time damage shall be followed. Accordingly, the same procedure shall be followed for damage/defect for the third time. However, if the goods under warranty period are damaged for the third time the manufacturer/supplier shall be issued a Performance Certificate that will have an impact on its participation in future bids/tenders in HESCO.

v) The warranty period of the entirely replaced item shall be as per the initial warranty period of new goods.

NOTE: Liquidated Damages shall be applicable where there is a delay in delivery of material under the warranty claim. Liquidated Damages shall be applicable as per SCC clause

22. **FORFEITURE OF SECURITY BOND/ GUARANTEE (PERFORMANCE BOND):**

The Procuring Agency will have the right to blacklist / debar & forfeit the Security Performance Bond.

23. **PREFERENCE OF TENDER CONDITIONS**:

(1) Purchase Order (PO)
(2) Letter of Intent (LOI) issued by HESCO and its acceptance by the successful bidder
(3) Special Conditions of Contract,/Bidding
(4) General Conditions of Contract,

(5) Specifications
(6) Contractor's Bid on EPADS
(7) Bidding Document (complete with all forms/Annexures/BDS)
(8) Notice inviting to Bid; Addendum (if any)

24. The blacklisting of firms and contractors will be carried out as per PPRA Rules.

25. **DISPUTE RESOLUTION:**

i) If any dispute of any kind whatsoever shall arise between HESCO and the Supplier in connection with or arising out of the Contract, including without prejudice to the generality of foregoing, any question regarding its existence, validity, termination and the execution of the Contract– whether during developing phase or after their completion and whether before or after the termination, abandonment or breach of the Contract – the parties shall seek to resolve any such dispute or difference by mutual diligent negotiations in good faith within 7 (seven) days following a notice sent by one Party to the other Party in this regard.

ii) At future of negotiation the dispute shall be resolved through mediation and Chief Supply Chain Management Officer HESCO shall act as Arbitrator/mediator.

iii) At the event of failure of mediation to resolve the dispute relating to this contract such dispute shall finally be resolved through binding Arbitration by sole arbitrator in accordance with Arbitration Act 1940. The Arbitration shall take place in HESCO Hyderabad and proceedings will be conducted in English language.

iv) The cost of the mediation and arbitration shall be shared by the parties in equal proportion however the both parties shall bear their own costs and lawyer's fees regarding their own participation in the mediation and arbitration. However, the Arbitrator may make an award of costs upon the conclusion of the arbitration making any party to the dispute liable to pay the costs of another party to the dispute.

v) Arbitration proceedings as mentioned in the above clause regarding resolution of disputes may be commenced prior to, during or after delivery of goods.

vi) Notwithstanding any reference to the arbitration herein, the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree that HESCO shall pay the Supplier any monies due to the Supplier.

Furthermore, the supplier agrees that the territorial jurisdiction of the litigation shall be Hyderabad District. No court other than Hyderabad District will entertain any judicial matter in respect thereto

Note: PPRA Rules (amended to date) will prevail during the whole procurement process.