

BANGALORE METRO RAIL CORPORATION LIMITED

GLOBAL TENDER FOR

SUPPLY OF RAIL GRINDING MACHINE
FOR
BANGALORE METRO RAIL PROJECT

CONTRACT NO. BMRCL/TM-01

Summary of Document

1. Notice of Invitation of Tender
2. Instructions to Tenderers
3. Technical specifications
4. General Conditions of Contract
5. Special Conditions of Contract

BANGALORE METRO RAIL CORPORATION LIMITED

NOTICE OF INVITATION OF TENDER

TENDER INVITATION

Global Tender Notice No. BMRCL/TM-01

- 1.0 Tender is invited by Bangalore Metro Rail Corporation Limited (BMRCL) from experienced manufacturers or their authorized agents for supply of the following:-

Name of Work	Cost of Tender Document In INR & USD	Amount of Bid Guarantee in INR & USD	Last date of submission of tenders
Supply of Rail Grinding Machine (16 Stones) for Standard Gauge track with specifications as specified in the Tender. Operation and Maintenance of New Rail Grinding Machine during warranty period including grinding stones for 1000 hours of grinding operation. Maintenance contract for a period of two years beyond warranty period and supply of grinding stones etc.	INR. 25000 OR USD 550 (inclusive of 12.5% KVAT)	INR. 1,000,000 OR USD 22,000	Up to 15:00 Hrs. (IST) on 29.01.2010

- 2.0 The tenders will be issued between 11:00 Hrs and 17:00 Hrs (IST) on all working days from 19-12-2009 to 31-12-2009. The offers complete in all respects will be received up to 15.00 Hrs (IST) on 29.01.2010 and will be opened at 15.30 Hrs (IST) on the same day.

- 3.0 Qualification / Eligibility of the Tenderer:

- 3.1 To be eligible for tendering for the work, the following shall be satisfied;

- a) The Tenderer should have supplied at least three Rail Grinding Machines of similar type (8 to 32 grinding stones) and make to any Metro / Railway system in the last five years from 1st January 2005 to 31st December 2009.
- b) The Tenderer (Leader in case of JV) should have an average annual turnover of at least INR 120 Million per year in last five accounting years.
- c) In the last five years from 1st January 2005 to 31st December 2009 the Tenderer should have carried out at least 20,000 Pass Kms (one pass over one Km of rail constitutes 1 Pass Km) of grinding operations.

- 3.2 The Tenderers, to qualify for award of contract, shall submit a written power of attorney authorizing the signatories of the Tender to commit each member of the partnership, consortium or joint venture. The partnership, consortium or joint venture shall be limited to a maximum 2 (two) firms / companies with lead partner having not less than 51% participation.

- 3.3 In the case of applications from groups / joint venture (not exceeding two members), a statement of participation for each constituent member shall be submitted to the effect that they are bonafide members of the group applying for qualification. Details of existing or proposed Joint Venture, Partnership; or

Consortium Agreement in the form of a Memorandum of Understanding (MoU)/ Joint Venture (JV) or Consortium Agreement signed by all members shall be submitted, which shall also include the following

- (a) Proposed percentage participation of each member of the consortium/JV for the proposed work.
 - (b) Areas of specialisation/responsibility of each member for the proposed work.
- 4.0 The Contract Performance Guarantee bond for 10% of the contract price will have to be furnished by the bidder in the event of contract being awarded to him.
- 5.0 Non-transferable Tender Documents containing detailed description of stores required as also other terms and conditions may be obtained from the office of the Managing Director, Bangalore Metro Rail Corporation Limited, III Floor, BMTC Complex, K.H. Road, Shanthinagar, Bangalore-560027, Karnataka, India. 560 027 on payment of amount as specified in clause 1 above in the form of crossed Demand Draft issued from a Scheduled Commercial Bank based in India (except Cooperative Banks) drawn in favour of 'Bangalore Metro Rail Corporation Limited' payable at Bangalore.
- 6.0 **Pre-tender Meeting:**
- 6.1 Bangalore Metro Rail Corporation Limited (BMRCL) will hold pre-tender meeting with the prospective bidders (who have purchased the bid documents) for technical and commercial discussions/clarifications. This conference will be held on 04.01.2010 at 11:00 Hrs (IST) in office of the Managing Director, Bangalore Metro Rail Corporation Limited, III Floor, BMTC Complex, K.H. Road, Shanthinagar, Bangalore-560027, Karnataka, India, The bidders may come out with their suggestions, if any, for modification in tender specification for the purpose of improvement in design, operation and economics of Rail Grinding Machine (RGM). As a result of the discussions in this pre-tender meeting, if it is considered necessary to modify technical specifications or any other conditions of tender, the same shall be advised to all the bidders. If situation so warrants opening of the tenders, may be rescheduled with advance intimation to the tenderers.
- 6.2 It is the responsibility of the prospective bidders that they should on their own attend the said conference at the indicated venue, date and time without waiting for any communication. It may also be noted that no request/clarifications would be entertained at a later stage.
- 6.3 It is desirable but not mandatory on the part of the bidders to attend the pre-tender meeting.
- 7.0 Last date of submission of offers, the date of opening of tender and the date of pre-tender meeting will be adjusted to next following working day if situation so warrants or if such dates happen to be declared as Gazette Holidays prospectively.
- 8.0 Further details about the tender can be obtained from the Office of the Bangalore Metro Rail Corporation Limited, 3rd Floor, BMTC Complex, K.H. Road, Shanthinagar, Bangalore - 560 027 on all working days between 15.00 hrs to 17.00 hrs. Website: www.bmrc.co.in. may also be seen. (Contact person – Sri S.S. Hegaraddi, Chief Engineer -R1, Telephone 080-22969300, 22969205)

Note:

- i. Late and delayed tenders will be summarily rejected.
- ii. Tender from Tenderers who have not purchased the tender documents, tenders not accompanied by Bid Guarantee and Tenders from Agents without Letter of Authority from the manufacturers will be summarily rejected.
- iii. BMRCL reserves right to accept or reject any or all proposals without assigning any reason whatsoever. No applicant shall have any cause of action or claim against BMRCL for rejection of the proposal.
- iv. Incomplete Tender documents will be summarily rejected.
- v. Canvassing in any form will result in summary rejection of the Tender.

Sd/-
Chief Engineer (R1)
Bangalore Metro Rail Corporation Limited,

INSTRUCTIONS TO TENDERERS

INSTRUCTIONS TO TENDERERS

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INSTRUCTIONS TO TENDERERS

A. INTRODUCTION

1. GENERAL DESCRIPTION OF THE WORK

- 1.1 Bangalore Metro Rail Corporation Ltd (BMRCL) is the Special Purpose Vehicle of Government of Karnataka and Government of India implementing the Phase I of the Bangalore Metro Rail Project. The sanctioned Detailed Project Report (DPR) envisages two corridors viz. East-West corridor, of approximately 18.10 km length with 17 stations and North-South corridor of approximately 14.90 Km length with 15 stations, comprising of at-grade, elevated and underground sections. On East-West Corridor the underground section length is approximately 4.8 km with 5 underground stations and on North-South Corridor, it is of section length approximately 3.8 km with 3 underground stations. The extension of North-South corridor - Yeshwantpur to Hessargatta Cross Road for 5.6 kms (north side) having 6 stations and RV Road Terminal to Puttenhalli for 3.7 kms (south extension) having 3 stations, all elevated - has also since been sanctioned by the Government. The two corridors will cross at a common interchange station at Majestic. The mode of traction is 750V dc Third Rail. The track will be of Standard Gauge (1435mm). On the East- West corridor a maintenance depot along with full workshop facilities is envisaged at Baiyapanhalli, adjacent to the Eastern Terminal Station. Similarly on the North- South Corridor a similar depot will be at Peenya, 3.7km north of Yeshwantpur.
- 1.2 BMRCL (hereinafter referred to as Purchaser) invites offer from established and reliable manufacturers or their authorized agents for the supply of Rail Grinding Machine as set forth in the 'Form of Tender', in two packets. The authorized agent should carry "letter of authority" from the manufacturer.
- 1.3 All offers in the prescribed Form of Tender along with the Appendices should be submitted before the time and date fixed for the receipt of offer as set forth in the tender papers. Offers received after the stipulated time and date will be summarily rejected.
- 1.4 Only one tender can be submitted by each tenderer. No tenderer can participate in the tender of another for the same contract in any relation whatsoever.
- 1.5 Each Tenderer (each member in the case of a joint venture or consortium) or any associate is required to confirm and declare with his Tender that no agent, middleman or any intermediary has been, or will be, engaged to provide any services, or any other item or work related to the award and performance of this Contract. They will have to further confirm and declare in the submittal that no agency commission or any payment which may be construed as an agency commission has been, or will be, paid and that the tender price will not include any such amount. If the Employer subsequently finds to the contrary, the Employer reserves the right to declare the Tenderer as non-compliant, and declare any Contract if already awarded to the Tenderer to be null and void. Specific declaration to this effect exactly as per Appendix -3 to Form of Tender shall be submitted with the Technical Package.

2. COST OF TENDERING

- 2.1 The Tenderer shall bear all costs associated with the preparation and submission of his tender and the Purchaser will in no case be responsible or liable for these costs, regardless of the conduct or outcome of the tendering process.

3. TIME SCHEDULE

- 3.1 The basic consideration and the essence of the contract shall be the strict adherence to the time schedule for the supply, installation and commissioning of the Rail Grinding Machine as indicated in Special Conditions of Contract.
- 3.2 The time and date specified in the contract for the delivery of the stores and equipment shall be deemed to be the essence of the contract and the delivery must be completed not later than the date so specified. The attention of the tenderer is invited to the clauses regarding liquidated damages and defaults in the General conditions of the contract by which the contract is governed.

B. THE TENDER DOCUMENTS

4 CONTENTS OF TENDER DOCUMENTS

- 4.1 The supplies required, tender procedures and Contract terms are prescribed in the Tender Documents. In addition to "Notice of Invitation to Tender", the Tender Documents include:
- (a) Instructions to Tenderers;
 - (b) Form of Tender with Appendices;
 - (c) General Conditions of Contract;
 - (d) Special Conditions of Contract;
 - (e) Bill of Quantities (Appendix 2 to the Form of Tender)
 - (f) Purchaser's Requirements
 - (g) Technical Specifications
- 4.2 The Tenderer is expected to examine all instructions, forms, terms, conditions and specifications in the Tender Documents. Failure to furnish all information required by the Tender Documents or submission of a tender not substantially responsive to the Tender Documents in every respect will be at the Tenderer's risk and may result in rejection of his tender.

5. CLARIFICATION ON TENDER DOCUMENTS

- 5.1 The Tenderer shall check the pages of all documents against page numbers given in indexes and summaries and, in the event of discovery of any discrepancy, the Tenderer shall inform the Chief Engineer (R1), BMRCL forthwith.
- 5.2 Should the Tenderer for any reason whatsoever, be in doubt about the meaning of anything contained in the Notice of Invitation of Tender, Tender Documents or the extent of details in the Purchaser's Requirements the Tenderer shall seek clarifications from The Chief Engineer (R1), BMRCL not later than 31.12.2009. All communications between the tenderer and Chief Engineer (R1), BMRCL shall be in writing.
- 5.3 Except for any such written clarification by the Chief Engineer (R1), BMRCL which is expressly stated to be by way of an addendum to the Tender Documents, no written or verbal communication, representation or explanation by any employee of the Purchaser or the Purchaser's Representative shall be taken to bind or fetter the Purchaser or the Purchaser's Representative under the Contract.

6. PRE-TENDER MEETING

6.1 The Tenderer or his official representative may be invited to attend a Pre-Tender meeting on the date and location as advised in the Notice of Invitation of Tender. Non-attendance at the pre-tender meeting will not be a cause for disqualification of the tenderer.

7. AMENDMENT OF TENDER DOCUMENTS

7.1 At any time prior to the deadline for submission of tender, the Purchaser may, for any reason, whether at his own initiative or in response to a clarification requested by the prospective tenderer, modify the Tender Documents by amendment.

7.2 The date for collection by the Tenderer of the amendment will be notified in writing by FAX, or by cable to the tenderer and shall be binding on him.

7.3 In order to afford the Tenderer reasonable time in which to take the amendments into account in preparing his tender, the Purchaser may, at his discretion, extend the deadline for the submission of tender.

8. PREPARATION OF TENDER

8.1 Language of Tender:

The tender prepared by the Tenderer and all correspondence and documents relating to the tender exchanged by the Tenderer and the Purchaser, shall be written in the English language, provided that any printed literature furnished by the Tenderer may be in another language so long as it is accompanied by an English translation. The English translation shall prevail in matters of interpretation.

8.2 Documents Comprising the Tender:

The Tenderer shall, on or before the date given in the Notice of Invitation to Tender, submit his Tender in four separate sealed envelopes clearly marked as follows along with name of the Tenderer.

- Contract BMRCL/TM-01– Technical Package,
- Contract BMRCL/TM-01- Financial Package,
- One copy of Tender Documents and Addenda thereto; and
- Original of Tender Guarantee.

These shall be addressed to The Managing Director, BMRCL and submitted to the Office of The Managing Director, Bangalore Metro Rail Corporation Limited, III Floor, BMTCL Complex, K.H. Road, Shanthinagar, Bangalore-560027, Karnataka, India. The Tenderer shall ensure that a receipt is obtained for the submission of his tender, such receipt being issued free of charge by BMRCL.

8.3 Technical Package:

The Tenderer shall submit in the Technical Package of his tender the following documents, duly completed, which in the event of acceptance of the Tender shall form part of the Contract:

- (a) Form of Tender with Appendix 1 to Form of Tender

- (b) Technical and financial supporting details consisting but not limited to the following:
- (i) A performance statement mentioning the previous similar supplies made by the tenderer in last 5 years from 01-01-2005 to 31-12-2009. Copies of performance certificates issued by various users including working cost / thousand mm³ of material removed.
 - (ii) Evidence of access to lines of credit and availability of other financial resources.
 - (iii) Financial predictions for the current year and the two following years, including the effect of known commitments.
 - (iv) Current work commitments.
 - (v) Current litigation information.
 - (vi) Plant and manufacturing capacity.
 - (vii) Complete Details of Sub-supplier etc, if any.
 - (viii) Organisation set up for
 - Operation and maintenance of machine for 36 months as specified in clause 28 of ITT.
 - Plan for operation and maintenance of Machine during post warranty period.
 - (ix) Quality control system.
 - (x) The specifications of the proposed packing.
 - (xi) Number of Engineers including their qualification, who can attend to the machine and repair in case of breakdown.
 - (xii) Clause wise compliance of Technical Specification. Whenever tenderer deviates from the provisions of a clause/sub clause he shall furnish his detailed justifications for the same in remarks column.
- (c) The tenderer may offer alternative internationally accepted specifications of equal or higher quality than the specifications mentioned in the tender specifications. However the decision of purchaser in this regard will be final. In this connection, attention of tenderer is invited to the 'Statement of Deviations' (Annexure-V to Technical Specifications) which should invariably be filled in and submitted along with the offer and further two copies of the alternative specifications offered should be sent along with the offer.

8.4 Financial Package:

The Tenderer shall submit the following documents duly completed with the Financial Package of his Tender Submission.

- (a) Form of Tender
- (b) Bill of Quantities, Appendix 2 to the Form of Tender – Completed Pricing Document.

- 8.5 The tenderer should avoid ambiguity in his offer e.g. if his offer is to his standard sizes/length/dimensions, he should specifically state them in details without any ambiguity. Brief descriptions such as "standard length" etc. should be avoided in the offer.

9. INSURANCE

The Tenderer's attention is drawn to the provisions contained in clause-16 of the General Conditions of Contract.

10. FORM OF TENDER

The Form of Tender shall be completed and signed by a duly authorised and empowered representative of the Tenderer. If the Tenderer comprises a partnership, consortium or a joint venture, the Form of Tender shall be signed by a duly authorised representative of each member or participant thereof. Signatures on the Form of Tender shall be witnessed and dated. Copies of relevant powers of attorney shall be attached. The Form of Tender and Appendices should be for the entire supply, on a "single responsibility" basis to cover all supplier's obligations mentioned in or to be reasonably inferred from the Tender Documents.

11. TENDER PRICES

- 11.1 Tender prices will be given in Appendix 2 to the Form of Tender. Tenderer shall quote for the entire supplies on a "single responsibility" basis such that the total tender price covers all Supplier's obligations mentioned in or to be reasonably inferred from the Tender Documents. Items against which no price is entered by the Tenderer will not be paid for by the Purchaser when executed and shall be deemed to be covered by the prices for other items.
- 11.2 All prices and other information like discounts etc. having a bearing on the price shall be written both in figures and words in the prescribed offer form.
- 11.3 Any unpriced offer for items not forming part of Bill of Quantities shall have no bearing on the offer of Tenderer for financial evaluation of bid.

12. TENDER CURRENCIES

- 12.1 Prices shall be quoted in the following currencies:

The tender price shall be quoted in Indian Rupees for Indian components of the supplies and shall be quoted in Indian Rupees and/or in Euros, US Dollars, UK Pounds or Japanese Yen for Imported Components of the supplies.

13. TENDER GUARANTEE

- 13.1 The Tenderer shall furnish, as part of his tender, a Tender Guarantee for Rs. 1 million.
- 13.2 The Tender Guarantee shall be in the form of a Bank Guarantee from a branch of Scheduled Commercial Bank based in India (excluding Co-operative Banks) or from scheduled foreign Bank as defined in section 2(e) of RBI Act 1934 read with second schedule, drawn on Bangalore branch, and in favour of "Bangalore Metro Rail Corporation Limited". The Bank Guarantee shall be in the form given in the Tender Documents (Annexure 1 to ITT). The Tender Guarantee shall remain valid for a period of Thirty (30) days beyond the original tender validity period, and beyond any extension subsequently granted.

- 13.3 Any tender not accompanied by an acceptable Tender Guarantee shall be rejected by the Purchaser as being non-responsive. The Tender Guarantee of a joint-venture / consortium must be in the name of all the partners in the joint-venture / member of the consortium submitting the tender.
- 13.4 The Tender Guarantee of the successful tenderer will be returned when the Tenderer has signed the Contract Agreement and has furnished the required Performance Guarantee.
- 13.5 The Tender Guarantee shall be forfeited:
- (a) if the Tenderer withdraws his Tender during the period of tender validity; or
 - (b) if the Tenderer has not accepted the correction of his Tender Price pursuant to Clause No. 21.5 of ITT; or
 - (c) in the case of a successful tenderer, if the Tenderer fails, within the specified time limit:
 - (i) to sign the Contract Agreement, or
 - (ii) to furnish the required Performance Guarantee
- 13.6 No interest will be payable to the tenderer by the purchaser on the Tender guarantee

14. PERIOD OF VALIDITY OF TENDER

- 14.1 The Tender shall be valid for a period of **180 days** from the latest date and time for submission of tender.
- 14.2 In exceptional circumstances, prior to expiry of the original tender validity period, the Purchaser may request the Tenderer to extend the period of validity for a specified additional period. The request and the responses thereto shall be made in writing or by facsimile. The Tenderer may refuse the request without forfeiting his Tender Guarantee. The Tenderer agreeing to the request will not be required or permitted to modify his Tender, but will be required to extend the validity of his Tender Guarantee for the period of the extension.

15. FORMAT AND SIGNING OF TENDER

- 15.1 The Tenderer shall prepare one original and one copy of the documents comprising the tender clearly marked as "ORIGINAL", and "COPY 1". In the events of discrepancy between them, the original shall prevail. As regards of the Tender Documents and Addenda thereto, only one copy should be submitted with each page of these documents signed and stamped to confirm acceptance of these Tender Documents, by the Tenderer.
- 15.2 Any individual(s) signing the tender or the other documents connected therewith should specify whether he is signing:
- i. as sole proprietor of the concern or as attorney of the sole proprietor
 - ii. as a partner or partners of the firm
 - iii. as a director, Manager or Secretary in the case of a Limited company duly authorised by a resolution passed by the Board of Directors

- 15.3 In the case of a firm not registered under the Indian Partnership Act, all the partners or the attorney duly authorised by all of them should sign the tender and all other connected documents. The original power of attorney or other documents empowering the individual or individuals to sign should be furnished to the purchaser for verification, if required.
- 15.4 The original and one copy of the tender shall be typed or written in indelible ink (in the case of copy, photocopies are also acceptable) and all the pages of the original and one copy shall be signed by a person or persons duly authorised to sign on behalf of the Tenderer. All pages of the Tender, where entries or amendments have been made, shall be initialled and dated by the person or persons signing the Tender.
- 15.5 The Tender shall contain no alterations, omissions or additions, except those to comply with instructions issued by the Purchaser, or as necessary to correct errors made by the Tenderer, in which case such corrections shall be initialled and dated by the person or persons signing the Tender.

C. SUBMISSION OF TENDER

16. SEALING AND MARKING OF TENDER

16.1 The Tenderer shall, on or before the date and time given in the Notice of Invitation to Tender, submit his Tender in four separate sealed envelopes clearly marked as follows along with name of the Tenderer.

- Contract BMRCL/TM-01– Tender Guarantee,
- Contract BMRCL/TM-01- Technical Package,
- Contract BMRCL/TM-01– Financial Package,
- Contract BMRCL/TM-01- Tender documents and Addenda thereto,

16.2 All the envelopes shall be addressed to the Purchaser at the following address:

The Managing Director
Bangalore Metro Rail Corporation Limited
3rd Floor, BMTC Complex,
K.H. Road, Shanthinagar,
Bangalore-560027
Karnataka-INDIA

a) bear the following identification for Tender Guarantee Package:

TENDER GUARANTEE
Tender Reference Number: BMRCL/TM-01
DO NOT OPEN BEFORE hours on
Name and address of the Tenderer

(b) bear the following identification for Technical & Financial Package:

TENDER SUBMISSION (Technical & Financial Package)
Tender Reference Number : BMRCL/TM-01
DO NOT OPEN BEFORE hours on
Name and address of the Tenderer

- (c) bear the following identification for the Tender Documents and Addenda thereto:

TENDER DOCUMENTS AND ADDENDA.
Tender Reference No. : BMRCL/TM-01
DO NOT OPEN BEFORE hours on
Name and address of the Tenderer.

- 16.3 If the outer envelope is not sealed and marked as above the Purchaser will assume no responsibility for the misplacement or premature opening of the Tender.

17. DEADLINE FOR SUBMISSION OF TENDER

- 17.1 Tender will be received by the Purchaser at the address specified above at the date and time given in the Notice of Invitation to Tender or such other time as may be advised by way of addendum issued.

- 17.2 The Purchaser may, at its discretion, extend this deadline for submission of tender by amending tender documents, in which case all rights and obligations of Purchaser and Tenderer will thereafter be subject to the deadline as extended.

18. LATE OR DELAYED TENDER

Any tender received by the Purchaser after the tender submission deadline stipulated above will be rejected and returned unopened to the Tenderer.

19. TENDER OPENING AND EVALUATION

- 19.1 The Tenderer is advised that, he may, if he so desires, be present at the time of opening of the Technical Packages. The Technical Packages will be reviewed to determine their acceptability and responsiveness to the Purchaser's Requirements. Unacceptable and Nonresponsive tenders will be rejected and the corresponding Financial Package will be returned unopened. Tenders that are not accompanied by a valid Tender Guarantee, or are accompanied by an unacceptable or fraudulent Tender Guarantee shall be considered as non-compliant and rejected.

- 19.2 The Tenderers are to note that Financial Packages of only those tender submissions which are accompanied by valid Tender Guarantee and for which Technical Packages have satisfied the review as per Clause 21 of ITT will be opened and the tender sums posted. The date, time and place of opening of Financial Packages will be advised to Tenderers whose Technical Package have been found acceptable so that they can be present at the stipulated time of opening of the Financial Packages.

20. CLARIFICATION OF TENDER

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

21. EXAMINATION OF TENDER AND DETERMINATION OF RESPONSIVENESS, CORRECTION OF ERRORS.

- 21.1 Prior to the detailed evaluation of tender, the Purchaser will determine whether the tender:

- (i) meets eligibility criteria;
- (ii) has been properly signed;
- (iii) is accompanied by the required Tender Guarantee; and
- (iv) is substantially responsive to the requirements of the Tender Documents.

21.2 A substantially responsive tender is one that conforms to all the terms, conditions and specifications of the Tender documents, without material deviation or reservation. A material deviation or reservation is one:

- (i) which affects in any substantial way the scope, quality or performance of the materials to be supplied; or
- (ii) which limits in any substantial way, the Purchaser's rights or the Tenderer's obligations under the Contract; or
- (iii) which is inconsistent with the Tender Documents; or
- (iv) which includes a deviation from the Tender Documents which would render the materials to be supplied, or any part thereof, unfit for their intended purpose; or
- (v) which fails to commit to the date specified for the completion of the supplies.

21.3 The Purchaser may waive any minor deviation, non-conformity or irregularity in the tender that does not constitute a material deviation.

21.4 If the tender is not substantially responsive, it will be rejected by the Purchaser, and may not subsequently be made responsive by correction or withdrawal of the non-conforming deviation or reservation.

21.5 **Correction of errors:** Tender determined to be substantially responsive will be checked by the Purchaser for any arithmetic errors. Errors will be corrected by the Purchaser. Where there is a discrepancy in the line item total, which is obtained by multiplying the unit price with the quantity, the correct arithmetic calculation shall prevail, and the line item total shall be corrected. If in the opinion of the Purchaser there is an obvious misplacement of the decimal point in the unit rate in which case the total cost per item as quoted will govern and the unit rate corrected. If there is a discrepancy between the tender total amount and the sum of line item totals the sum of the line item totals shall prevail and the tender total will be corrected. If there is discrepancy between words and figures, the amount in words will prevail. If the Tenderer does not accept the correction of errors, his tender will be rejected and tender guarantee may be forfeited.

22. **CONVERSION TO SINGLE CURRENCY**

To facilitate evaluation and comparison, the Purchaser will convert all prices in Indian Rupees by using the exchange (bill selling) rate for those currencies at the close of business of the State Bank of India twenty-eight days before the latest date of tender submittal. In case this particular day happens to be a holiday, the exchange rate at the opening of the business of the State Bank of India on the next working day will be considered.

23. LOCAL CONDITIONS

It will be imperative on the tenderer to fully acquaint himself of all the local conditions and factors, which would have any effect on the performance of the contract and cost of the stores. In his own interest, the foreign tenderer should familiarise himself with the Income Tax Act 1961, the Companies Act 1956, the Customs Act 1962 and other related laws in force in India. The purchaser shall not entertain any request for clarifications from the tenderer regarding such local conditions. No request for the change of price, or time schedule, of delivery of stores shall be entertained after the offer is accepted by the Purchaser.

- 23.1 The Custom Duty as applicable on the imported equipment including port handling, custom clearance etc., will be paid directly by BMRCL to the Customs Authorities. All other charges shall be included by the tenderer in the pricing document.
- 23.2 The invoice shall contain the basic value and central excise duty separately. Interstate or local VAT shall be shown separately.
- 23.3 Presently there is "No" waiver and exemption from the Government of Excise Duty, Taxes, other Royalties, Duties, Cess, Octroi / Entry Tax, and levies etc., payable to various authorities. In respect of Customs Duty, benefits as provided in the Notification No. 7/2007 – Customs dated 22-01-2007 read with Notification No. 42/96 – Customs dated 23-07-1996 shall be available for Bangalore Metro Rail Project.
- 23.4 All paper works connected with custom clearance shall be handled by the contractor or his associate on behalf of BMRCL.

24. PRICE BASIS AND INDEMNITY

- 24.1 The prices shall be quoted on CIF basis and port of delivery is ICD Bangalore.
- 24.2 Prices should not include any type of agency commission payable to Indian Associate/Representatives. If it is established that any amount of agency commission is being paid to any associate/representative in India, it will be sufficient ground for rejection of offers.
- 24.3 **Currency of Payment:** The contract price will be paid in the currency or currencies in which the price is stated in the tender.
- 24.4 The prices quoted shall be firm and not subject to any variation and no variation will be allowed on any account after the opening of tender.
- 24.5 Quotations should be made only for units specified in the "Bill of Quantities".

25. EVALUATION OF TENDER

- i) The tenders received would be evaluated on the basis of following items taken together.
 - a) Quoted price for supply of Rail Grinding Machine along with all accessories, vide item 1 of Pricing Document at Appendix – 2.
 - b) Quoted price for operation and Maintenance of the Machine during the warranty period, vide item 2 of Pricing Document at Appendix – 2.

- c) Quoted price of maintenance contract for a period of two years beyond warranty period, vide item 3 of Pricing Document at Appendix – 2.
- d) Quoted price for supply of grinding stones for 1000 hrs of grinding operation, vide item 4 of Pricing Document at Appendix – 2.

The cost of spare parts (during the maintenance period beyond warranty period) will not be considered for evaluation of tenders.

- ii) During tender evaluation, the Employer may, at its discretion, ask the Tenderer for a clarification of its tender. The request for clarification and the response shall be in writing, and no change in the price or substance of the tender shall be sought, offered or permitted.
- iii) The tenders received will be evaluated by the Purchaser to ascertain the lowest acceptable tender in the interest of the Purchaser, as specified in the specification and tender documents. Evaluation criteria not mentioned herein but mentioned specifically in the technical specifications will be taken into consideration in the evaluation of offers.
- iv) **Conversion to Single Currency for Comparison of Tenders:-** To facilitate evaluation and comparison, the Purchaser will convert all prices in Indian Rupees by using the exchange (bill selling) rate for those currencies at the close of business of the State Bank of India twenty-eight days before the latest date of tender submittal. In case this particular day happens to be a holiday, the exchange rate at the opening of the business of the State Bank of India on the next working day will be considered.
- v) Also if a foreign tenderer request for a variation in the payment terms stipulated in the General Conditions of Contract and if such variation is acceptable to the Purchaser, the same would be evaluated at an interest rate of 10% per annum for all earlier payments for the purpose of comparison with other tenderers offers.
- vi) The offers received from indigenous tenderers should indicate clearly the rate of CST/KVAT etc. as leviable on particular item. In case concessional duty or taxes are applicable, the tenderer should quote accordingly. However, if the tenderer state in his offer that CST/KVAT etc. will be charged as prevailing at the time of supply, then while working out F.O.R destination rates for comparison, the highest rate applicable will be loaded on the offer. Similarly, if concessional rate of ED, CST/KVAT or any other levy is applicable due to lower turnover, the highest applicable rate will be taken for the evaluation of F.O.R destination rates unless the tenderer confirms in the offer that any increase in the ED, CST/KVAT or other levy due to increase in the turnover will be absorbed by the tenderer itself.

26. PAYMENT TERMS

The standard Payment Terms subject to recoveries, if any, under the liquidated damages clause in general conditions of contract will be as under:

Payment of foreign currency (freely convertible international trading currency) portion shall be made to the supplier through negotiable Letter of Credit (LC). LC shall be irrevocable and divisible. Part payment is allowed. LC is opened through Banker's of the Purchaser based at Bangalore. LC opening charges shall be borne by the Purchaser, however, Bank charges on LC amendment, if any, at the request of supplier shall be to Supplier's account. All other charges shall be to Supplier's account.

(a) For ITEM No. 1 (Supply of Rail Grinding Machine)

- i) 80% payment of the supply value of stores (i.e. Supply of Rail Grinding Machine) will be made, on submission of following documents:
- (a) Certificate from the purchaser of having received the Performance Guarantee Bond in acceptable form.
 - (b) Invoice in duplicate.
 - (c) Shipping documents/Proof of Dispatch (Bill of Lading/Air Way Bill) in the number of copies as specified in the contract.
 - (d) Inspection Certificate
 - (e) Factory Acceptance Test Report
 - (f) Copy of Insurance document.
 - (g) Packing list.
 - (h) Certificate of country of origin.
- ii) Balance 20% payment will be made on furnishing of Purchaser's Certificate indicating the successful receipt, installation & commissioning of the equipment and confirm with specifications and acceptance of material.

(b) For ITEM No. 2 (Operation & Maintenance of Rail Grinding Machine)

100% Payment within 36 months of commencement of warranty period in nine equal instalments spaced 4 months apart each upon satisfactory performance of operation and maintenance. The last instalment will be released on completion of training of BMRCL staff on operation and maintenance of the machine.

(c) For ITEM No. 3 (Maintenance contract for a period of two years beyond warranty period)

The payment will be made on quarterly basis (3 months) on successful completion of the maintenance of the machine during the quarter.

(d) For ITEM No. 4 (Supply of Grinding Stones)

- i) 80% payment of the supply value of grinding stones (i.e. grinding stones for 1000 Hrs of Grinding Operation) will be made, on submission of following documents:
- a. Certificate from the purchaser of having received the Performance Guarantee Bond in acceptable form.
 - b. Invoice in duplicate.
 - c. Shipping documents/Proof of Dispatch (Bill of Lading/Air Way Bill) in the number of copies as specified in the contract.
 - d. Inspection Certificate
 - e. Factory Acceptance Test Report
 - f. Copy of Insurance document
 - g. Packing list.
 - h. Certificate of country of origin.
- ii. Balance 20% payment will be made on furnishing of Purchaser's Certificate indicating the successful receipt and confirm with specifications and acceptance of material.

(e) For ITEM No. 5 (Recommended spare parts/ assemblies for maintenance and operation)

Payment will be made through L/C or direct remittance on receipt of actual supply of spares as ordered by the purchaser.

27 LOCAL ADDRESS

The Foreign Tenderer is required to give name and address of the local agent/associates if any. In such case, they should furnish

- (i) The precise relationship/Agreement/Memorandum of understanding between the foreign manufacturer/principals and Indian agents/ associates.
- (ii) The services to be rendered by the agent/associates in relation to the extant contract.
- (iii) Past performance of the local agent / associates.

28. SPARE PARTS

28.1 The Tenderer shall furnish, apart from the main equipment, the spare parts required for efficient operation of machine beyond warranty period as detailed in para 28.2 below. The rates for such of the items of those spares should be indicated on CIF basis (to be delivered in purchaser's storage at Bangalore) separately for imported and on FOR destination basis for indigenous components. The purchaser reserve the right to order any or all the spares as quoted for any quantity considered reasonable by him at the prices quoted by the tenderer and on the terms and conditions quoted for the main equipment. The responsibility of the tenderer under the warranty clause will not be diluted in any way on this account. Cost of spare parts shall not be considered in the evaluation criteria as given in clause 25. The tenderer shall indicate item-wise rate and quantity of spare parts as detailed in para 28.2 below.

28.2 The tenderer shall furnish for the spare parts required for a period of two years operation after warranty period. The spare parts list shall be grouped under categories "Mandatory spares", "Recommended spares" and "Consumable spares". The rates of the spares as per this list shall be valid for a period of two years beyond warranty. The purchaser will purchase the spares contained in this list as per the actual requirement at the accepted rates by placing separate orders from time to time during this period. Any item of spares not covered in the list, but found necessary during the maintenance period, shall be supplied by the tenderer at his own cost.

28.3 The supplier shall also be required to carry out day to day maintenance of the equipment supplied by them during warranty period. Day to day maintenance shall be carried out in such a way that machine is generally available for operation for 5 hours per day during night time in non revenue operation period (actual grinding work of about 3 hours per day), six consecutive days per week. Fuel and water for operation of Machine shall be arranged by BMRCL. All other consumables including filters, Grinding stones, lubricants etc. complete shall be arranged by supplier at no extra cost to BMRCL during warranty period. Work of maintenance beyond these days and hours will be performed on mutual agreement without any additional financial liability to BMRCL. The daily maintenance will also cover replacement of grinding stones, besides other repairs.

28.4 The supplier would also be required to indicate requirement of fuel and water on the basis of five hours daily block for 6 days in a week. In order to provide efficient daily maintenance, the supplier may have to stock certain frequently used components in India which should be used on the machine. The supplier should indicate the number of his employees who would be deployed for this purpose

29. TRAINING OF BMRCL STAFF:

29.1 Two personnel of BMRCL shall be given training for a period of two months to be arranged by the supplier at their cost in their manufacturing plant and/or affiliated institutes/training centres in the rail grinding technology with a view to establish efficient rail grinding management system on Metro Rail network. Likely places and the methodology of training in terms of duration and topics covered at various places shall be indicated in the offer. However, the cost of boarding, lodging and travel cost shall be borne by the purchaser.

29.2 Adequate training for two months of two personnel of the BMRCL should be arranged in India on the contractor's / supplier's premises or at the site of commissioning of machines, in the operation, repair and maintenance of these machines at no extra cost. This training of the staff to be deployed on the machine, in operation, repair and maintenance shall be completed preferably before commissioning of the machine. However, the cost of boarding and lodging and travel of trainees will be borne by the purchaser.

29.3 BMRCL shall depute a set of personnel to work on the machine with the suppliers operators during warranty period. They will be given regular training of the machine working, maintenance during the warranty period of 36 months so as to enable them to take over the machine for subsequent operations & maintenance.

30. SERVICE ENGINEERS:

30.1 The tenderer shall provide at his own cost the services of adequate number of experienced service Engineers in India for satisfactory commissioning and operation of the machine.

30.2 After commissioning of the machine, the operation and maintenance of the machine shall be carried out by the supplier during the warranty period. Further in this period, the supplier shall be responsible for training of BMRCL officials with hands on experience on all aspects of machine working as indicated in para 29.3 above including the following:

- a) The management of deciding existing rail and wheel profile before starting rail grinding.
- b) Fixing appropriate target rail profile.
- c) Achievement of target rail profile through statistical methods after grinding operation and its measurement.
- d) Generate management reports to effectively monitor the results of rail grinding.
- e) Absorb and assimilate the rail grinding technology for its sustained use on Metro Rail network.

The supplier will be responsible for ensuring the availability of machine for 5 hours every day for a minimum of 25 days in a month. During these 5 hours, the working time (actual grinding) will in general be for about 3 hours per day. If availability of machine for work is less than 25 days in a month during warranty period due to suppliers default a penalty of Rs.20,000/- per day will be levied on supplier. The machine availability will be worked out by taking average availability of machine for three consecutive months.

At the end of warranty period, the machine will be handed over to BMRCL by the supplier in proper working condition, satisfying the acceptance tests stipulated in clause 19 of technical specifications.

- 30.3 Tenderers shall indicate the details of services which will be rendered for after sale service of the machines.

31. VISIT TO MANUFACTURING PLANT OF THE SUPPLIER

The tenderer shall provide all facilities for three officials of the purchaser to visit the manufacturing plant of the machine before the despatch of the machine. Transport and boarding expenses in connection with the visit will be borne by the purchaser.

32. DEDUCTIONS

- 32.1 Payment as in clause 26 of ITT shall be subject to deduction of any amount for which the supplier is liable under the contract against this tender or any other contract in respect of which BMRCL is the Purchaser.

33. PACKING

- 33.1 The specifications of the proposed packing shall be such as to ensure that no damage will be caused to the materials to be supplied during transit.
- 33.2 The packing advices should bring out the weight, dimensions and size of each bundles/package. Where it is not possible to give weight of the bundles / packages, the supplier must indicate the volume of the bundles / packages, the number of pieces per bundle/package, number of bundles / packages, and total weight of the items supplied.
- 33.3 Where the materials are shipped / transported in bundles / packages, the pieces in each bundle / package should be of uniform sizes to facilitate quick acceptance and payment. The number of pieces in each bundle/package should also be the same.

D. AWARD OF CONTRACT

34. AWARD CRITERIA

Subject to Clause 35 of ITT, the Purchaser will award the contract to the successful Tenderer whose tender has been determined to be substantially responsive and who has submitted the Lowest Evaluated Tender.

35. PURCHASER'S RIGHT TO ACCEPT ANY TENDER AND TO REJECT ANY OR ALL TENDERS

The Purchaser reserves the right to accept a tender for a part or, whole of the quantities offered, or reject any tender, and to annul the tendering process and reject all tenders at any time prior to award of contract, without thereby incurring any liability to the affected Tenderer or Tenderers or any obligation to inform the affected Tenderer or Tenderers of the grounds for the Purchaser's action.

36. NOTIFICATION OF AWARD

36.1 Prior to expiration of the period of Tender validity prescribed by the Purchaser or extended period, the Purchaser will notify the successful Tenderer by facsimile confirmed by letter transmitted by courier that his Tender has been accepted. The letter (hereinafter and in the Conditions of Contract called the "Letter of Acceptance") shall name the amount which the Purchaser will pay the supplier in consideration of the supplies/services.

36.2 In the event of award of the Contract, the following will be the sequence of events in the order given below.

- (i) Letter of Acceptance;
- (ii) Submission of Performance Guarantee;
- (iii) Signing of Contract;

37. SIGNING OF THE CONTRACT AGREEMENT

The Tenderer should note that in the event of acceptance of the Tender, the Tenderer will be required to execute the Contract Agreement in the form specified (Annexure 3 of ITT) with such modifications as may be considered necessary at the time of finalisation of the contract, within a period of 25 days from the date of issue of the Letter of Acceptance.

38. PERFORMANCE GUARANTEE

38.1 The Performance Guarantee required in accordance with clause 11 of GCC shall be 10% of the Contract Price from a Scheduled Commercial Bank based in India in the types and proportions of currencies in which the Contract Price is payable.

38.2 Within 15 (Fifteen) days of receipt of the Letter of Acceptance from the Purchaser, the successful Tenderer shall furnish to the Purchaser a Performance Guarantee as per sub-clause 38.1 above.

38.3 Failure of the successful Tenderer to comply with the requirements of Clauses 37 and 38 above shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Guarantee.

TENDER GUARANTEE*(Reference Clause 13 of ITT)*

(To be stamped in accordance with Stamp Act of India)

KNOW ALL MEN by these presents that we _____ (Name and Address of Bank), having our registered office at _____ (hereinafter called "the Bank") are bound unto Bangalore Metro Rail Corporation Limited (hereinafter called "the Purchaser") in sum of Rs. _____ for which payment well and truly to be made to the said Purchaser, the Bank binds himself, his successors and assigns by these presents.

WHEREAS _____ (Name of Tenderer) (hereinafter called "the Tenderer") has submitted his tender dated _____ for Contract No.BMRCL/TM-01 (hereinafter called "the Tender").

WHEREAS the Tenderer is required to furnish a Bank Guarantee for the sum of Rs. _____ (Amount in figures and words) as Tender Guarantee against the Tenderer's offer as aforesaid.

AND WHEREAS _____ (Name of Bank) have, at the request of the Tenderer, agreed to give this guarantee as hereinafter contained.

We further agree as follows:

- i. That the Purchaser may without affecting this guarantee grant time or other indulgence to or negotiate further with the Tenderer in regard to the conditions contained in the said tender and thereby modify these conditions or add thereto any further conditions as may be mutually agreed upon between the Purchaser and the Tenderer.
- ii. That the guarantee herein before contained shall not be affected by any change in constitution of our Bank or in the constitution of the Tenderer.
- iii. That this guarantee commences from the date hereof and shall remain in force till:
 - a) The Tenderer, in case his tender is accepted by the Purchaser, executes a formal agreement after furnishing the Performance Guarantee on a Scheduled Commercial Bank based in India.
 - b) 30 days after the date of validity or the extended date of validity of the Tender, as the case maybe;

Whichever is earlier.

- iv. That the expression "the Tenderer" and the "the Bank" herein used shall, unless such an interpretation is repugnant to the subject or context, include their respective successors and assigns.

THE CONDITIONS of this obligation are:

- (i) if the Tenderer withdraws his Tender during the period of Tender validity specified in the Form of Tender, or
- (ii) if the Tenderer refuses to accept the corrections of errors in his tender; or
- (iii) if the Tenderer having been notified of the acceptance of his Tender by the Purchaser during the period of tender validity:
 - a) fails or refuses to furnish the Performance Guarantee and/or
 - b) fails or refuses to enter into a Contract within the time limit specified in Clause 31 of the "Instructions to Tenderers".

We undertake to pay to the Purchaser up to the above amount upon receipt of his first written demand, without the Purchaser having to substantiate his demand provided that in his demand the Purchaser will note that the amount claimed by him is due to him owing to the occurrence of any one or more of the conditions (i), (ii), (iii) (a) or (iii) (b) mentioned above, specifying the occurred condition or conditions.

SIGNATURE OF WITNESS

NAME OF WITNESS:

Address of witness:

Signature of Authorized Official
of the Bank:

Name of Official:

Designation

ID No.

STAMP/SEAL OF BANK

PERFORMANCE GUARANTEE FOR WARRANTY PERIOD
(Reference Clause 11 of GCC)

(To be stamped in accordance with the Stamp Act of India)

To.
Bangalore Metro Rail Corporation Limited,
3rd Floor, BMTC Complex,
K.H. Road, Shanthinagar,
Bangalore 560 027,

1. WHEREAS ----- (Name and address of Supplier) (hereinafter called "the Supplier") has undertaken, in pursuance of Contract No: BMRCL/TM-01 to Supply of Rail Grinding Machine for Bangalore Metro Rail Project (hereinafter called "the Contract").
2. **AND WHEREAS** it has been stipulated by you in the said Contract that the Supplier shall furnish you with a Bank Guarantee by the scheduled Commercial Bank based in India for the sum specified herein as security for compliance with his obligations in accordance with the Contract.
3. **AND WHEREAS** we (Insert name and address of Bank) have agreed to give the Supplier such a Bank Guarantee:
4. **NOW THEREFORE** we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Supplier up to a total of ----- (amount of Guarantee)-----
----- (in words), such sum being payable in the types and proportion of currencies in which the Contract Price is payable and we hereby unconditionally, irrevocably and without demur undertake to immediately pay you, upon your first written demand and without cavil or argument any sum or sums within the limits of ----- (amount of guarantee) as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.
5. We hereby waive the necessity of your demanding the said debt from the Supplier before presenting us with the demand.
6. We further agree that no change or addition to or other modification of the terms of the contract or of the Works to be performed there under or of any of the contract documents which may be made between you and the Supplier shall in any way release us from any liability under the guarantee and we hereby waive notice of any such change, addition or modification.

This guarantee shall be valid till it is replaced by the Performance Guarantee after Warranty Period i.e, up to (date). The pendency of any dispute or arbitration or other proceedings shall not affect this guarantee in any manner.

SIGNATURE AND SEAL OF THE GUARANTOR

Signature of Authorised Official

of the Bank: _____

Name of Official: _____

Designation _____

ID No. _____

Name of Bank _____

Address _____

SIGNATURE OF WITNESS

NAME OF WITNESS

Address of witness

STAMP/SEAL OF BANK

DATE -----

Notes:

1. The stamp papers of appropriate value shall be purchased in the name of the Bank, who issues the 'Bank Guarantee'

PERFORMANCE GUARANTEE BEYOND WARRANTY PERIOD
(Reference Clause 11 of GCC)

(To be stamped in accordance with the Stamp Act of India)

Bangalore Metro Rail Corporation Limited,
3rd Floor, BMTC Complex,
K.H. Road, Shanthinagar,
Bangalore 560 027,

1. **WHEREAS** ----- (Name and address of Supplier) (hereinafter called "the Supplier") has undertaken, in pursuance of Contract No: BMRCL/TM-01 to Supply of Rail Grinding Machine for Bangalore Metro Rail Project (hereinafter called "the Contract").
2. **AND WHEREAS** it has been stipulated by you in the said Contract that the Supplier shall furnish you with a Bank Guarantee by the scheduled Commercial Bank based in India for the sum specified herein as security for compliance with his obligations in accordance with the Contract.
3. **AND WHEREAS** we (Insert name and address of Bank) have agreed to give the Supplier such a Bank Guarantee:
4. **NOW THEREFORE** we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Supplier up to a total of ----- (amount of Guarantee)-----
----- (in words), such sum being payable in the types and proportion of currencies in which the Contract Price is payable and we hereby unconditionally, irrevocably and without demur undertake to immediately pay you, upon your first written demand and without cavil or argument any sum or sums within the limits of ----- (amount of guarantee) as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.
5. We hereby waive the necessity of your demanding the said debt from the Supplier before presenting us with the demand.
6. We further agree that no change or addition to or other modification of the terms of the contract or of the Works to be performed there under or of any of the contract documents which may be made between you and the Supplier shall in any way release us from any liability under the guarantee and we hereby waive notice of any such change, addition or modification.

This guarantee shall be valid for 3 months beyond the contract period.

SIGNATURE AND SEAL OF THE GUARANTOR

Signature of Authorised Official
of the Bank: _____
Name of Official: _____
Designation _____
ID No. _____
Name of Bank _____
Address _____

SIGNATURE OF WITNESS

NAME OF WITNESS

Address of witness

STAMP/SEAL OF BANK

DATE -----

Notes:

1. The stamp papers of appropriate value shall be purchased in the name of the Bank, who issues the 'Bank Guarantee'

CONTRACT AGREEMENT

CONTRACT No: BMRCL/TM -01

This Contract is made at Bangalore onday ofby and between :

- (1) **Bangalore Metro Rail Corporation Limited**, a company incorporated under companies act 1956, represented by Company Secretary and General Manager, authorized to sign and bind the company, with office located at III Floor, BMTCL Complex, K.H. Road, Shantinagar, Bangalore 560 027, Karnataka , India, hereinafter referred to as the “BMRCL” or the “Employer”, as the case may be, which expression shall unless excluded by or repugnant to the context or meaning thereof be deemed to include its successors and assigns of the one part, and;

- (2)[Note 1] comprising:
 - a), a company registered and existing under the laws of, with head office located at represented by Mr. and Mr. authorised to sign and bind the company, under the Power of Attorney dated..... and the Board Resolution dated [Note 5]

 - b), a company registered and existing under the laws of, with head office located at..... represented by Mr. and Mr. authorised to sign and bind the company, under the Power of Attorney dated..... and the Board Resolution dated [Note 5]

[Note 2] who shall be jointly and severally liable for the undertaking of this Contract; hereinafter [Note 3] collectively referred to as the “Supplier” of the other part.

WHEREAS the Supplier has established a [Note 4] acceptable to the Purchaser and offered a tender for Supply of Rail Grinding Machine including installation, commissioning and operation & maintenance for Bangalore Metro Rail Corporation Limited and agrees to undertake performance of work under the terms and conditions set forth in this Contract.

Both parties hereby agree as follows:

Clause 1

The Purchaser agrees to hire and the Supplier agrees to be hired to implement the Supply including installation, commissioning and operation & maintenance of Rail Grinding Machine for Bangalore Metro Rail Project under the terms and conditions specified in this Contract Agreement and the other Contract Documents attached hereto as follows:

- Letter of Acceptance
- The Tender
- Notice Inviting Tender
- Instructions to Tenderers
- General Conditions of Contract

- Special Conditions of Contract
- The Addenda, if any
- Technical Specifications
- Any other documents forming part of the Contract

All of the foregoing documents, together with this Contract Agreement, are referred to herein as the Contract Documents. Also incorporated into these Contract Documents, and made part hereof, are all codes, standard specifications, and similar requirements that are referred to therein.

Clause 2 Obligation of the Supplier:

The Supplier agrees, subject to the terms and conditions of the Contract Documents, to perform efficiently and faithfully all of the work and to Supply, including installation, commissioning and operation & maintenance of the Rail Grinding Machine for Bangalore Metro Rail Project requisite for or incidental to the successful completion of the Supplies and in carrying out all duties and obligations imposed by the Contract Documents.

The Supplier shall ensure full compliance with tax laws of India with regard to this contract and shall be solely responsible for the same. He shall submit copies of acknowledgements evidencing filing of returns every year and shall keep the Purchaser fully indemnified against liability of tax, interest, penalty etc. of the Supplier in respect thereof, which may arise.

Clause 3 Obligation of the Purchaser:

The Purchaser agrees, subject to the terms and conditions of the Contract Documents, to pay the Supplier the amount specified, and at the rates and terms and in the manner set forth in the Contract Documents.

Clause 4 Value of Supplies and Completion Time:

The Purchaser agrees to pay for the total cost of the Supplies and the Supplier agrees to accept the sums mentioned below in the following currencies, to be the total cost for the Supplies/services carried out by him as part of his obligations, responsibilities and liabilities under and according to the provisions and obligations imposed on him by the Contract.

Contract Price

(i) Rupees (Rs.....); and

(ii) In the foreign currency of: (.....);

The above Contract Price does not include payment for item-6 of Pricing Document. Payment against this item shall be dependent on the specific orders placed by the purchaser from time to time and shall be governed by the rates included under item-6.

The above amounts include all taxes, royalties, duties, fees, cess, octroi, other levies etc. and any tax to be deducted at source.....

The Supplier shall complete the supply/service within (.....) months from the date stipulated in the Letter of Acceptance, issued by the Purchaser.

Clause 5 Notices:

All notices called for by the terms of the Contract Documents shall be in writing in the English language and shall be delivered by hand or by registered mail, acknowledgement

due, to the parties' addresses given below. All notices shall be deemed to be duly made when received by the party to whom it is addressed at the following addresses or such other addresses as such party may subsequently notify to the other:

Purchaser: Bangalore Metro Rail Corporation Limited,
3rd Floor, BMTC Complex
K.H. Road, Shanthinagar,
Bangalore, 560 027
Karnataka, India

Supplier:
.....
.....

Clause 6 Integration

The Purchaser and the Supplier agree that this Contract Agreement, together with the other Contract Documents, expresses all of the agreements, understandings, promises, and covenants of the parties, and that integrates, combines, and supersedes all prior and contemporaneous negotiations, understandings, and agreements, whether written or oral and that no modification or alteration of the Contract Documents shall be valid or binding on either party, unless expressed in writing and executed with the same formality as this Contract Agreement, except as may otherwise be specifically provided in the Contract Documents.

Clause 7 Governing Law

This Contract is enforceable and construed under the laws of the Republic of India.

Clause 8 Language

This Contract Agreement and the other Contract Documents are made in the English language.

This Contract is made in two copies with identical wording. Both parties having thoroughly read and understood the contents hereof sign their names and affix the seal (if any) in the presence of witness and each shall retain one copy.

The Purchaser
Bangalore Metro Rail Corporation Limited

The Supplier (Note-6)
(a)

WITNESS

(b)

(_____)

(c)

WITNESS

(_____)

Notes: (for preparation of but not for inclusion in the engrossment of the Contract Agreement)

1. If the Supplier comprises a partnership, consortium or joint venture, liability will be joint and several, and each member thereof must be identified.
2. In the case that the Supplier comprises a single company, this line should be deleted entirely, as also should be paragraph (b).
3. In the case that the Supplier comprises a single company, the word "collectively" should be deleted from this line.
4. Enter the appropriate nature of the Supplier; company, partnership, consortium or joint venture as the case may be.
5. Enter the date of the appropriate resolution.
6. If the Supplier comprises a partnership, consortium or joint venture, each member thereof must execute.

FORM OF TENDER

(To be submitted on Firm's Letter head)

Date:

To: The Managing Director
Bangalore Metro Rail Corporation Limited
3rd Floor, BMTCL Complex,
K.H. Road, Shanthinagar
Bangalore-560 027
Karnataka, India

SUPPLY OF RAIL GRINDING MACHINE FOR BANGALORE METRO RAIL PROJECT**CONTRACT No: BMRCL/TM-01**

GENTLEMEN,

1. Having examined the Technical Specifications, General Conditions of Contract, Special Conditions of Contract and Instruction to Tenderers including Pricing Document, and addenda thereto (if any) issued by the BMRCL for the Supply of Rail Grinding Machine for Bangalore Metro Rail Project and the matters set out in Appendix 1 hereto, and having completed and prepared Appendices hereto, we hereby (jointly and severally)* offer to supply and remedying any defects therein, in conformity with the above documents for the sum stated in the Pricing Document as completed by us and appended hereto.
2. We undertake (jointly and severally)* to complete and deliver the whole of the supplies/works and achieve all Stages, within the times stated in Appendix 1 hereto.
3. We undertake (jointly and severally)*:
 - (a) to keep this Tender open for acceptance without unilaterally varying or amending its terms for the period stated in Notice of Invitation to Tender hereto (the withdrawal of any member or any other change in the composition of the partnership/joint venture/consortium on whose behalf this Tender is submitted shall constitute a breach of this undertaking)*; and
 - (b) if this Tender is accepted, to provide Guarantees, Undertakings & Warranties for the due performance of the Contract as stipulated in the General Conditions of Contract, Special Conditions of Contract and Appendix 1 hereto; and
 - (c) to hold in confidence all documents and information whether technical or commercial supplied to us at any time by or on behalf of the BMRCL in connection with this Tender or with the above-mentioned supplies / works and, without your written authority or as otherwise required by law, not to publish or otherwise disclose the same.
4. We submit with this Tender a duly executed Tender Guarantee in respect of our obligations under this Tender.
5. Unless and until a formal agreement is prepared and executed, this Tender together with your written acceptance thereof, shall constitute a binding contract between us.
6. We understand that you are not bound to accept the lowest or any tender you may receive.

7. We declare that the submission of this Tender confirms that no agent, middleman or any intermediary has been, or will be engaged to provide any services, or any other item of work related to the award and performance of this Contract. We further confirm and declare that no agency commission or any payment which may be construed as an agency commission has been, or will be, paid and that the tender price does not include any such amount. We acknowledge the right of the Purchaser, if he finds to the contrary, to declare our Tender to be non-compliant and if the Contract has been awarded to declare the Contract null and void.
8. This Tender shall be governed by and construed in all respects according to the laws for the time being in force in India.

Witness: Signature: ----- Date ----- Name:----- Address -----	We are, Gentlemen, Yours faithfully, Signature: ----- Date ----- Name ----- For and on behalf of: ----- ----- Address -----
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Witness: Signature: ----- Date ----- Name:----- Address -----	Signature: ----- Date ----- Name ----- For and on behalf of: ----- ----- Address -----
---	---

Witness: Signature: ----- Date ----- Name:----- Address -----	Signature: ----- Date ----- Name ----- For and on behalf of: ----- ----- Address -----
---	---

*** Note:**

If the Tenderer comprises a partnership, joint venture or consortium:

- (a) The provisions marked with an asterisk are to be retained subject to deletion of the brackets and inapplicable descriptions (i.e. partnership, joint venture or consortium)
- (b) The liability of each member under the Tender, and under any contract formed upon its acceptance, will be joint and several;
- (c) An authorized representative of each member must sign the Tender.
- (d) Signature on the Form of Tender shall be witnessed and dated.
- (e) Duly notarized Power of Attorney issued in favour of authorized representative of each member of joint venture / consortium shall be attached
- f) Duly notarized, irrevocable Power of Attorney issued by each member of joint venture / consortium in favour of the leader of the joint venture / consortium for participation in this tender shall be attached.
- g) Power of Attorney of the authorized representative of each member of Joint venture / consortium who issues the Power of Attorney in favour of leader of the joint venture / consortium, with clear evidence that the person is authorized to issue such Power of Attorney shall be attached.

FORM OF TENDER - APPENDIX 1

CONTRACT CONDITIONS

1. Amount of Performance Guarantee (Clause 11 of GCC)
- 1.1 Performance Guarantee for Warranty Period 10% of the Contract Price in types and proportions of currencies in which the Contract Price is payable. In the event of variations during the execution of the Contract which results in payments to the supplier over and above the contract price, the Performance Guarantee shall be suitably adjusted.
- 1.2 Performance Guarantee for AMC 5% of the cost of Rail Grinding Machine in types and proportions of currencies in which the cost was paid.
2. Latest date for commencement of the work Date of issue of "Notice to Proceed"
3. Delivery period for Rail Grinding Machine (Clause-10 of SCC) 9 months from the date of issue of Notice to Proceed.
4. Commissioning of Rail Grinding Machine (Clause-12 of SCC) 30 days of arrival of Machine
5. Time for completion of contract (Clause 13 of SCC) 70 months from the date of issue of Notice to Proceed.
6. Tender Guarantee (Clause 13 of ITT). INR 1 million OR USD 22,000
7. Validity of Offer (Clause 14 of ITT). 180 days.
8. Warrantee (Clause 15 of GCC) 36 months after the receipt of machine at BMRCL's Depot at Bangalore and its successful testing and commissioning.
9. Price Adjustment / Escalation NIL.
10. Liquidated Damages for delayed delivery of consignment/stores (Clause 8 of GCC) 0.5% of the contract value per week's delay or part thereof beyond the specified date subject to maximum limit of 10% of contract value.
11. Resolution of Disputes (Clause 14 of GCC). Arbitration and conciliation Act – 1996 of India is applicable.
12. Payment Terms (Clause 26 of ITT) As per Clause No.26 of ITT
13. Place, date and time of Tender submission and Tender opening As per Clause-2 of NIT and Clause-16 of ITT

- | | | |
|-----|---|--|
| 14. | Place, date and time of Pre Tender meeting | As per Clause-6 of NIT |
| 15. | Last date up to which clarification on Tender documents can be sought | As per Clause-5 of ITT |
| 16. | Supplier's Name and Address** |
.....
..... |
| 17. | Purchaser's Name and Address | Bangalore Metro Rail Corporation Limited
3 rd Floor, BMTC Complex
K.H. Road, Shanthinagar
Bangalore- 560 027
Karnataka, India |

(** Tenderer to complete)

FORM OF TENDER - APPENDIX 2

Pricing Document (Tender Total and Bill of Quantities)

Name of the work: Supply of Rail Grinding Machine for Bangalore Metro Rail project.

TENDERER'S FINANCIAL OFFER

STATEMENT OF PRICES FOR SUPPLY

Sl. No.	Description of Goods	Unit	Quantity	Unit price CIF basis (port of dispatch to ICD Bangalore) (in Fig & Words)	Total price CIF basis (port of dispatch to ICD Bangalore) (in Fig & Words)
1.	Supply, installation, testing and commissioning of Rail Grinding Machine (16 Stones) for Standard Gauge track to technical specifications as specified in the Tender documents.	No.	1 (one)		
2.	Operation & Maintenance of New Rail Grinding Machine (16 Stones) inclusive of day-to-day maintenance of the equipment during warranty period (36 months) as specified in the Tender and supply of Grinding Stones for hours of grinding operation (hours of grinding operation to be furnished by the Tenderer).	Lumpsum	Lumpsum		
3.	Maintenance contract for a period of two years beyond warranty period as specified in clause 20 of Technical Specifications (excluding cost of spares covered under item-6 below)	Per Month	24 months (Twenty Four months)		
4.	Supply of Grinding Stones for Grinding Operation during two year maintenance period *	Per Stone	Quantity to be furnished by the Tenderer		
5.	Total Price for items 1 to 4 above				
6.	Recommended spare parts / assemblies for maintenance and operation of the machine for 2 years beyond the warranty period as specified in clause 28 of ITT. List of spare parts / assemblies to be furnished by the Tenderer with unit, quantity and unit price CIF in the respective columns.				

* Details / Specification of grinding stone such as type, dimensions, thickness, diameters etc., shelf life, quantity etc., to be quoted in item No. 4 above. The tenderer to furnish the estimated grinding hours for the anticipated traffic on the route. Requirement in number and size of grinding stone for the above hours of grinding operation will be mentioned. Rate to be mentioned per stone for calculation of cost.

1. Cost of recommended spare parts / assemblies as mentioned in Item-6 above, shall not be considered in the tender evaluation as given in Clause-25 of ITT
2. Separate purchase order will be issued for supply of recommended spare parts / assemblies as mentioned in Item-6 above in one or more installments.
3. If the Grinding hours furnished by the contractor against items 2 and 4 are found to be under estimated and more hours are required during actual operation, the excess cost thereof shall be on contractor's account.

FORM OF TENDER - APPENDIX -3

(TO BE SUBMITTED BY EACH CONSORTIUM MEMBER SEPARATELY)

**FORM OF DECLARATION FOR NON-ENGAGEMENT OF ANY AGENT,
MIDDLEMAN OR INTERMEDIARY**

We hereby jointly and severally declare that the submission of this Tender confirms that no agent, middleman or any intermediary has been, or will be engaged to provide any services, or any other item or work related to the award and performance of this Contract. We further confirm and declare that no agency commission or any payment which may be construed as an agency commission has been, or will be paid and that the tender price does not include any such amount. We acknowledge the right of the Employer, if he finds to the contrary, to declare our Tender to be non-compliant and if the Contract has been awarded to declare the Contract null and void.

Signature of the Tenderer

INITIAL FILTER CRITERIA

1. Turnover:

The Tenderer (Leader in case of JV) should have an average annual turnover of at least INR 120 Million per year in last five accounting years. Necessary documents in this regard, duly certified by chartered accountant shall be provided.

2. Experience:

- a) In the last five years from 1st January 2005 to 31st December 2009 the Tenderer should have carried out at least 20,000 Pass Kms (one pass over one Km of rail constitutes 1 Pass Km) of grinding operations and.
- b) The Tenderer should have supplied at least three Rail Grinding Machines of similar type (8 to 32 grinding stones) and make to any Metro / Railway system in the last five years from 1st January 2005 to 31st December 2009.

Note: For 2 above, only those experience credentials will be considered for which the financial participation of the Tenderer (or members in case of Consortium / JV) was more than 26% in the claimed work/project, **and**, he should have financial participation of at least 26% in the present JV also.

CHECKLIST FOR INITIAL FILTER

SN	Criteria	YES	NO	Ref
1	Has the Tenderer become bankrupt / insolvent in the last ten years ending 31.12.2009?			
2	Has the Tenderer been involved in litigation (an average of more than two litigations per year) in respect of execution of works in the last 10 years ending 31.12.2009?			
3	Has the Tenderer abandoned any contract work of similar nature in the last 10 years ending 31.12.2009?			
4	Has the Tenderer suspended any work for a period exceeding 6 months continuously?			
5	Has the Tenderer submitted CA certified turnover statement confirming meeting the criteria i.e. minimum annual average turnover of Rs 120 million for lead member?			
6	Does the Tenderer meet the experience criteria for: i. Supply of Rail Grinding Machine ii. Carrying out rail grinding operations and documentary evidences provided?			

Notes

1. Answer "YES" to any of the questions 1 to 4 and "NO" to any of the questions 5 & 6 will disqualify the Tenderer.
2. Serial number 1 to 4 applies to individual Tenderer or each member of consortium / JV in case of consortium / JV
3. Serial number 5 & 6 applies as per provisions made in Annexure-5 to ITT above.
4. In the "Ref" column, indicate the Tender Index reference, where the relevant documents are provided in the Technical Package.