	<b>ITER-India</b> (Institute For Plasma Research)	EOI Notice No.
		<b>I-I/EOI/LSP/02/2022-23</b>


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Sub Title	<b>Part-A(III) – Commercial Arrangement</b>

EOI No.	<b>I-I/EOI/LSP/02/2022-23</b>
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## **COMMERCIAL ARRANGEMENTS AND TERMS & CONDITIONS**

### **1 Commercial Arrangement**

**Please note that this tender is floated to invite bids for empanelling suitable Local Logistic Service Provider (LLSP) for all out & inbound shipments of ITER-India.**

- 1.1** The bids will be evaluated as per Essential Eligibility Criteria (EEC).
- 1.2** All the bidders who will successfully meet the EEC would be empanelled at ITER-India, IPR for providing logistics services as and when required.
- 1.3** All the empanelled Local Logistic Service Provider (LLSP) will have partnership agreement (Annex-III) with Daher International France. Hence, all the bidders are requested to go-through the Partnership Agreement attached herewith the tender. All bidders are to endorse the attached partnership agreement with their seal and sign while submitting the bid.
- 1.4** The following mechanism will be adopted for awarding task orders to the empanelled Local Logistic Service Provider (LLSP) for any shipment as and when requirement arises.

**Step-1.** On requirement of logistic service at ITER India, the empanelled LLSPs will be approached with all technical details of the cargo.

**Step-2.** On receipt of technical documents of cargo and Packing List, the empanelled LLSPs are required to submit Commercial Offer in the format which will be provided after empanelment.

**Step-3.** The Commercial Offer will be assessed and the task order will be awarded to Lowest qualified empanelled bidder (L1).

**Step-4.** The selected L1 bidder would require to submit the shipping plan of load and execute the shipment in coordination with Daher International France.

Disclaimer This Tender is an invitation to receive responses from eligible interested Bidders for empanelment as Logistics Service Provider (LSP) against various logistics requirement by ITER-India, IPR. ITER-India, IPR will empanel Bidders who fulfil the eligibility criteria and agree to the tender document. No contractual obligation whatsoever shall arise from this process.

### **2 Terms and Conditions**

Following are the Terms and Conditions to this tender. The TO/Frame work Contract resulting from this tender shall be governed by the terms and conditions given in this part. Bidders submitting the bid against this tender shall be deemed to have read and understood the same in total.

#### **2.1 Governing Law**

The Frame work Contract shall be construed and shall be governed by the laws of India and the LSP shall be required to comply with all the applicable laws with regard to performance of the Contract.

#### **2.2 Jurisdiction**

The Courts in Ahmedabad (Gujarat State, India) shall have exclusive jurisdiction to deal with and decide all disputes arising out of this Contract.

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### 2.3 Confidentiality and Secrecy

- a) All information, including but not limited to, specifications, drawings and other technical details that are imparted to the LSP, shall at all times, remain the absolute property of the Purchaser. The LSP shall not use them for purposes other than for which they are provided for, and shall treat all these documents as confidential. These shall not be reproduced in whole or in part for any other purpose.
- b) All information, including but not limited to, specifications, drawings and other technical details forming part of the tender or Contract/GeM Order/Task Order are property of the Purchaser and shall not be used for any other purpose, except for execution of the Contract.
- c) The LSP shall use his best endeavors to ensure that such information is not divulged to third parties except where needed for the performance of the Contract by the LSP with the prior consent of the Purchaser.
- d) A confidential/ non-disclosure agreement shall be signed between the LSP/Contractor and the Purchaser as per the attached **Annexure-B1**.
- e) In the event of any breach of this provision, the LSP shall indemnify the Purchaser from any loss, cost or damage or any other claims whatsoever from any parties claiming from or through him in respect of such breach

### 2.4 The LSP

#### a) Permits, Licenses or Approvals

The LSP shall, at his own cost and risk, acquire in its name all permits, approvals and/or licenses from all local, state, national or international government authorities or public service undertakings that are necessary for the performance of the Contract.

The Purchaser may provide, at the request of the LSP, such reasonable assistance in the form of issue of necessary certificates as required under law so as to allow the LSP to obtain any permits, licenses or approvals required by the laws of the country, which the LSP is required to obtain. However, no claim can be made by the LSP with respect to this clause. The LSP shall bear all cost, charges and expenses for the licenses, permits and approvals required to be obtained by him for proper and safe execution of the Order/Contract.

#### b) Compliance with law

The LSP shall comply with all laws in force in India and in the countries / states where the service as per the order is being rendered. The laws will include all local, state, national or other international laws that affect the performance of the Contract and bind upon the LSP. The LSP shall indemnify and hold harmless the Purchaser from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the LSP or its personnel, including the sub-contractors/Partners and their personnel.

#### c) LSP's representative

The LSP shall appoint the LSP's key representatives, who are responsible for execution of managerial, technical and commercial aspects of the Contract. The details of the LSP representatives including their roles and responsibilities shall be intimated to the Purchaser at the time of Kick-off meeting.

The LSP's representatives shall represent and act for the LSP at all times during the tenure of the Contract. All notices, instructions, information and all other communications to be given by the Purchaser to the LSP under the Frame work Contract shall be given to the LSP's representative(s), except as herein otherwise provided.

The LSP shall promptly inform the Purchaser if there is any change in the LSP's representative personnel or

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their designated roles towards this Frame work Contract. In the absence of timely information regarding change of personnel or their designated roles from the LSP, the resulting damages/liabilities if any, shall not be attributable to the Purchaser.

#### **d) General obligations**

The LSP shall be deemed to have carefully examined all tender/contract documents and obtained clarifications from the Purchaser where needed, the quantities and nature of work necessary for the completion of the Frame work Contract, all necessary information for risks, contingencies and other. The price quoted shall, except as otherwise provided, cover all his obligations under the Frame work Contract and all matters and things necessary for the complete and successful execution of the Frame work Contract. No claim on his part which may arise on account of non-examination or misunderstanding of the particulars and/or matter related to scope of work and/or Technical specifications, will, in any circumstances, be considered payable by the Purchaser.

#### **e) Sub-contracting, subletting or assignment of contract**


In case the LSP sublets, transfers or assigns any part of the Frame work Contract with the prior written consent of the Purchaser, all payments to the Sub-Contractor shall be the responsibility of the LSP and any requests from such Sub-Contractor shall not be entertained by the Purchaser.

The LSP shall be responsible for coordination of all activities with his sub-contractors and Partners

## **2.5 Guarantee**

### **a) Security Deposit (SD) or Performance Security**

- i. Within three weeks from the date of issuance of Task Order (TO), the LSP shall submit an irrevocable Bank Guarantee (BG) equal to 3% (three percent) of total TO value, subject to revision as per government guidelines issued time to time, on a non-judicial stamp paper, as "Security Deposit" towards satisfactory execution and performance of the Contract.
- ii. BG issuing bank is required to send confirmation through SFMS (Structured Financial Messaging System) on our SBI bank having IFSC Code: SBIN0001045 Account No: 30360272380 and provide intimation of the same on following E-mail ID: accounts@iterindia.in.
- iii. The Bank Guarantee shall remain valid till the expiry of (60) sixty days from the date of successful completion of ordered logistics service under the TO. If need arises, the LSP shall extend the validity of the Bank Guarantee for suitable period at his expenses.
- iv. If the LSP fails to provide the Security Deposit (SD), within the period as specified in clause no. i) above, such failure shall constitute a breach of Contract and the action as deemed fit may be initiated by the Purchaser.
- v. In the event, the LSP fails to fulfil any of the obligations under the TO/Frame Work Contract; the Purchaser shall have the right to encash the Security Deposit.
- vi. Where the LSP fails to maintain the delivery date/completion time, the LSP shall extend the validity of Bank Guarantee(s) suitably to cover the extended/expected delivery date or completion time, failing which, the Purchaser shall have the right to invoke the Bank Guarantee(s) without prejudice to the terms and conditions of the TO/ Frame work Contract.
- vii. Upon satisfactory execution of the TO/Frame work Contract, the original Bank Guarantee (s) shall be returned to the LSP on receipt of a request from the LSP.

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- viii. No interest shall be payable on security deposit amount till it is retained by Purchaser in terms of Contract.

## 2.6 Mode of Payment

- a) Payment shall be made through RTGS/NEFT in INR within 30 days from the date of against successful safe delivery at ITER organization site or any other destination as per Task Order and on receipt of invoice & other documents complete in all respects. Necessary mandate form for RTGS/NEFT will be provided at the time of Order. All bank charges, if applicable, shall be borne by LSP only.
- b) Release of payment shall be subject to receipt of following documents from LSP:
- The relevant original invoices in duplicate indicating the reference number of the TO/Contract, Partnership agreement and the reference of the Task Order number to which they refer along with any other supporting document for claimed amount.
  - Bill of Lading/Air way bill
  - A copy of Insurance Certificate.
  - A duly signed Shipment Delivery Certificate/CMR as per the packing list by the Consignee (ITER-Organization France) including all its annexes
  - Duly signed copy (ies) of Lorry Receipt or CMR for Road Transportation.
  - All copies of receipts duly signed by LSP with respect to charges claimed at actuals, if any.

### 2.6.1 Recovery of Sums Due

Wherever any claim for the payment of Liquidated Damages or loss suffered by the Purchaser arises in terms of money out of the TO against the LSP, the Purchaser shall be entitled to recover such sums from any due payment under the TO. In the event of this amount being insufficient, then the amount of damages or loss shall be recoverable from the payment that may become due, to the LSP from the TO or any other TO with the Purchaser (if any). Should this sum be not sufficient to cover the amount of damages or loss that may be recoverable, the LSP shall pay to the Purchaser on demand, amount due. Similarly if the Purchaser had made any claim against the LSP under TO or any other TO with the Purchaser, the payment of all sums payable under the TO to the LSP shall be withheld to the extent of claims due according to the Purchaser till such claims of the Purchaser are finally paid by the LSP, pending which the same will be adjusted. Notwithstanding the provision for recovery through adjustment the Purchaser shall be free to recover his claims from the LSP as per the terms of the Frame work Contract.

## 2.7 Change Management

- a) The Purchaser shall have the right to propose and order the Contractor/LSP from time to time during the execution of the Frame work Contract to make any change, modification, addition or deletion to, in or from the scope (hereinafter called "Change"), provided that such change does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the scope of work and the technical compatibility of the change envisaged with the nature of the work as specified in the Contract/TO.
- b) The Contractor/LSP may from time to time during its execution of the Frame work Contract propose to the Purchaser any change that the Contractor/LSP considers necessary or desirable. The Purchaser may at its discretion approve or reject any change proposed by the Contractor/LSP.

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- c) Notwithstanding Clause 2.7 a) and 2.7 b) above, no change made necessary because of any default of the Contractor/LSP in the performance of its obligations under the Frame work Contract /TO and/or for Contractor/LSP's convenience, shall be deemed to be a change and such change shall not result in any adjustment of the /TO price or the time for completion.
- d) The Contractor/LSP shall be paid for such additional procurement in the following manner:
  - i. If the required cost for change(s) proposed by the Purchaser is available in the TO, the same unit rate/rate shall be used as cost for such change.
  - ii. If the required item/cost for change(s) proposed by the Purchaser is not available in the TO, the Purchaser reserves the right to get the detailed break up with valid documentary evidence from the Contractor/LSP. Contractor/ LSP shall provide the details asked by the Purchaser within the stipulated time. Purchaser and Contractor/LSP shall mutually agree on such cost for change within reasonable time from the date of such change proposed by the Purchaser.

## 2.8 Delay, Extension & Postponement

### a) Extension of Time (due to LSP)

In the event, the completion time cannot be adhered to for any cause(s) attributable to the LSP, an application for extension of time with sufficient reasons shall be made by the LSP to the Purchaser. If failure, on the part of the LSP to deliver the items/completion of work in scheduled time shall have arisen from any causes which the Purchaser may find as reasonable ground for an extension of time (and his decision shall be final), he may allow such additional time as he may consider justified in the circumstances of the case through a formal notification. However, this extension shall be without prejudice to the Purchaser's right to recover Liquidated Damages (LD) as stipulated in clause 2.8 c) below. The LSP shall not become entitled to receive additional payment towards escalation or increased statutory levies (if any) beyond the contractual delivery date / completion time.

If the LSP fails to apply and secure extension of contract delivery date(s) (before effecting the dispatch of the items as in the Contract) acceptance of such services by the Purchaser, shall not entitle the LSP to claim payment on account of escalation or extra payment on account of increase of statutory levies that may be payable at higher rate after the expiry of Contractdelivery dates/Contract completion date will not be applicable or waiver of LD.

### b) Delay in delivery dates/completion time

Should the LSP fails to comply with contractual delivery dates/completion time and the reasons for such failures are attributed to the LSP, it shall be construed as a breach of the Contract and the Purchaser shall be entitled at his option to the following:-

- i. To receive the deliverable items under the Contract after prescribed date of delivery with the right to recover the Liquidated Damages as per the clause 2.8 c)
- ii. To terminate the total Contract, as per clause 2.12 in case the liquidated damages (as per clause 2.8 c) recovered from the LSP reaches maximum value. However, the Purchaser will inform in writing one month in advance to the LSP before exercising this clause.

### c) Liquidated Damages (LD)

If the LSP fails to organize transport and/or fails to deliver the items at FOS Sur Mer or any other place as per Task Order (TO) within the time specified in the Contract/Task Order and the delay or part thereof is attributable to the LSP, the Purchaser shall recover from the LSP as liquidated damages sum of half percent (0.5 percent) of the total Contract price for each calendar week of delay or part thereof that is attributable to the LSP. The total liquidated damages shall not exceed five percent (5%) of the total Contract/TO price.



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Items will be deemed to have been delivered only when all its item and component parts are also delivered. If certain items/components are not delivered in time, the items will be considered as delayed until such time as the missing parts are delivered.

However, the payment of liquidated damages shall not in any way relieve the LSP from any of its obligations to complete the supplies and work scope or from any other obligations and liabilities of the LSP under the Frame work Contract/TO.

#### **d) Force Majeure**

Force Majeure is herein defined as any cause which is beyond the control of the LSP or the Purchaser, as the case may be which they could not foresee or with a reasonable amount of diligence could not have foreseen and which substantially affects the performance of the Frame work Contract/TO, such as:

- i) Natural Phenomena, including but not limited to floods, droughts, earthquakes, and epidemics.
- ii) Acts of any Government, domestic or foreign including but not limited to war-declared or undeclared, priorities, quarantines, embargoes.
- iii) Other Phenomena including but not limited to hostilities riots, civil commotion and declared lock-out in LSP's works.
- iv) Provided that Parties shall not be liable for delays in performing its obligations resulting from any Force Majeure causes as referred to/or defined above. The date of completion will subject to hereinafter provided, be extended by reasonable time even though such cause may occur after LSPs performance of his obligations has been delayed for other cause. However, the LSP is not entitled to increase in statutory levies that has come into force during the extended delivery period.

## **2.9 Liability**

Purchaser shall not be liable for any loss and/or damage sustained by the appointed LSP in performance of the Frame work Contract/TO except in the event of wilful misconduct or gross negligence on the part of the Requesting Party.

The appointed LSP shall be liable and accountable for any direct loss or damage and death or personal injury caused by itself in performance of the Frame work Contract/TO including in the event of subcontracting or partnership. ITER-India shall not be liable and accountable for any act or default on the part of the appointed LSP in performance of the Agreement.

The appointed LSP shall provide compensation in the event of any action, claim or proceeding brought against ITER-India by a third party as a result of damage caused by the appointed LSP in performance of the Frame work Contract/TO.

## **2.10 Indemnity**


The appointed LSP shall indemnify and keep indemnified ITER-India all losses, claims etc. arising out of any of his acts or out of the acts of his agents or associates or servants during the currency of the Frame work Contract/TO.

## **2.11 Settlement of disputes and Arbitration**

### **a) Settlement of Disputes**

Any disputes or difference arising out of or in connection with the Frame work Contract/TO shall be to the extent possible settled amicably between the parties involving management from either side within sixty



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(60) days. If amicable settlement cannot be reached within sixty (60) days, then all disputed issues shall be settled by arbitration as per clause [2.11 b\)](#)

Notwithstanding any reference to the arbitration as herein before provided (i) the Parties shall continue to perform their respective obligations under the Frame work Contract/TO with due diligence, unless they otherwise agree, (ii) the Purchaser shall continue to pay any undisputed amount to the LSP.

#### **b) Arbitration**

All disputes or differences arising out of or in connection with the Frame work Contract/TO including the one connected with the validity of the Contract or any part thereof, should be settled by bilateral discussions.

The Arbitration shall be conducted, in English, by two Arbitrators, one each nominated by the Purchaser and LSP. In case, the said Arbitrators are not able to settle the dispute by themselves, the matter shall be referred to the Arbitrator mutually nominated by the Purchaser and the LSP and whose decision shall be final and binding on both the parties. The sole Arbitrator shall have its seat in Ahmedabad or such other place in India as may be mutually agreed to between the parties. The arbitration proceedings shall be conducted under the Indian Arbitration and Conciliation (Amendment) Act, 2015 and the award of such Arbitration Tribunal shall be enforceable in Indian Courts only. The Courts of Ahmedabad, Gujarat shall only have exclusive jurisdiction to deal with and decide any legal or dispute arising out of the Contract.

Each party shall bear its own cost of preparing and presenting its case. The cost of arbitration including the fees and expenses shall be shared equally by the parties, unless otherwise awarded by the sole arbitrator.

The parties shall continue to perform their respective obligations under the Frame work Contract/TO during the pendency of the arbitration proceedings except in so far as such obligations are the subject matter of the said arbitration proceedings.

### **2.12 Cancellation/Termination of Contract**

#### **a) Termination of Contract for default**

The Purchaser may, without prejudice to any other remedy for breach of Frame work Contract/TO, by written notice of default sent to the LSP, terminate the Contract in whole or in part in circumstance detailed hereunder:

- i. If the LSP fails to transport any or all of the deliverable items, within the time period(s) specified in the TO or any extension thereof granted by the Purchaser or within the period (10 weeks) till which the maximum LD amount is reached.
- ii. If the LSP fails to perform any other obligation(s) under the TO within the period specified in the Contract or any extension thereof granted by the Purchaser

In the event the Purchaser terminates the TO/Frame work Contract in whole or in part, the Purchaser may take recourse to any one or more of the following actions. However, the LSP shall continue to perform the Contract to the extent not terminated

Recovery of Liquidated Damages (LD) as per the Frame work Contract/TO

The Purchaser may get the work done, upon such terms and in such manner as it deems appropriate, services similar to those covered under the terminated Frame work Contract/TO at the risk and cost of the LSP.

Forfeiture of Security Deposit/Performance Security

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**b) Termination of Contract for insolvency**

If the LSP becomes bankrupt or otherwise insolvent or goes into liquidation, the Purchaser may, at any time, terminate the Frame work Contract/TO, by giving a written notice to the LSP, without compensation to the LSP, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Purchaser.

**c) Termination of Contract for convenience**

After placement of Frame work Contract/TO, there may be some unforeseen situations compelling the purchaser to cancel the Frame work Contract/TO. In such a case, the purchaser will send a suitable notice at least one month in advance to the LSP for cancellation of the Frame work Contract/TO, in whole or in part, for Purchaser's convenience, inter alia, indicating the date with effect from which the termination is to become effective. Depending on the merits of the case, the Purchaser suitably compensates the LSP on mutually agreed terms for terminating the Frame work Contract/TO.

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### **Annexure-B1: Non-Disclosure Agreement**

CONTRACTOR agrees following points to maintain non-disclosure of proprietary and/or confidential information that are presented/referred in the ITER-India Contract for “-----  
-----” vide Contract No.\_\_\_\_\_.

1. Any information from the referred documents will not be disclosed to any other third party or person for making any kind of references without the prior permissions from ITER-India.
2. In case information are to be revealed to a sub-contractor/ consortium partner, CONTRACTOR will sign similar ‘Mutual Non-Disclosure Agreement’ with the sub-contractor/ consortium partner and will submit a copy of the same to ITER-India for conforming the compliance of this ‘Mutual Non-Disclosure Agreement’.
3. Any information from the referred documents of this tender will not be used or published for any purposes other than necessary for the present Contract.

CONTRACTOR will take all necessary steps to protect the secrecy of the proprietary and/or confidential Information provided along with the Contract.

Date:

CONTRACTOR

(Name and signature of responsible officer with SEAL)