

SPECIAL PURCHASE CONDITIONS

(SPC)

PROJECT: ALUMINA 5TH STREAM REFINERY

OWNER / PURCHASER: National Aluminium Company Ltd. (Nalco)

CONSULTANT: thyssenkrupp Industrial Solutions (India)
Private Limited
(tkIS-India)

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RFQ (MR) Number: 6695-PPM-G00-EC-0041
Date: 01.01.2025
For: DCS & PLC System

SPECIAL PURCHASE CONDITIONS (SPC)

1. INTRODUCTION

1.1. M/s National Aluminium Company Limited (Nalco) having its Corporate Office at Bhubaneswar, Odisha is a premier Public Sector Undertaking and a Navaratna Company, under the administrative control of Ministry of Mines, Government of India owns and operates a large integrated Mines-Alumina-Aluminium complex in India.

As a part of its growth plan Nalco is planning to set up one more Stream (5th Stream) in its Alumina Refinery at Damanjodi. The stream capacity would be 1.0 MTPA.

At port facilities, Visakhapatnam one Alumina silo of capacity 25000 MT and one Caustic Soda tank of capacity 5000 MT shall be constructed for export of Alumina and import of caustic soda liquor respectively.

1.2. Nalco (i.e., the Owner) has appointed thyssenkrupp Industrial Solutions (India) Private Limited (tkIS-India) (Formerly Uhde India Private Limited), as their EPCM Consultant & PMC for LSTK Packages (hereafter referred to as consultant or tkIS India). The technology for the Alumina refinery expansion is being provided by M/s RTAIL (Rio-Tinto Alcan Limited).

1.3. thyssenkrupp Industrial Solutions (India) Private Limited, (i.e., the Consultant) on behalf of National Aluminium Company Ltd. (Nalco) invites bids against the above RFQ. These Special Purchase Conditions (SPC) are being issued by thyssenkrupp Industrial Solutions (India) Pvt. Ltd., for and on behalf of M/s. National Aluminium Company Ltd (Nalco) i.e., the Owner. These SPC and the documents mentioned in the Annexures to these SPC (along with other documents listed in the RFQ such as Nalco's General Purchase Conditions, Price Schedule Formats, Vendor Co-ordination Procedure etc.) are a part of the above referred RFQ and may become a part of any Purchase Order that might result from submission of a Bid in response to this RFQ. All Purchase Orders will be issued by Nalco and all payments will be made only by Nalco.

2. PAYMENT TERMS

In partial modification to the payment terms as mentioned in the General Purchase Conditions, the following payment terms shall be applicable.

Interest Bearing Advance

Interest bearing recoverable advance shall be paid to the vendor/supplier, if requested by them, in two installments up to 15% of the order value (excluding taxes & duties), i.e. 10% in 1st installment & 5% in 2nd installment after the following conditions have been fulfilled:

- I. Submission of Contract cum Performance Bank Guarantee as per Contract Terms by vendor/supplier.

- II. Vendor/supplier shall submit Bank Guarantee(s) for an amount equivalent to 110% of the advance amount valid up to the delivery period plus one-month from any bank as per list provided by the NALCO and in a format acceptable to the NALCO.
- III. Second installment of 5% shall be paid on submission of critical drawings as stipulated in the RFQ documents. If it is found that, the advance has been utilized by the vendor/supplier in whole or part for any other purpose; the NALCO may at its discretion forthwith recall the entire advance and without prejudice to any other right or remedy available to the NALCO, recover the same by recourse to the Bank Guarantee(s).
- IV. The vendor/supplier shall at the request of the NALCO suitably extend the validity of the Bank Guarantee(s) for such period as may be required.
- V. Vendor/supplier may submit multiple BGs each BG should be not less than 25 % of the advance amount for facilitating release of BG amount equivalent to advance realized from supplier invoice.
- VI. Recovery of advance paid shall start from 1st Invoice
- VII. Depending upon the percentage of advance opted by the vendor, the recovery shall be made in such a manner that the total advance is recovered when 80% of the Total Order Value gets paid. The percentage of recovery from invoices for advance shall be decided as per given formula:
$$\% \text{ Recovery} = (\% \text{ Advance}/80) \times 100$$
- VIII. The interest rate of such advance shall be variable. For the financial year 2024-25, the interest rate is **9.65%** which is worked out based on MCLR rate of SBI as on April'2024 for one-year tenor plus 1%. For subsequent financial years, the interest rate for the balance amount of advance will be MCLR (1-year tenor) rate of SBI declared in the month of April of that financial year plus 1%.
- IX. No loading shall be done on account of payment of advance.

Payment Terms:

100% payment along with GST shall be payable as per following break up:

(i) Supply

100% payment along with taxes & duties shall be payable as per following break up:

- i. 80% payment on pro-rata basis against dispatch documents (along with Inspection release order issued by consultant certifying the clearance of goods for shipment) received through bank, along with 100% GST on Order Value. The dispatch documents shall include the Vendor's invoice, Packing List, Delivery challan, Lorry Receipt and any other document stipulated in the Purchase Order.
- ii. 5% payment against receipt of all final technical documents and drawings in the required number of copies, as per the vendor data requirement specified in the technical specifications enclosed with the Purchase Order.
- iii. 10% shall be paid within 30 days of receipt and acceptance of materials at NALCO's site, duly certified by the Engineer-In- Charge.
- iv. Balance 5% against successful commissioning and Performance Guarantee test of the equipment and completion of supervision, duly certified by EIC.

(ii) Site Supervision Services

100% along with applicable GST in 3 to 4 stages against defined milestone against submission of invoice duly certified by NALCO.

Notes:

- (a) TDS shall be deducted as per provision of Income tax act.
- (b) Cess under BOCW act (Building and other construction workers act 1996) shall be borne by the vendor/supplier.
- (c) Goods & Services Tax (GST) as applicable shall be payable extra. The vendor will have to raise invoice for the applicable GST amount as per approved format for claiming the GST paid.

NALCO, being Buyer (under Section 194Q inserted in the Income Tax Act, 1961 vide Finance Act 2021) having total sales, gross receipts, or turnover from business above Rupees Ten Crores during the last Financial Year, will deduct TDS under Section 194Q, w.e.f. 01.07.2021, at the prescribed rate of 0.1% on the purchase value of any goods, aggregate of which is exceeding the threshold limit of Rs.50 Lakhs in a Financial year.

Accordingly, Vendors/Sellers are advised not to take any action to collect tax at source under section 206C(1H) of the Act w.e.f. 01.07.2021, in case the provisions of section are applicable to you.

The above is as per the status and is subject to modification(s) based on amendments/ notifications under Income Tax Act, 1961.

Vendors / Contractors categorized/ designated as “specified person” under Section 206AB of Income Tax Act, 1961 shall be liable for TDS at higher rate as provided under the said section, by NALCO. So, vendors/ contractors are advised to submit self-certified copies of Income Tax Return (ITR) for each of the two previous years for which due date for filing of ITR has expired, along with the invoice/ bill so as to facilitate NALCO verify the applicability of Section 206AB.

Performance Bank Guarantee:

The Vendor shall furnish a Contract Performance Bank Guarantee, for 5% of the total order value (excluding GST) as per NALCO’s format, executed by any of the banks listed in the Appendix enclosed with the ITB. The Vendor shall submit the CPBG within 21 days of placement of BOA. This CPBG shall be valid for a period of three months beyond expiry of the contractual guarantee period of 12 months from the date of successful commissioning of the Plant or 30 months from the date of last dispatch, whichever is earlier.

Each page of the Bank Guarantee must be stamped & signed by the authorized signatory(ies) of the Bank. Corrections, if any, must also be initialled by the authorized signatory(ies) of the Bank. The Bank is required to send a copy of the Bank Guarantee(s) in confirmation directly to the OWNER and for BG confirmation, the issuing bank can adopt SFMS (Structured Financial Messaging System) facility in favour of OWNER’s Payee bank. In case CPBG gets reduced / deducted for reasons of non-fulfilment of any contractual obligation then the reduction / deduction shall be done at the time of settlement.

General Notes:

1. All dispatches shall be made only after receipt of Inspection Release Order from Consultant.
2. For all Indian Vendors, the CGST & SGST or IGST shall be released only on receipt of tax compliant GST Invoice / document, against which Nalco shall be able to take the Input Tax Credit (ITC) in terms of GST provisions.
3. All Bank guarantees will be issued directly to Nalco – Bhubaneswar by the Bank and Vendor shall enclose copy of the same along with invoice. Banks shall be informed to send a separate confirmation immediately on request Nalco to expedite processing at Nalco's end.
4. Billing schedule (wherever applicable as per PO) shall be submitted to Nalco and tkIS India by the vendor for approval within 45 days from the date of Brief Order of Acceptance / Purchase Order (whichever is issued earlier) wherever specified in the Purchase Order. No partial dispatch or pro-rata payment shall be made without the approval of billing schedule.
5. ~~Nalco shall establish the Letter of Credit only on receipt of Vendor's acceptance to Nalco's Brief Order of Acceptance (BOA) and on submission of 10% PBG by Vendor to Nalco within 21 days of BOA.~~ (Not applicable for this RFQ)
6. All Bank Guarantees shall be sent to the following address:
Group General Manager (Matls)
National Aluminium Company Limited
Nalco Corporate Office,
P/1, Nayapalli, Bhubaneswar – 751 013
Odisha, India.
Mobile- 9437025102
- (i) "Order Value" or "Total Order Value" means total contract value exclusive of taxes and duties in India (Except Gem Contract).
- (ii) For all Purchase Orders placed on Indian vendors, the E-Way bill shall be the responsibility of the vendor. For all Purchase Orders placed on Indian vendors, the vendor shall quote the Firm freight charges up to Nalco's Site at Damanjodi / Visakhapatnam (as applicable). If any route survey is to be carried out for any consignment, then the vendor shall carry out the same at his own cost only.
7. Bidder to note wherever there is a requirement of equipment / item pertaining to the Vizag Port facilities of NALCO as mentioned in ITB, separate order will be placed on the successful Bidder and accordingly the successful Bidder needs to raise the separate invoice for enabling Purchaser to claim the ITC (Input Tax Credit)
8. All the materials to be supplied by the vendor to NALCO against the order which will be handed over to NALCO upon completion of the package will be covered under the MCE policy taken by NALCO. However, the vendor will take insurance for his materials and his personnel used for execution of the work.

For materials to be supplied under NALCO's Insurance policy, the vendor has to give a prior intimation on the following to the insurance company in the e-mail ID amaresh.rout@orientalinsurance.co.in with a copy to storesref_osrd@nalcoindia.co.in:

- (i) Copy of Invoice
- (ii) Vehicle details
- (iii) LR number

3. DELETED

4. TAXES AND DUTIES IN INDIA

The taxes & duties shall as per the payment terms mentioned in this document / Purchase Order. The following provisions of GST shall be applicable:

4.1. GOODS & SERVICES TAX

- 4.1.1. Rate variation in Taxes and any new promulgated taxes after last date of the submission of price bid only on the goods and/or services applicable to invoices raised on NALCO within the contractual delivery date / contractual completion period (including extension approved if any) shall be on NALCO's Account against submission of documentary evidence.
- 4.1.2. Further, in case of delay in delivery of goods and/or services, any upward rate variation in Taxes and any new promulgated taxes imposed after the contractual delivery date / contractual completion period shall be to the Vendor's Account.
- 4.1.3. It would be the responsibility of the Vendor to get the registration with the respective Tax authorities under provision of GST. Any taxes being charged by the Vendors would be claimed by issuing proper TAX Invoice in a GSTN (Goods & Services Tax Network) acceptable format indicating details elements of all taxes charged and necessary requirements as prescribed under the respective tax laws and also to mention his correct and valid GSTN number (GSTIN) along with NALCO's GSTN number as applicable for particular supply on all invoices raised on NALCO under GST Regime.
- 4.1.4. The Vendor would be liable to reimburse or make good of any loss/claim by NALCO towards tax credit rejected / disallowed by any tax authorities due to non-deposit of taxes or non updation of the data in GSTIN network or non-filing of returns or non-compliance of tax laws by the Vendor by issuance of suitable credit note to NALCO. In case, contractor does not issue credit note to NALCO, NALCO would be constrained to recover the amount including interest payable along with Statutory levy/Tax, if any, payable on such recovery.
- 4.1.5. Tax element on any Debit Note / Supplementary invoice, raised by the Vendor will be reimbursed by NALCO as long as the same is within the permissible time limit as per the respective taxation laws and also permissible under the Purchase Order terms and conditions. Vendors to ensure that such debit Notes are uploaded while filing the Statutory returns as may be prescribed from time to time.

- 4.1.6. The Vendor will be under obligation for quoting/charging correct rate of tax as prescribed under the respective Tax Laws. Further the Vendor shall avail and pass on benefits of all exemptions/concessions/benefits/waiver or any other benefits of similar nature or kind available under the Tax Laws. In no case, differential Tax Claims due to wrong classification of goods and/or services or understanding of law or rules or regulations or any other reasons of similar nature shall be entertained by NALCO.
- 4.1.7. In case NALCO's Input Tax Credit (ITC) is rejected on account of wrong levy of tax i.e. payment of Integrated Tax in place of Central Tax+ State/Union Territory Tax or vice versa, the Vendor is liable to make good the loss suffered by NALCO by issuance of suitable credit note to NALCO. In case Vendor does not issue credit note to NALCO, NALCO would be constrained to recover the amount including interest payable along with Statutory levy, if any, payable on such recovery.
- 4.1.8. NALCO shall reimburse GST levied as per invoice issued by the Vendor as prescribed under section 46 of the CGST Rules 2017 and respective states Act and Rules.
- 4.1.9. To enable NALCO to avail ITC, the Vendor shall furnish/submit any and all certificates, documents and declarations as are required by NALCO to avail of the ITC with respect to GST reimbursed by NALCO on materials sold to NALCO.
- 4.1.10. The HSN / SAC Code under which the goods/service will fall should be clearly mentioned along with the Rate at the time of submission of invoice for releasing payment.
- 4.1.11. In case, NALCO is not able to take Input Tax Credit due to any noncompliance/default/negligence of the Contractor, the same shall be recovered from the pending bills/dues (including any security available with NALCO).
- 4.1.12. Vendor shall be responsible to indemnify NALCO for any loss, direct or implied, accrued to NALCO on account of Vendor's failure to discharge his statutory liabilities like paying taxes on time, filling appropriate returns within the prescribed time etc.
- 4.1.13. Any benefit by way of reduction in rate of tax or increase in input tax credit arising due to introduction of GST shall be passed on to NALCO through reduction in supply value by way of commensurate reduction in Bill value.
- 4.1.14. The Vendor shall ensure that all the required documents as per the GST regulations are furnished to NALCO with their invoices failing which NALCO shall not make any reimbursement of such GST.
- 4.1.15. The applicable GST for site supervision training services by Foreign Service Provider shall be borne by NALCO on reverse charge basis.
- 4.1.16. Nalco's GST numbers are as follows:

Damanjodi Refinery: 21AAACN7449M1Z9
Vizag: 37AAACN7449M1ZW

4.2. DEDUCTION OF INCOME TAX AND TAX DEDUCTION AT SOURCE (TDS) UNDER GST

- 4.2.1. Income Tax as applicable at the prevailing rate on the gross amount billed shall be deducted from the Vendor's bills (wherever such deduction is applicable).
- 4.2.2. As per section 51 of CGST Act 2017, to read with Notification No. 33/2017-Central Tax, dated 15.09.2017, NALCO shall deduct at source @ 1% CGST & @ 1% SGST for intra state transactions and @2% IGST in the case of interstate transactions from the payment made and credited to the supplier of taxable goods and/or services, provided if the contract value is more than Rs.2,50,000/-. This deduction is applicable from the date to be notified by the Government. The value of supply shall be taken as the amount excluding CGST, SGST, UGST and Cess indicated in the invoice.

4.3. INCOME TAX

- 4.3.1. The Vendor shall be exclusively responsible and liable to pay taxes on income comprised in all or any payments arising out of the Purchase Order, whether payable/paid in India or in any other jurisdiction and quoted prices shall be inclusive of Income Tax.
- 4.3.2. Income tax (if applicable) shall be deductible at source by NALCO on all payments to be made to the Vendor. However, for payments (for services) made to Foreign Bidders in Foreign Currency, the applicable Withholding Tax shall be borne by NALCO on grossing up basis. As per extant provisions of Income Tax Act and Rules made there under following documents are mandatory for this purpose (a) Tax Residency Certificate (TRC) issued by the competent authority of the country of residence of the Vendor (b) Form 10F as described in Income Tax Rules, 1962 and (c) Permanent Account Number (PAN) or a declaration in specified format in lieu of Permanent Account Number (PAN).
- 4.3.3. The Indian Income Tax Act and rules made there under contains provisions permitting deduction of tax at a lesser rate if the Vendor is able to justify to the Income Tax Authorities such lesser rate of deduction. However, a deduction once made has to be deposited by the OWNER with the Income Tax Authorities in India and will not be adjustable by the OWNER. It is therefore in the interest of the Vendor that prior to release of any payment due to the Vendor under the Purchase Order, the Vendor obtains, from the relevant Income Tax Authorities in India, a certificate specifying the rate of deduction/withholding of Income tax at source, failing which, payment to the Vendor shall be made by the Nalco after Withholding/deduction at the highest rate as may be applicable to the non-resident contractors as per Provisions of Income Tax Act, 1961.

4.4. NEW TAX AND STATUTORY VARIATION IN TAXES AND DUTIES

- 4.4.1. If any new taxes or duties (including any increase in rate of any existing taxes or duties) are levied in India after the date of submission of bids/ revised price bids (whichever is later) and within the Contractual delivery / completion period or any extension thereof by NALCO, on any payments due to the Vendor under the Purchase Order, other than tax on income, wealth or profits of the Vendor, the OWNER shall

reimburse the Vendor the amount of such taxes or duties lawfully paid and borne by the Vendor against proof of payment.

- 4.4.2. If there is any increase in taxes or duties or if any new taxes or duties are levied in India after the contractual delivery / completion period, such increase in taxes or duties or such new taxes or duties shall be to the Vendor's account only

5. DELAYED DELIVERIES

- 5.1. The clauses related to delayed deliveries shall be as mentioned in Nalco's General Purchase Conditions. **The % of Price Reduction mentioned in Clause No. 23 (i) of GPC has been revised to ½ % of Total Order Value per week of delay (Excl GST) or part thereof, subject to a maximum of 5% of Total Order Value (Excl GST). The date of last Lorry Receipt (LR) shall be considered as the date of delivery for the purpose of PRS.**
- 5.2. Non-acceptance or deviation to Price Reduction Schedule (PRS) clause is a rejection criteria.
- 5.3. For the purpose of calculating the PRS for delayed delivery, the contractual delivery date shall be the date of last Lorry Receipt (for Indian Vendors), and the date of last Bill of Lading or Air Way Bill (as applicable) -for foreign vendors.

6. SHIPPING WEIGHT

Actual weight/ volume shall not exceed the estimated weight/ volume by bidder. In case actual weight/ volume exceeds, additional cost of shipping on this account shall be borne by the bidder. Freight quoted by Bidder shall be firm. Bidder shall intimate in advance to the Owner, Consultant & Owner's authorised Freight Forwarder / Logistic Contractor, prior despatch of equipment/item from their works.

7. VENDOR'S/SUPPLIER'S DEFAULT

Any forfeiture / recovery made by the NALCO due to any of "vendor's/supplier's default" shall be with applicable GST at the time of settlement.

8. ANTI PROFITEERING PROVISIONS

In compliance to GST Act, anti-profiteering provisions mandates that any reduction in tax rates or benefits of input tax credits shall be passed on to the consumer by way of commensurate reduction in prices. Indigenous bidders to take note of the same and pass on such benefits to NALCO while quoting their price as well as during execution of the contract.

Supplier / Contractor needs to submit a certificate under Section 171 of CGST Act, 2017, before or at the time of submitting final bill against the Contract/Work Order/Purchase Order/BOA to the effect that anti profiteering measure has been complied with. The certificate needs to contain the following: "Commensurate benefit of reduction in rate of tax or benefit of input tax credit in the BOA/Purchase Order/Work Order/Contract No.....dated.....has been passed on to NALCO".

9. ARBITRATION & DISPUTES

Arbitration & Disputes, if any, shall be dealt in accordance to "Guidelines for Arbitration and Mediation in Contracts of Domestic Public Procurement" issued by Department of Expenditure via OM No. F.1/2/2024-PPD dated 03.06.2024, as amended from time to time.

10. INDIRECT OR CONSEQUENTIAL LOSS

Neither party shall be liable to the other for any and all consequential, special, speculative, indirect and incidental damages including but not limited to loss of use, loss of profits or product, for extra cost of producing product, for extra cost of capital, or for failure to achieve or delay in achieving anticipated profits or products.

11. LIMITATION OF LIABILITY

The maximum liability shall be 100 % (Hundred Percentage) of the total order value. The total maximum liability shall be exclusive of patent infringement & indemnity.

12. Force Majeure:

Any delays in or failure of the performance of either parties thereto shall not constitute default here under or give rise to any claims for damages, if any, to the extent such delays or failure of performance caused by occurrences such as acts of God or the public enemy, expropriation or confiscation of facilities by Government authority, compliance with any order or request of any Government authorities, act of war rebellion, sabotage, fire, floods, explosions, riots or illegal strikes, epidemics, pandemics whether known or unknown occurring at any time during the execution of the Contract, provided always that such occurrence result in impossibility of performances of the contract. Only events of Force Majeure which impedes the execution of the contract at the time of its occurrence shall be taken into cognizance.

ANNEXURE 1 TO SPC
PRICE REDUCTION CLAUSE FOR NOT MEETING GUARANTEED PERFORMANCE PARAMETERS

**Price Reduction Clause for not meeting Guaranteed Performance
Parameters is Not Applicable for this RFQ (MR).**
