

# **Terms & Conditions of Spot e-Auction Scheme**

## **Objective:**

Coal distribution through e-Auction has been introduced with a view to provide access to Coal for such Buyers who are not able to source Coal through the available institutional mechanism. In the long run it is expected that e-Auction may help in creating spot as well as future market of Coal in the country.

The purpose of periodic e-Auction is to provide equal opportunity to purchase Coal through single window service to all intending Buyers.

E - Auction has been introduced to facilitate across the country wide ranging access to book Coal on-line for all sections of Coal Buyers enabling them to buy Coal through a simple, transparent and consumer friendly system of marketing and distribution of Coal.

## **Terms & Conditions**

### **1. Eligibility:**

1.1 Any Indian Buyer (viz. individual, partnership firm, companies etc.) can participate in e-Auction for procurement of Coal.

1.2 Before the bid is accepted, the bidder shall pay in full all sums of money due to the Seller in regard to any previous supply of Coal to the bidder. If there are any arrears the Seller shall be entitled not to consider such bids.

### **2. Registration:**

2.1 Before participation in the e-Auction, a prospective Buyer shall be required to get itself / himself registered with the Service Provider appointed by the Seller for the purpose, by submitting an application in the prescribed format available on the Website of the respective Service Providers. The application shall be made along with the required documents such as copy of Income Tax return (latest), PAN Number, GST Registration Certificate, SSI Registration, Trade License, if applicable, Passport size photograph, etc. as prescribed by the Service Provider. Registration can be done either online, or at any of the front offices of the Service Provider.

2.2 After the registration, all-prospective Buyers will have an auto generated "Unique User ID" & a "password" based on which they can log in. Details of the registration process with the Service Provider will be available in their respective websites.

2.3 The Service Provider shall issue "Photo Identity Card" to their registered Bidders duly authenticating the identity & signature, indicating a "Unique Registration Number" allotted to them. The "Unique registration number" of the registered Bidders shall be communicated to the Seller by the Service Provider.

2.4 Only one registration will be done against one PAN number. However, based on more than one independent valid GST registration, more than one registration against a PAN Number can be considered. In such cases, the details of valid sales tax registration will be indicated in each "Photo Identity Card". In the event of one PAN number and one GST registration number for a bidder having multiple units in one state, more than one registration will be allowed based on independent valid excise registration number or factory license for such units and the same will be indicated in each "Photo Identity Card".

2.5 All Buyers having been registered with the Service Providers shall also have to furnish non-interest-bearing Earnest Money Deposit (EMD) at the rate of Rs. Rs.500 per tonnes for Coal with the Service Provider. This EMD shall not be specific for the Seller and shall be available with the Service Provider for participation in the e-Auction across the Seller, as long as the required amount of EMD is available in the bidders a/c. with the Service Provider.

### 3. **Notification:**

3.1 Seller would draw program for conducting at least one e-auction per month and notify the same, minimum 7(seven) days in advance, through display on the Seller's notice board and putting the same on the Seller's websites for wide publicity. The program will be intimated to the Service Providers accordingly for hoisting the same on their websites also.

3.2 The minimum bid quantity & bid multiple would be 50 (fifty) tonnes for the Road mode. The minimum bid quantity & bid multiple would be 1 (one) rake for Rail mode, where 1 Rake = 2500 Metric Tonnes.

3.3 **Mode Of Delivery:** ROAD MODE - Available from BETPL's depot at JALALGARH BIHAR (PURNIA) & SAHARANPUR (U.P). ALSO AVAILABLE AT KATRA, UP (NEAR AYODHYA, UP) & NARAYANPUR ANANT, MUZZAFARPUR, BIHAR. RAILMODE - (min order quantity of 2500 mt or 1 Rake) (1 Rake is APPROX 2500-2600 MT). from Ex-Siding (ASSAM) railway loading stations to customer's preferred unloading station. Unloading point can be in any part of India as per customer's preference subject to available railway sidings. **For Road mode auctions, the seller would take 2 working days' time for approval of the bids.**

3.4 **FOR RAIL MODE ONLY-** It shall be mandatory for Buyer to mention their choice of unloading station (Both City and State inputs are required) the next 2 working days after the conclusion of the e-auction. Arrangements shall be done as per the availability of coal unloading railway sidings. No changes shall be permitted after the issuance of railways NOC in favor of the seller.

- a) BETPL will arrange the rake as per requirement of the buyer.
- b) The rake will be arranged in 10 to 15 days' time basis completion of procedure for procuring necessary departmental and governmental NOC'S & buyer shall be required to disclose their unloading point no later than the next two working day (after the auction gets concluded) and arrangements shall be done accordingly subject to availability of loading & unloading train sidings.
- c) The buyer winning 2500 and its multiple must declare rake siding location details to the seller within 2 working days from the completion of the auction
- d) Buyers bidding in Rail mode & not declaring within 2 working days about the destination shall be understood to be taking the allocated coal through self-arrangement of rake at BETPL's loading location or shall wait till BETPL's arranges rake for customer's preferred location subject to availability.

## 4 **Bidding Process**

4.1 The registered Bidders shall be required to record their acceptance after login, of the Terms & Conditions of the e-Auction before participation in the actual Bidding Process.

4.2 Before participating in e-Auction, Bidders are to satisfy themselves with the quality of Coal being offered from a source.

4.3 Prospective Bidders are entitled to Bid for the quantity to the extent of amount of EMD which is available with the Service Provider in the Bidder's account at the time of Bidding.

4.4 The Buyers while Bidding shall quote their "Bid price" per tonne in Indian Rupee as base Coal price on **FOB**- ASSAM LOADING STATIONS for Rail mode and **FOR-AT** Jalalgarh (Bihar) / Saharanpur (U.P) Ex - Depot, ALSO AVAILABLE AT KATRA, UP (NEAR AYODHYA, UP) & NARAYANPUR ANANT, MUZZAFARPUR, BIHAR & Other Unloading Stations (PAN INDIA) for Road mode, exclusive of other charges like statutory levies, surface transportation charges, sizing/beneficiation charges, taxes, cess, royalty, SED, & any other charges as will be applicable at the time of delivery. These charges as well as freight etc. shall be on the Buyers' account. (RATE CALCULATOR WILL BE PROVIDED BEFORE AUCTION BY (BETPL) FOR DEPICTING ALL OF THE AFOREMENTIONED EXCLUSIVE CHARGES).

4.5 The Bidder has to Bid for a price equal to or above the Reserve Price to secure consideration in the concerned e-Auction.

4.6 The date, time and period of e-Auction as notified in advance including closing time on portal of Service Provider shall be adhered to but for the event of force majeure. However, the closing time of e-Auction will be automatically extended up to last Bid time, plus 5 minutes, so that opportunity is given to other Bidders for making an improved Bid on that item.

4.7 The Bidder shall offer his Bid price (per tonne) in the increment of Rs.20/- (Rs. Twenty) or multiple thereof during the Normal e-Auction period. During the extended period, the Bidder shall offer his Bid price in the increment of Rs.50/- (Rs. Fifty) or multiple thereof.

4.8 While maintaining the secrecy of Bidder's identity, the web site shall register and display on screen the lowest & highest successful Bid price at that point of time. The system will not allow a Bidder to Bid in excess of his entitled quantity as per his EMD. However, once a Bidder is out-Bided by another (in part or full) the particular Bidder shall become eligible for making an improved Bid.

4.9 Following criteria would be adopted in deciding the successful Bidders: -

4.9.1 Precedence will be accorded to the highest Bid price in the descending order (H1, H2, H3 and so on) as long as the offered quantity is available for allocation.

4.9.2 If two or more Buyers Bid the same highest price, precedence for allotment will be accorded to the Buyer who has placed the Bid for the higher quantity.

4.9.3 In case two or more Buyers Bid the same price and the same quantity, precedence will be given to the Buyer who has accorded his Bid first with reference to time.

## **5 Post e-Auction process:**

5.1 Each successful Bidder will be intimated through e-mail / SMS by the Service Provider on the same date after the closure of e-Auction. However, it will be the responsibility of the Bidder to personally see and download the result displayed on website, on the same date after close of e-Auction.

5.2 The successful Bidders after the e-Auction will be required to deposit Coal value with the concerned Seller, within a period of 7 working days (PERIOD OF 7 WORKING DAYS EXCLUDING BANK HOLIDAYS), after the date of closing of e-Auction. Seven working days would be reckoned as applicable to the respective Seller's office where the payment/ deposit is required to be made.

5.3 Equivalent amount of EMD of successful Bidder corresponding to successful Bid quantity, shall be blocked, and will be transferred to Seller by the Service Provider along-with the Bid sheet in respect of successful Bidders.

## **6 Terms of payment:**

6.1 The Coal value to be deposited by the successful bidder shall be complying with any one of below clauses viz. 6.1.a (NORMAL RTGS/NEFT) OR 6.1.b (Lot wise payment on **ADVANCE FRAGMENTED DO I/O** cash and carry basis) OR 6.1.c.(BANK GUARANTEE/ BG/**DOMESTIC LETTER OF CREDIT (LC)**)

6.1.a The Coal value to be deposited in advance by the successful Bidders shall be computed and deposited after making provision for the EMD amount for the successful Bid quantity already transferred by the Service Provider to the Seller. In other words, the Coal value to be deposited and EMD amount together, shall be equivalent to the 100 % Coal value.

6.1.b The Coal value to be deposited in advance in instalments basis (Lot wise **ADVANCE PAYMENT OF DIVIDED FRAGMENTED DO I/O** cash and carry basis) DO issuance by the successful Bidders & shall be computed and deposited after making provision for the EMD amount for the successful Bid quantity already transferred by the Service Provider to the Seller. In other words, the Coal value to be deposited and EMD amount together, shall be equivalent to the 100 % Coal value on a part basis. The total number of instalments / part DOs to be mutually decided between buyer & seller after conclusion of the e-Auction.

6.1.c The Coal value to be deposited in advance, before DO generation, in the form of

Bank Guarantee **OR DOMESTIC LETTER OF CREDIT (LC)**, by the successful Bidders shall be computed and deposited after making provision for the EMD amount for the successful Bid quantity already transferred by the Service Provider to the Seller. In other words, the Coal value Bank Guarantee to be deposited and EMD amount together, shall be equivalent to the 100 % Coal value.

6.2 The above EMD amount would be adjusted against the Coal value. However, in the event of default in performance by the Bidder, the provision of forfeiture of the EMD on pro-rata basis as stipulated, would be applicable.

6.3 In case of rail / road / Hybrid mode of supplies, once the Coal value is deposited by way of RTGS / NEFT, drawn in favor of the concerned Seller, along with the debit advice issued by the Bank, certifying that the RTGS / NEFT has been issued, by debiting the account of the concerned Buyer against which the Sale/Delivery orders shall be issued within seven working days by the Seller after receiving the coal value.

In the event of non-deposition of 100% Coal value, as the case may be, by the Bidder in terms of Clause-6.1 above, the consent given against e-Auction will be withdrawn by the Seller and EMD as per e-Auction scheme will be forfeited.

6.4 The Buyers shall have the option of depositing the Coal value into the Seller's account as given below.

**BETPL'S BANK ACCOUNT**

<b>NAME</b>	<b>BALARKA EMERGING TECH PRIVATE LIMITED</b>
<b>BANK NAME &amp; BRANCH ADDRESS</b>	<b>PUNJAB NATIONAL BANK, MODEL TOWN, YAMUNANAGAR, HARYANA 135001</b>
<b>ACCOUNT NO</b>	<b>3701008700004143</b>
<b>IFSC CODE</b>	<b>PUNB0370100</b>

6.5 The successful buyer shall pay any additional sum which may become payable by the Seller under any statutory provision over and above the amount claimed in the invoice. The successful bidder will also be entitled to a refund of the sum of taxes to the Seller on account of reduction, if any of the statutory levies claimed in the invoice by the Seller.

## **7 Procedure of Coal Delivery**

### **By Rail & Road:**

7.5 Seller shall issue Sale / Delivery Orders to the successful Bidders in terms of Clause 6.3 after realization of payment. The Buyer has to submit the option before the issue of the Sale / Delivery Order for movement of the Coal “within state” or “outside state” and the Sale / Delivery Order would indicate the same accordingly within the stipulated time as mentioned earlier. However, the challan issued by the Seller shall indicate the destination.

7.6 The validity period to complete lifting / supply of Coal by rail / road / hybrid mode shall be 45 days from the date of issue of Sale/Delivery Order. No extension of validity will be allowed in any case. **In case the Seller fails to deliver Coal (in full / in part) within the stipulated timelines, then buyer is liable to receive the EMD & Coal Value on pro-rata basis from the Seller within 15 days from the end of lifting period on mutual discussion. (BARRING FORCE MAJEURE CIRCUMSTANCES AND NON-AVAILABILITY OF RAILWAY SIDINGS AT LOADING/ UNLOADING STATIONS.)**

7.7 The seniority of Buyers shall be guided by the seniority list as provided by the Service Provider based on Buyer’s Bids.

7.8 Although loading will be the responsibility of the Seller but to avoid any complaint regarding over-loading, under loading and quality, the Buyer himself or his authorized representative may supervise loading at the loading point. The authorized representative must carry valid authority letter along with photocopy of Identity Card issued by Service Provider.

### **7.9 Overloading & Under loading://**

i) Any penal freight for overloading charged by the ways for any consignment shall be payable by the Purchaser. However, if overloading is detected from any particular colliery, consistently during three (3) continuous months, on due intimation from the Purchaser to this effect, the Seller undertakes to take remedial measures.

Any idle freight for under-loading below the stenciled carrying capacity, as shown on the wagon, for Glass cutting (7250+), G1(7000+), G2 (6700+), G4 (6100+) & G6 (5500+). Gross calorific value (GCV) based on ADB basis below the stenciled carrying capacity, as shown on the wagon, by two (2) tonnes for all other Grades of Coal shall be payable by the Seller.

i) Idle freight resulting from under loading of wagon, as per point no. (ii) shall be adjusted in the bills. Idle freight shall be reckoned as:

- a) the difference between the freight charges applicable for the stenciled carrying capacity, as shown on the wagon, less the freight payable as per actual recorded weight of Coal loaded in the wagon for Glass cutting (7250+), G1(7000+), G2 (6700+), G4 (6100+) & G6 (5500+). Gross calorific value (GCV) based on ADB basis or
- b) the difference between the freight charges applicable for the stenciled carrying capacity, as shown on the wagon, by two (2) tonnes less the freight payable as per actual recorded weight of Coal loaded in the wagon for all other Grades of Coal.

7.10 The weighment at the ETRR as generated by Indian Railways at designated spot shall be final and binding for all commercial purposes.

## **8 Refund of EMD for Unsuccessful Bidders: -**

In case of unsuccessful Bidders, EMD shall be refunded by the Service Provider after the auction is over, only upon the Bidder's request. However, if no such request is received the Service Provider will retain the EMD for participation in e- Auction in future.

## **9 Forfeiture of EMD: -**

The EMD submitted by the successful Bidders will be liable for forfeiture in the following cases: -

**9.1** If after completion of e-Auction, a successful Bidder fails to make payment for the Coal value including all other charges within the stipulated time, the proportionate EMD equivalent to the failed quantity shall be forfeited subject to the provisions at Clause 6 of this document, and/or,

**9.2** If the successful Bidders does not lift the booked quantity within the stipulated validity period, the proportionate EMD @ of Rs. 500/- per tonne for Coal for the unlifted quantity would be forfeited.

Such forfeiture shall be made only if the balance Unlifted Quantity is equal or more than a Truck Load i.e., 9 tonnes as applicable.

Such forfeiture, however, would not take place if the Seller has failed to offer full or part of the successful Bid quantity within the validity period. In such cases again, no forfeiture would take place if the balance quantity is less than a truck load.

**9.3** If the Buyer cancels the order after booking, the EMD @ of Rs. 500/- per tonne for Coal shall be forfeited for the order cancelled.

**Arbitration:** Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred exclusively to and finally resolved by arbitration under the Arbitration and Conciliation Act of India 1996, before a Sole Arbitrator to be appointed through mutual agreement between the parties. The seat of arbitration shall be **Kolkata, India**. The language to be used in the arbitral proceedings shall be English. The governing law of the contract shall be the substantive law of India.

**Force Majeure:**



- Neither Party shall be liable for any delay or interruption in or failure in the performance of its obligations under this Agreement if such delay, interruption or failure results from any event or circumstance (a "Force Majeure Event") which is beyond the reasonable control of the directly affected Party ("Directly Affected Party"), relates to such Directly Affected Party or to the transportation of the Product by rail or ship or any other means, and has the effect of preventing, delaying or interrupting the performance of all or part of the obligations of such Directly Affected Party or the exercise of all or part of the rights of such Directly Affected Party under this Agreement, including:
  - war, hostilities or warlike operations (whether a state of war be declared or not), invasion, act of foreign or public enemy, civil war, blockade;
  - rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, military uprising, conspiracy, riot, civil commotion, terrorist acts;
  - nationalization, commandeering, order or requisition by or under legislation, regulation or directive having force of Law;
  - epidemic, pandemic or quarantine;
  - strike, sabotage, lock out, embargo, industrial dispute or disturbance, shipwreck;
  - earthquake, landslide, avalanche, volcanic activity, fire, explosion, flood or inundation, accumulation of snow, tidal wave, typhoon or cyclone, tornado, hurricane, storm, lightning, nuclear and pressure waves, soil erosion, subsidence or other natural or physical disaster; and
  - any act of God.
  - AVAILABILITY OF RAILWAY SIDINGS

**Title and Risk:** Title of the materials shall be transferred to buyer immediately upon loading of cargo in buyer's nominated transport (wagon / rake / truck)

**Liabilities:** Neither party shall be liable for indirect or consequential damages.

**Confidentiality:** Both the buyer and the seller shall keep the conditions of this contract confidential and shall not disclose the existence or details of the contract to any other party without prior consent of the buyer or seller respectively.

**Entire agreement:** This contract contains the entire agreement between the parties with respect to the subject matter hereof and all proposals, negotiations and representations with reference thereto are merged herein.

**Notices:** All communications referred to in this contract shall be in writing and will be sent by registered e-Mail to authorized buyer.

#### **9.4 Penalty & Bonus Clause towards sale of products based on the test report of third-party inspection agency as mutually agreed by both Seller and Buyer for all commercial purposes.**

Pricing Mechanism: - (To be followed by buyer/seller for any instance of GCV disagreement). The final basic price shall be obtained as follows: (For bonus & penalty). Price shall be rounded up to two decimals place. GCV is to be calculated on ADB basis.

**Final Sale Basic Price = (Auction Price x Final GCV at coal dispatch) / Offered GCV.**

The seller will provide an initial test report along with the auction offer. The buyer before loading, in agreement with seller, can engage a service provider to conduct 3rd party testing to determine the final GCV (to be calculated on ADB basis) to arrive at the final "Sale Basic Price" as per the formula in 9.4 clause. The cost of such sampling will be equally borne by buyer & seller.

Whenever the GCV variation is more than 10%, in such cases, buyer will have the right to reject the offered quantity & will get full refund of the EMD as per refund clause 10.

**10. Refund of Coal value / EMD from seller:**

The balance Coal value of the unlifted quantity after the expiry of the validity period for supply of Coal and completion of required commercial formalities shall be refunded subject to forfeiture of EMD if required, in terms of the forfeiture clause as mentioned above. Such refund would be completed within 15 working days from the expiry of the lifting period.

Refund of EMD wherever applicable would be processed by seller within 15 days from receipt of such request from buyer provided it complies with the laid down clause 9.4.

**11. General Terms & Conditions:**

- a. The Coal procured under e-Auction is for use within the country and for Export. However, the buyer would be solely & wholly responsible for exporting consignment through legal & valid channels.
- b. All terms and conditions of Scheme are subject to force majeure conditions as applicable.
- c. Bidders must always ensure to keep their email address valid. In any case Buyers cannot be absolved from fulfilling the responsibility of compliance of any of the terms and conditions herein including payment terms due to non-receipt of emails from the Service Provider.
- d. Bidders must be extremely careful to avoid any error in Bidding (whether typographical or otherwise) and they are fully responsible to check and rectify their Bid before submitting their Bid into the live e-Auction floor by clicking the "Bid" button. During the auction if the incremental Bid price is more than 50% of the immediately preceding Bid price, then the system will seek a re-confirmation from the Bidder before the Bid is registered.
- e. There is no provision for Bidding in decimals. The Bidder shall be solely responsible for all consequences arising out of the Bid submitted by him (including any wrongful Bidding by him) and no complaint /representation will be entertained by the Service Provider/Seller in this regard.
- f. The decision of the Director-In-Charge of Marketing of Seller in matters related to this e-Auction shall be final and binding on the Bidders / Buyers.
- g. Quantity mentioned in notice are only indicative and may undergo a change depending on factors like actual production of Coal, bottlenecks in Coal transportation etc.
- h. Seller / Service Provider reserve the right to cancel the sale of Coal under this e-Auction from any source / location in part or whole at any stage at sole discretion without assigning any reason thereof and no party shall have any right whatsoever to raise any claim in that regard on that count.

i. Seller reserves their rights to amend/modify and revise the terms and conditions contained herein in full or in part at any point of time and no party shall have any right whatsoever to raise any claim in that regard on that count.

j. While the sale under e-auction is independent both parties shall be entitled to claim and recover from the other any excess or differential tax and statutory levies as provided in **clause 6** at any time within a period of 3 years from the date on which the sum becomes recoverable. Both parties shall have a lien on any sums of money belonging to the other, which may come to their possession or control to the extent of the sum recoverable from the other.

k. In the event of any dispute, Bidder / Buyer is necessarily required to represent in writing to the General Manager (Sales & Marketing) of the concerned Seller, who would deal with the same in a period of one month from such representation. Thereafter, if required the matter be determined by the Director-In- Charge of Marketing of the concerned Seller. Any interpretation of any clause of this will be subject to clarification by Seller, which will be deemed as firm and final. All disputes arising out of this scheme or in relation thereto in any form whatsoever shall be dealt exclusively by way of arbitration in terms of the Arbitration and Conciliation Act, 1996. The arbitration shall be conducted at **Kolkata** at a place to be notified by Seller. The arbitrator shall be appointed by the Chairman and Managing Director, Seller upon written request in this behalf. The award rendered by the Arbitrator shall be final and binding on the parties. (The place of arbitration & nomination of arbitrator be varied appropriately in view of the Seller involved)".

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