

TERMS OF REFERENCE (TOR)

FOR

AWARD OF LEASE OF STATE-OWNED TEXTILE MILLS

1.0 BACKGROUND OF THE LEASE

All mills of Bangladesh Textile Mills Corporation (BTMC) ceased their operation since 1997. Later, some mills were operated on rental basis. Cabinet Committee on Economic Affairs (CCEA) Approved In-Principle 16 Mills of BTMC for Public Private Partnership (PPP). In exercise of the power conferred in Section 11 of The Industrial Enterprises Nationalization Act, 2018, BTMC desires to run the remaining mills under private management through lease or rental agreement. Therefore, BTMC has taken initiatives to lease out the textile mills (other than mills under PPP model) on the basis of this TOR.

2.0 OBJECTIVES OF THE LEASE

2.1 The main objective of leasing out the land area, structures and facilities of (name of Mill) is to ensure and facilitate productive utilization of the same with a view to:

(a) Enhancing production and export preferably but not limited to textiles, jute, diversified jute products, forward-backward linkages industries in the jute and textile sector, garments etc. to contribute to the national economy of Bangladesh; and

(b) Thereby creating employment opportunities including space for reemployment of the retrenched workers of (name of the mill) to the extent possible.

3.0 SCOPE OF THE LEASE

3.1 General Scopes of the Lease


3.1.1 Term of lease will be up to 30 years, which may be extended on the basis of satisfactory performance of the first Lease term.

3.1.2 The ownership of the demised premises of the leasehold mill shall remain with the Lessor and shall not deem to have been transferred.

3.1.3 The name and status of the demised premises of the leasehold mill shall remain unchanged throughout the entire lease term.


3.1.4 The Lessee shall have the right to display and operate under its own name as 'Lessee' without prejudice to the original ownership.

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মহাব্যবস্থাপক (বাণিজ্য)
বিটিএমসি, ঢাকা।

- 3.1.5 Before handover, a joint physical inventory by the Lessor and the Lessee of all moveable and immovable properties within the demised premises shall be conducted. Such joint inventory shall cover but not limited to items included in the Schedules mentioned in Clause 3.1.9 that will be handed over to the custody of the Lessee.
- 3.1.6 The list of the properties and other assets prepared following the joint physical inventory shall be reviewed and updated at the end of every following year by a team consisting of representatives of both the Lessee and the Lessor.
- 3.1.7 The Lessee shall have to pay the monthly rent proposed in the Financial Proposal submitted by it/him and such monthly rent shall be automatically increased by 10% on the existing rent after every 5 (five) years throughout the entire lease term.
- 3.1.8 A grace period of 30 (thirty) months for mobilization of resources will be allowed if the lessee so desires and in such a case, the monthly rent shall be payable from 31st month after the date of handover of the demised property to the Lessee.
- 3.1.9 Schedules attached hereto (Schedule 1: Leasehold Land Area, Schedule II: List of Infrastructures within the Leasehold Area,) for each mill and the Business Plan submitted by the successful bidder shall be treated as part of this TOR.
- 3.1.10 The Lessee may undertake necessary interior decoration, installation of air- conditioning, substation, electricity & water supply etc. as may be required for the purpose of business at its/his own cost.
- 3.1.11 The Lessee may undertake installation of new machinery and physical structures/facilities including construction of new buildings/structures/facilities for the purpose(s) outlined in his/its business plan with prior intimation to the Lessor. However, construction of such new structures/facilities must conform to the proposed purpose(s) mentioned in and must not exceed the limit set by the Business Plan. All new construction and renovation including retrofitting of existing buildings/structures must be done in compliance with all relevant environmental, industrial and other regulatory requirements.
- 3.1.12 The leasehold property/demised premises shall only be used or utilized for the purposes mentioned/outlined in the detailed Business Plans submitted in the EOI process and any exception to that will constitute a breach of the terms and conditions of this lease Agreement.

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মহাব্যবস্থাপক (বাণিজ্য)
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- 3.1.13 Conduct of business under the lease shall be carried out subject to the laws of Bangladesh.
- 3.1.14 The Lessor or the Government shall not take part in the operation of the mills under lease, and shall not share profit or loss of this operation.
- 3.1.15 The leasehold property or any part thereof shall not be mortgaged or sub-leased or rented to any third party including bank or financial institution or intermediary.
- 3.1.16 Any dispute or disagreement arising out of interpretation of any clause of the TOR or regarding any issue beyond the TOR shall be resolved through mutual discussions keeping in view the objectives of the Lease enumerated in Clauses 2.1(a) and 2.1 (b).
- 3.1.17 The entire leasehold property/demised premises or a part or parts thereof may be used for setting up a single product-line or multiple product-lines under a single roof or multiple roofs for the purpose(s) of carrying out business/operation(s) mentioned in the Business Plan.
- 3.1.18 This ToR shall form an integral part of any agreement or contract executed in pursuance of this EOI/Bidding process.

3.2 Rights and Obligations of the Lessee


- 3.2.1 The successful bidder shall have to deposit an amount of money (in pay-order form) equivalent to 36 (thirty-six) months' rent as 'Security of the Lease' before signing the Lease Agreement. Such amount is refundable without interest after expiry or termination of the lease term and handing over the possession of the leasehold property to the Lessor.
- 3.2.2 The Lessee shall take over the property under lease/demised premises within 03 (three) months from signing of the Lease Contract or in case the Lessee chooses not to use the same, within 01 (one) month from the date on which the Lessor concludes disposal of existing buildings/structures/facilities whichever comes later.
- 3.2.3 The Lessee shall operate the demised premises of the leasehold mill/business under its own name and style, carry out transactions through its own Bank Account(s) and obtain necessary permissions, licenses, registrations and any other business related documents that may be required under existing laws and regulations.
- 3.2.4 The Lessee may utilize the existing facilities including building(s)/structures/facilities within the demised premises for the purpose of carrying out business at its/his choice.

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মহাব্যবস্থাপক (বাণিজ্য)
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- 3.2.5 The Lessee shall submit the detailed Business Plan at the time of final submission and follow the Business Plan in its operation. However, if required the Business Plan maybe revised/amended with the prior permission of the lessor.
- 3.2.6 The Lessee should clearly state in the Detailed Business Plan, its/his willingness or unwillingness to use existing buildings/structures/facilities in whole or in part.
- 3.2.7 The Lessee shall pay the monthly rent with VAT. Tax & other applicable government charges within the 7th day of each running English calendar month during the lease period.
- 3.2.8 The Lessee shall be responsible for payment of all utility bills from the month of Take-over.
- 3.2.9 The Lessee shall be responsible for payment of all expenses related to operation & maintenance of the demised premises of the leasehold mill including salary and wages of all staff/employees.
- 3.2.10 The Lessee must obtain adequate and appropriate comprehensive insurance cover for the leasehold property/demised premises covering all infrastructures, facilities, machinery and inventories at its/his own cost during the lease term and a copy of the policy documents in that behalf must be provided to the Lessor.
- 3.2.11 The Lessee shall be responsible for proper upkeep and maintenance of the land, building, properties and other assets of the mill(s) as described in the list during the lease period.
- 3.2.12 The Lessee shall not use the leasehold property to produce/sell or stock any goods/commodity which is not related to business proposed in the Business Plan submitted in the EOI process,
- 3.2.13 The Lessee shall not change or deface the landscape of the leasehold property/demised premises or cut/remove/sell any tree(s) inside the leasehold property for purpose(s) other than those mentioned in the Business Plan submitted in the EOI process.
- 3.2.14 The Lessee shall be responsible to ensure the overall safety and security of the leasehold property at it/his own cost.
- 3.2.15 The Lessee shall be liable for any inconsistency and discrepancy in or to the assets listed in the Schedules and other list of items prepared through joint physical inventory under clause 3.1.5 after handover of the same in favor of the Lessee.

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- 3.2.16 The Lessee shall be liable for any damage to or loss of the assets listed in the Schedules and other list of items prepared through the joint physical inventory while in custody of itself during the lease term after handover of the same.
- 3.2.17 The Lessee shall be obliged to cooperate with the Lessor for compliance of the Lease Contract.
- 3.2.18 If the Lessee intends to extend the contract tenure after end of expiry of lease term, he/it shall inform its willingness for extension of lease term to the Lessor at least 06 (six) months before expiry of the lease term.
- 3.2.19 At the end of the lease term, the Lessee shall handover the demised premises of the leasehold mill to the Lessor through a joint physical inventory.
- 3.2.20 The lessor shall install solar panel on the roof-top of the factory and godown building. If the Lessee intends to install such solar panel, it must be intimated to the Lessor in writing within one month and installation shall be completed within a year from the date of handover the demised premises. If the roof top already been utilized to establish and produce solar energy, the Lessee shall accept the Terms of Reference (TOR) of the Solar Plant establishment.

3.3 Rights and Obligations of the Lessor

- 3.3.1 The Lessor shall handover the leasehold property demised premises within 03 (three) months after the signing of the Lease Agreement or in case the Lessee chooses not to use the same, within 01 (one) month from the date on which disposal of existing buildings structures/facilities is completed whichever comes later.
- 3.3.2 The Lessor shall be responsible for all the liabilities of the leasehold mills up to the day of handover of the demised premises of the leasehold mill.
- 3.3.3 The Lessor shall be responsible for payment of the Land Development Tax, Holding Tax and other government charge(s) related to the ownership.
- 3.3.4 The Lessor, with prior intimation to the lessee, shall have the right to visit the leasehold mills for compliance of the Lease Contract.
- 3.3.5 If the Lessee proposes for any renovation of existing building structures/facilities or construction of new structures/facilities/buildings or change to the demised premises including cutting/removing any tree(s) inside the leasehold property, the

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Lessor shall dispose of it within 6 (Six) months of receipt of such request or proposal.

- 3.3.6 If the Lessee choses notto use the existing buildings/ structures/ facilities within the demised premises in whole or in part, the Lessor shall ensure disposal of such buildings structures facilities before handover of the demised premises to the Lessee or whenever Lessee apply to Lessor.

3.4 Force Majeure

- 3.4.1 In the event of the demised premises or any part thereof being wholly or partially destroyed or seized by earthquake, tempest, flood, civil commotion, enemies of the state or other irresistible force beyond human control or the situation is beyond control due to act of God so as to render the same or any part thereof substantially unfit for the purpose of which it is or to be let out, neither the Lessee nor the Lessor shall be considered in breach of this contract to the extent that performance of their respective obligations is prevented after handover of the demised premises of the leasehold mill.
- 3.4.2 If an event of Force Majeure results in a loss or damage to the facilities, structures and machinery/equipment listed in physical joint inventory including schedules I & II, the Lessee shall rectify such loss or damage to the extent required by the Lessor.
- 3.4.3 Any other issues arising from event of Force Majeure shall be governed by relevant laws of Bangladesh.

3.5 Cancellation or Termination of Lease

- 3.5.1 If the Lessee fails to take over the demised premises of the leasehold mills within the specified time, the Lease Offer will be automatically cancelled. In such a case, the Lessee shall be liable to pay compensation of an amount equivalent to 03 (three) months' rent.
- 3.5.2 In case of any violation of the Lease Contract, the Lessor shall have the right to cancel the lease through issuing 06 (Six) months notice.
- 3.5.3 The Lessee shall have the right to terminate the Lease Contract by issuing 06(six) months' notice to the Lessor.If such notice served within the grace period the Lessee liable to pay the monthly rent of this said notice period of 06(Six) months.

4.0 SUBMISSION OF EXPRESSION OF INTEREST (EOI)

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মহাব্যবস্থাপক (বাণিজ্য)
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- 4.1 An individual bidder of local (Bangladeshi) origin with 100% ownership, or an individual bidder of foreign (other than Bangladeshi) origin with 100% foreign equity or a Joint Venture (JV) between more than one individual or entity of local and/or foreign origin with either of them as the lead partner, may submit EOI.
- 4.2 Any interested party may submit bid for more than one mill. In such a case, separate EOI must be submitted for each individual mill.
- 4.3 Required details, qualifications and experiences of the bidders for EOI-

4.3.1 For Individuals and Firms

(a) Local bidder:

- Certificate of incorporation from a relevant authority duly authorized under a Bangladesh law.
- Memorandum and Articles of Association (if applicable)
- Updated copy of Trade License(s) and other business documents up to the preceding year.
- Income Tax Certificate up to the preceding year. VAT Registration Certificate up to the preceding year.
- Documents relating to textiles business (if any)
- Yearly production capacity for the preceding 03 (three) years (in case of textiles mills/production oriented factory)
- Yearly turnover for the preceding 03 (three) years (if any)
- Experience in number of years in textiles production/business (if any)
- Experience in number of years in Textile or Textile related business (if any)
- Experience in number of years in manufacturing and export business of other goods and services (if any)

(b) Foreign Bidder

- Certificate of incorporation of the company in the country of origin (if applicable)
- Memorandum and Articles of Association (if applicable)
- List of Directors/Partners with nationality and address
- Copies of current passport(s)/travel document(s) of foreign directors/partners/ entrepreneurs.
- Yearly turnover for the preceding 03 (three) years (if any)
- Experience in number of years in manufacturing and export business of other goods and services (if any)

4.3.2 For Joint Venture (JV)

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- Local & Local: Documents as per clause 4.3.1(a)
- Local & Foreign: Documents under as per 4.3.1(a) & (b)
- Foreign & Foreign Documents as per clause 4.3.1(b)

- 4.4 A foreign company with 100% foreign equity, if successful in bid, has to incorporate itself as a company with Registrar of Joint Stock Companies and Firms (RJSC) in Bangladesh and have to obtain other necessary business licenses such as Trade License, Tax Identification Number (TIN) Certificate, VAT Registration Certificate, Business Identification Number (BIN) Certificate, Fire License. Environmental Clearance and other necessary documents as may be required by various authorities in Bangladesh.
- 4.5 The EOI shall be submitted in required number of copies with one original. The EOI notice and TOR shall be followed in preparation and submission of EOI.
- 4.6 The particulars, qualifications and experiences mentioned in clause 4.3 shall have to be supported by valid documents. The original documents/related papers must be submitted as and when required by the authority.
- 4.7 The Expression of Interest (EOI) submitted by the bidders shall be assessed and evaluated initially to prepare a short list on the basis of clause 4.1 to 4.6.
- 4.8 If number of bidders in the short list are less than 02 (two), RFP shall not be invited. In such a case, fresh EOI may be invited.

5.0 SUBMISSION OF FINAL PROPOSAL

- 5.1 Request for Proposal(RFP) shall be invited from the short listed bidders selected as per clause 4.7.
- 5.2 Final Proposal against RFP shall be submitted in required number of copies with one original.
- 5.3 The Final Proposal shall include one Technical Proposal and one Financial Proposal both separately sealed. The final proposal should be submitted in a single packet.
- 5.4 The Technical Proposal shall contain a Detailed Business Plan for the proposed lease term, which should reflect on how the bidder intends to implement the core objectives of the lease as enumerated in clauses 2.1 and shall include brief highlights on but not limited to-
- (i) Investment (ii) Financing Arrangement (ii) Procurement (iv) Human Resource (v) Operation (vi) Production (vii) Marketing (viii) Maintenance (ix) Development (x)Product Innovation,

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মহাব্যবস্থাপক (বাণিজ্য)
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- 5.5 The Technical Proposal shall contain Audit Reports with annual accounts certified by recognized audit firms for the 3 (three) preceding years.
- 5.6 The Technical Proposal may also contain, as appropriate-
- (i) Annual Gross Turnover for the preceding 03 years
 - (ii) Experience in operating any industrial undertaking
 - (iii) Yearly Export Value in any goods/industrial item(s) for the preceding 03 years
 - (iv) Experience in any business related to proposed activity.
- 5.7 The particulars, qualifications and experiences under clauses 5.4, 5.5 & 5.6 shall have to be supported by valid documents. The originals must be submitted as and when required by the authority.
- 5.8 The Financial Proposal shall contain, among others, a Monthly Rent proposed.

6.0 FINAL EVALUATION


6.1 Technical Proposals shall be assessed and evaluated as follows-

No	Subject	Points
01	Detailed Business Plan	40
02	FDI/JV with FDI	10
03	Experience in operating any industrial undertaking	10
04	Yearly Export Value in any good/industrial item for the preceding 03 years	10
05	Annual Gross Turnover for the preceding 03 years	10
06	Experience of any business related so proposed activity	05
07	Net Asset Value supported by Audit Report	05
08	Experience of any jute and/or textile related business	10
Total		100

6.2 The evaluation process under clause 6.1 shall be followed for the assessment of responsiveness of the bidders. The qualifying score for the responsive bidders shall be 50 points.

6.3 Financial Proposals shall be opened in presence of the technically responsive bidders (if any). Financial Proposals of the non-responsive bidders shall be returned unopened.

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6.4 The formula to determine the financial score is as follows:

$$F_p = 100 \times \frac{F}{F_M}$$

In which, F_p is the final score, F_m is the highest price and F is the price is the proposal under consideration.


6.5 For final selection for Award of Lease the technical Proposal and the financial Proposal are weighted equally (50:50). In case of equal score in evaluation, technical score shall get preference.

Definitions:

In the Agreement, the following terms will bear the meaning given below, unless otherwise explicitly stated in the Agreement:

- "Demised Premises" means the Factory Building and open space to be leased pursuant to this Agreement by the Lessor to the Lessee and is more fully described at the end as Leasehold Property/Demised Premises of this Agreement:
- "Force Majeure" means any event or condition, not existing as of the date of signing of this Agreement, not reasonably foreseeable as of such date and not within the control of either Party. Such event shall include but not limited to acts of God, unfavorable natural phenomenon like earthquake, tempest, flood, war like hostility, blockage, revolution, insurrections, mobilizations, or other epidemic and pandemic;
- "Jute Diversified Products" means jute diversified products (JDP) as defined in the Jute Act, 2017 (Act 05 of 2017).
- "Security Deposit" means amount of money to be paid by the LESSEE to the LESSOR for the Demised Premise under Clause 3.2.1 of this Agreement;
- "Textile Products" means any raw, semi-worked, semi-manufactured, manufactured, semi-made-up or made-up products which are exclusively composed of textile fibers, regardless of the mixing or assembly process employed such as weaving, knitting, or felting, and ready-made garment (RMG) including production input' as defined in Section 2 (2) of the Textiles Act, 2018 (Act 37 of 2018).
- "Utility Charges" means the supply of electricity, gas, water, telephones, fiber optics, disposal of sewerage, etc.

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"Utility Bills"

means the amount charged by the relevant State/autonomous entity/utility provider for the Utilities.

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