

PRE-CONTRACT INTEGRITY PACT

General

1. The pre-bid pre-contract Agreement is made onday of the month ofYear, between, on one hand, the President of India acting through Director/Head of the Estt (Name of Lab/Estt/Centre), Ministry/Department, Government of India (hereinafter called the 'Buyer', which expression shall mean and include, unless the context otherwise requires, his successors in office and assigns) of the First Part and M/s. Represented by. Chief Executive Officer (hereinafter called the "Bidder/Seller" which expression shall mean and include, unless the context otherwise requires, his successors and permitted assigns) of the Second Part.

Whereas the Buyer proposes to procure (Name of the Stores/Equipment/Services) and the Bidder/Seller is willing to offer/has offered the stores/services.

2. Whereas the Bidder is a Private Company /Public Company/Government Undertaking/Partnership/Registered Export Agency, constituted in accordance with the relevant law in the matter and the Buyer is a R&D organization under Ministry of Defence, Government of India performing its functions on behalf of the President of India.

Objectives

- 3.0 Now, therefore, the Buyer and the Bidder agree to enter into this pre-contract agreement, hereinafter referred to as Integrity Pact, to avoid all forms of corruption by following a system that is fair, transparent and free from any influence/unprejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:-
 - 3.1 Enabling the Buyer to obtain the desired defence goods/services at a competitive price in conformity with the defined specifications of the Services by avoiding the high cost and the distortionary impact of corruption on public procurement.
 - 3.2 Enabling Bidders to abstain from bribing or any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also refrain from bribing and other corrupt practices and the Buyer will commit

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to prevent corruption, in any form, by their officials by following transparent procedures.

Commitments of the Buyer

4.0 The Buyer commits itself to the following:

4.1 The Buyer undertakes that, no official of the Buyer, connected directly or indirectly with the contract will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the Bidder, either for themselves or for any person, organization or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to the Contract.

4.2 The Buyer will, during the pre-contract stage, treat all Bidders alike and will provide to all Bidders the same information and will not provide any such information to any particular Bidder which could afford an advantage to that particular Bidder in comparison to other Bidders.

4.3 All the officials of the Buyer will report to the appropriate Government office any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.

5. In case of any such preceding misconduct on the part of such official(s) is reported by the Bidder to the Buyer with full and verifiable facts and the same is prima facie found to be correct by the Buyer, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the Buyer and such a firm / person shall be debarred from further dealings related to the contract process. In such a case while an enquiry is being conducted by the Buyer the proceedings under the contract would not be stalled.

Commitments of Bidders

6.0 The Bidder commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any pre-contract or post-contract stage in order to secure the contract or in furtherance to secure it and in particular commit itself to the following:-

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- 6.1 The Bidder will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Buyer, connected directly or indirectly with the bidding process, or to any person, organisation or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the Contract.
- 6.2 The Bidder further undertakes that he has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Buyer or otherwise in procuring the Contract or forbearing to do or having done any act in relation to the obtaining or execution of the Contract or any other Contract with the Government for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other Contract with the Government.
- 6.3 The Bidder will not collude with other parties interested in the contract to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract.
- 6.4 The Bidder will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.
- 6.5 The Bidder further confirms and declares to the Buyer that the Bidder is the original manufacturer/integrator/authorized government sponsored export entity of the Defence stores and has not engaged any individual or firm or company whether Indian or foreign to intercede, facilitate or in any way to recommend to the Buyer or any of its functionaries, whether officially or unofficially to the award of the contract to the Bidder, nor has any amount been paid, promised or intended to be paid to any such individual, firm or company or Agent in respect of any such intercession, facilitation or recommendation.
- 6.6 The Bidder would not enter into conditional contract with any Agents, brokers or any other intermediaries wherein payment is made or penalty is levied, directly or indirectly, on success or failure of the award of the contract. The Bidder while presenting the bid, shall disclose any payments he has made during the 12 months prior to tender submission or is committed to or intends

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to make to officials of the buyer or their family members, Agents, brokers or any other intermediaries in connection with the contract and details of such services agreed upon for such payments. Within the validity of PCIP, bidder shall disclose to the Buyer any payments made or has the intention to pay any amount, gift, reward, fees, commission or consideration to such person, party, firm or institution as an annual report during the procurement process.

- 6.7** The Bidder shall not use improperly, for purposes of competition or personal gain or pass on to others, any information provided by the Buyer as part of the business relationship regarding plans, technical proposals and business details, including information contained in any electronic data carrier. The Bidder also undertakes to exercise due and adequate care lest any such information is divulged.
- 6.8** The Bidder commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts. Complaint will be processed as per Guidelines for Handling of Complaints in vogue. In case the complaint is found to be vexatious, frivolous or malicious in nature, it would be construed as a violation of Integrity Pact.
- 6.9** The Bidder shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.

Previous Transgression

- 7.0** The Bidder declares that no previous transgression occurred in the last three years to be reckoned from date of bid submission, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprises in India or any Government Department in India. The transgression(s), for which cognizance was taken even before the said period of three years, but are pending conclusion, shall also be reported by the Bidders.
- 7.1** If the Bidder makes incorrect statement on this subject, Bidder can be disqualified from the tender process or the contract if already awarded, can be terminated for such reason or action can be taken as per the procedure mentioned in "Guidelines on Debarment of Firms from bidding".

EMD towards Integrity Pact (PCIP-EMD)

- 8.0** Every bidder, while submitting techno-commercial bid, shall submit an PCIP-EMD for an amount of _____ (amount to be specified by Buyer) in favour of the Buyer.

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8.1 Format of PCIP-EMD:

PCIP-EMD may be submitted in the form of Insurance Surety Bonds, Account Payee Demand Draft drawn in favour of the Director of the Lab/Estt, Fixed Deposit Receipt, Banker's Cheque or a Bank Guarantee in acceptable form as per DRDO.BG.01 (including e-Bank Guarantee) from any Indian Public or Private Scheduled Commercial Bank (as notified by RBI or First Class Bank of International Repute) for safeguarding the Buyer's interest in all respects.

8.2 Validity of PCIP-EMD :

The PCIP-EMD shall be valid up to twelve months or till signing of the contract / submission of Performance Security Bond whichever is later. The PCIP-EMD shall be extended from time to time as required by the Buyer and agreed by the Bidder. No interest shall be payable by the Buyer to the Bidder(s) on the PCIP-EMD for the period of its currency. For unsuccessful bidders, PCIP-EMD will be returned on declaration of successful bidder(s).

8.3 Forfeiture of PCIP-EMD :

In case of violation of Pre-contract Integrity Pact, PCIP-EMD/ Performance Security Bond / Warranty Bond would be forfeited besides other legal penalties as may be decided by the Buyer.

8.4 In the case of successful bidder a clause would also be incorporated in the Article pertaining to Performance Security Bond / Warranty Bond in the Purchase Contract that the provisions of Sanctions for Violation shall be applicable for forfeiture of Performance Security Bond / Warranty Bond in case of a decision by the Buyer to forfeit the same without assigning any reason for imposing sanction for violation of this pact.

8.5 The Provisions regarding Sanctions for Violation in Integrity Pact include forfeiture of PCIP-EMD / Performance Security Bond / Warranty Bond in case of a decision by the Buyer to forfeit the same without assigning any reason for imposing sanction for violation of Integrity Pact.

Company Code of Conduct

9. Bidders are also advised to have a company code of conduct (clearly rejecting the use of bribes and other unethical behavior) and a compliance program for the implementation of the code throughout the company.

Sanctions for Violations

10.0 Any breach of the aforesaid provisions by the Bidder or any one employed by him or acting on its behalf (whether with or without the knowledge of the Bidder) the

commission of any offence by the Bidder or any one employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act 1988 or any other act enacted for the prevention of corruption shall entitle the Buyer to take all or any one of the following actions, wherever required:-

- i) To immediately call off the pre contract negotiations without assigning any reason or giving any compensation to the Bidder. However, the proceedings with the other Bidder(s) would continue.
- ii) The PCIP-EMD / Performance Security Bond / Warranty Bond shall stand forfeited either fully or partially, as decided by the Buyer and the Buyer shall not be required to assign any reason thereof.
- iii) To immediately cancel the contract, if already signed, without any compensation to the Seller.
- iv) To recover all sums already paid by the Buyer, along with interest at the rate of 2% above MCLR (Marginal Cost of Funds based Lending Rate) declared by RBI pertaining to SBI for Indian bidders, and London Inter Bank Offered Rate (LIBOR) / EURIBOR for the foreign bidders. If any outstanding payment is due to the Bidder from the Buyer in connection with any other contract for any defence stores, such outstanding payment could also be utilized to recover the aforesaid sum and interest.
- v) To encash the advance bank guarantee and Performance security Bond / Warranty Bond if furnished by the Bidder, in order to recover the payments, already made by the Buyer, along with interest.
- vi) To cancel all or any other Contracts with the Bidder.
- vii) To Put on Hold or Suspend or Debar the bidder as per the extant policy.
- viii) To recover all sums paid in violation of this Pact by Bidder(s) to any Agent or broker with a view to securing the contract.
- ix) If the Bidder or any employee of the Bidder or any person acting on behalf of the Bidder, either directly or indirectly, is closely related to any of the officers of the Buyer, or alternatively, if any close relative of an officer of the Buyer has financial interest / stake in the Bidder's firm, the same shall be disclosed by the Bidder at the time of filing of tender. Any failure to disclose the interest involved shall entitle the Buyer to debar the Bidder

from the bid process or rescind the contract without payment of any compensation to the Bidder. The term 'close relative' for this purpose would mean spouse whether residing with the Government servant or not, but not include a spouse separated from the Government servant by a decree or order of a competent court; son or daughter or step son or step daughter and wholly dependent upon Government servant, but does not include a child or step child who is no longer in any way dependent upon the Government servant or of whose custody the Government servant has been deprived of by or under any law; any other person related, whether by blood or marriage, to the Government servant or to the Government servant's wife or husband and wholly dependent upon Government servant.

- x) The Bidder shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the Buyer and if he does so, the Buyer shall be entitled forthwith to rescind the contract and all other contracts with the Bidder. The Bidder shall be liable to pay compensation for any loss or damage to the Buyer resulting from such rescission and the Buyer shall be entitled to deduct the amount so payable from the money(s) due to the Bidder.
- xi) In cases where request to open Letters of Credit have been received in respect of any contract signed by the Buyer with the Bidder, the same shall not be opened.

10.1 The decision of the Buyer to the effect that a breach of the provisions of this Integrity Pact has been committed by the Bidder shall be final and binding on the Bidder, however, the Bidder can approach the independent Monitor(s) appointed for the purposes of this Pact.

Fall Clause

11.0 The Bidder undertakes that he has not supplied/is not supplying similar products, systems or subsystems at a price lower than that offered in the present bid in respect of any other Ministry/Department of the Government of India and if it is found at any stage that similar system or sub system was supplied by the Bidder to any other Ministry/Department of the Government of India at a lower price, then that very price, with due allowance for elapsed time, will be applicable to the present case and the

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difference in the cost would be refunded by the Bidder to the Buyer, even if the contract has already been concluded.

- 11.1 The Bidder shall strive to accord the most favoured customer treatment to the Buyer in respect of all matters pertaining to the present case.

Independent Monitors

- 12.0 The Buyer has appointed Independent Monitors for this Pact in consultation with the Central Vigilance Commission. The names and addresses of nominated Independent Monitors (at the time of issue of RFP) are as follows:-
(Name & addresses of Independent Monitors holding office on date of issue of RFP to be included by the Lab/Estts/ Procuring Entities.)
- 12.1 Any communication made by either Bidder / Seller or Buyer to Independent Monitors would be marked to Director (Vigilance), DRDO HQrs also. The Designation and contact details of Director (Vigilance), DRDO HQrs are as follows: -
(Designation and Address of the Director (Vigilance) to be included by Procuring Entities /Lab/Estts).
- 12.2 After the integrity pact is signed, the Buyer shall provide a copy thereof, along with a brief background of the case to the Independent Monitors, if required by them.
- 12.3 The Bidders(s), if they deem it necessary, may furnish any information as relevant to their bid to the Independent Monitors.
- 12.4 If any complaint with regard to violation of the IP is received by the Buyer in a procurement case, the Buyer shall refer the complaint to the Independent Monitors for their comments/enquiry.
- 12.5 If the Independent Monitors need to peruse the relevant records of the Buyer in connection with the complaint sent to them by the Buyer, the Buyer shall make arrangement for such perusal of records by the Independent Monitors.
- 12.6 The report of enquiry, if any, made by the Independent Monitors shall be submitted to the DG (R&M) / DRDO HQ, Ministry of Defence, Government of India for a final and appropriate decision in the matter keeping in view the provisions of this pact.

13. Examination of Books of Accounts

In case of any allegation of violation of any provisions of this Integrity Pact or payment of commission, the Buyer or its agencies shall be entitled to examine the Books of Accounts of the Bidder and the Bidder shall provide necessary information of the relevant financial documents in English and shall extend all possible help for the purpose of such examination.

14. Law and Place of Jurisdiction

This pact is subject to Indian Law. The place of performance and jurisdiction is the seat of the Buyer (Lab/Estts/ Procuring Entities specify the location / city name).

15. Other Legal Action

The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.

Validity

16.0 The IP shall remain valid for a period of three years or up to 60 days beyond the date of completion of all contractual obligations including warranty period to the complete satisfaction of both the bidder and the buyer whichever is later.

16.1 Should one or several provisions of this Pact turn out to be invalid; the remainder of this Pact remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

17. Bidder / Seller / Buyer signing IP shall not approach the Courts while representing the matters to IEMs and he / she will await their decision in the matter.

18. The parties hereby sign this Integrity Pact at on

Buyer

Bidder

Ministry Of Defence,
Government Of India

Chief Executive Officer

Witness

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