

FORMAT FOR PRE CONTRACT INTEGRITY PACT

General

This pre-bid pre-contract Agreement (hereinafter called the Integrity Pact) is made **on day of bid submission**, between on one hand, MOIL Limited (hereinafter called the “BUYER / Principal”, which expression shall mean and include, unless the context otherwise requires, his successors in office and assigns) of the First Part **and Undersigned who is authorized to sign the bid** (hereinafter called the “BIDDER/Seller/Contractor” 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 the tendered Stores/Equipment/Items/Goods and the BIDDER/Seller is willing to offer/has offered the stores and

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 Central Public Sector Unit.

The Pact essentially envisages an agreement between the prospective bidders and the buyer, committing the persons/officials of both sides, not to resort to any corrupt practices in any aspect/stage of the contract. Only those bidders, who commit themselves to such a Pact with the buyer, would be considered competent to participate in the bidding process. In other words, entering into this Pact would be a preliminary qualification.

The parties hereto hereby agree to enter into this Integrity Pact and agree as follows:

Section 1 – Commitments of the Principal:

- i. Not to seek or accept any benefit, which is not legally available;
- ii. Principal to treat all bidders with equity and reason;

Section 2 - Commitments of the Bidder(s)/ Contractor(s):

- i. Not to offer any benefit to the employees of the Principal not available legally;
- ii. Bidders not to enter into any undisclosed agreement or understanding with other bidders with respect to prices, specifications, certifications, subsidiary contracts, etc.
- iii. Bidders not to pass any information provided by Principal as part of business relationship to others and not to commit any offence under PC/ IPC Act;
- iv. Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or associates;
- v. Bidders to disclose the payments to be made by them to agents / brokers or any other intermediary;

- vi. Bidders to disclose any transgressions with any other public/government organization that may impinge on the anti-corruption principle. The date of such transgression, for the purpose of disclosure by the bidders in this regard, would be the date on which cognizance of the said transgression was taken by the competent authority. The period for which such transgression(s) is/are to be reported by the bidders shall be the last three years to be reckoned from date of bid submission. 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.

Section 3 - Disqualification from tender process and exclusion from future contracts

- 1) Any violation of Integrity Pact would entail disqualification of the bidders and exclusion from future business dealings, as per the existing provisions of GFR, 2017, PC Act, 1988 and other Financial Rules/Guidelines etc. as may be applicable to the organization concerned.
- 2) If the Bidder, before contract award, has committed a transgression through a violation of Section 2 or in any other form such as to put his reliability or credibility as Bidder into question, the Principal is entitled to disqualify the Bidder from the tender process or to terminate the contract, if already signed, for such reason.
- 3) If the Bidder/Contractor/Supplier has committed a transgression through a violation of Section 2 such as to put his reliability or credibility into question, the Principal is also entitled to exclude the Bidder / Contractor / Supplier from future contract award processes. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the circumstances of the case. In particular, the number of transgressions, the position of the transgressors within the company hierarchy of the Bidder and the amount of the damage. The exclusion will be imposed for a minimum of 6 months and maximum of 3 years.
- 4) A transgression is considered to have occurred if the Principal, after due consideration of available facts and evidences within his / her knowledge concludes that there is a reasonable ground to suspect violation of any commitment listed under Section 2 i.e. "Commitments of Bidder(s) /Contractor(s).
- 5) The Bidder accepts and undertakes to respect and uphold the Principal's absolute right to resort to and impose such exclusion and further accepts and undertakes not to challenge or question such exclusion on any ground, including the lack of any hearing before the decision to resort to such exclusion is taken. This undertaking is given freely and after obtaining independent legal advice.
- 6) If the Bidder / Contractor / Supplier can prove that he has restored / recouped the damage caused by him and has installed a suitable corruption prevention system, the Principal may revoke the exclusion prematurely."

Section 4 - Compensation for Damages

- (1) If the Principal has disqualified the Bidder(s) from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposit/ Bid Security.
- (2) If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to Section 3, the Principal shall be entitled to demand and recover from the Contractor liquidated damages of the Contract value of the amount equivalent to Performance Bank Guarantee.

Section 5 - Previous transgression

- (1) The Bidder declares that no previous transgressions occurred in the last three years with any other Company in any country conforming to the anti-corruption approach or with any Public Sector Enterprise in India that could justify his exclusion from the tender process.
- (2) If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or action can be taken as per the procedure mentioned in "Guidelines on Banning of business dealings".

Section 6 - Equal treatment in case of Joint venture / Subcontractors

- (1) In case of Joint venture, all the partners of the joint venture should sign the integrity pact.
- (2) In case of Sub-contracting, the Principal Contractor shall take the responsibility of the adoption of Integrity Pact by the Sub-contractor.
- (3) It is to be ensured that all subcontractors also sign the IP. The IP will be a tripartite arrangement to be signed by the organization, the contractors and the subcontractors.

Section 7 - Independent External Monitor

- 1) IP would be implemented through a panel of 2 (two) Independent External Monitors appointed by MOIL Limited as per the nomination received from CVC from the IEMs panel maintained by it. The IEM would review independently and objectively, whether and to what extent parties have complied with their obligations under the Pact on receipt of any complaint by them from the bidder(s).
- 2) The IEMs shall examine all the representations/grievances/complaints received by them from the bidders or their authorized representative related to any discrimination on account of lack of fair play in modes of procurement and binding systems, tendering method, eligibility conditions, bid evaluation criteria, commercial terms & conditions, choice of technology/specifications etc.
- 3) For ensuring the desired transparency and objectivity in dealing with the complaints arising out of the tendering process, the matter would be examined by both IEMs jointly, who would look into the records, conduct an examination, and submit their

joint recommendations to the Management. In case the both IEMs are not available due to some unavoidable reasons, the available IEM will conduct examination of the complaints. Consent of other IEM(s), who may not be available, shall be taken on record.

- 4) The role of IEM is advisory and the advice of IEM is non-binding on the organization.
- 5) The IEMs would be provided access to all documents/records pertaining to the tender for which a complaint or issue is raised before them, as and when warranted.
- 6) In the event of any dispute between the management and the contractor relating to those contracts where Integrity Pact is applicable, in case, both the parties are agreeable, they may try to settle dispute through mediation before the panel of IEMs in a time bound manner. If required, the organizations may adopt any mediation rules for this purpose. However, not more than five meetings shall be held for a particular dispute resolution. The fees/expenses on dispute resolution shall be equally shared by both the parties.

In case, the dispute remains unresolved even after mediation by the panel of IEMs, the organization may take further action as per the terms & conditions of the contract.

- 7) The IEMs would also be required to sign a declaration of absence of conflict of interest. A person acting as an IEM shall not be debarred from taking up other assignments such as consultancy with other organizations or agencies subject to his declaring that his / her additional assignment does not involve any conflict of interest with existing assignment, and it is not a full time assignment. In case of any conflict of interest arising at a later date from an entity wherein he is or has been a consultant, the IEM should inform CMD/MOIL and recuse himself/herself from that case,

Section 8 - Pact Duration

Integrity Pact, in respect of a particular contract, shall be operative from the date IP is signed by both the parties. It expires for the Contractor 12 months after the last payment under the contract, and for all other Bidders 6 months after the contract has been awarded. Any violation of the same would entail disqualification of the bidders and exclusion from future business dealings. If any claim is made / lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged / determined by CMD, MOIL Limited.

Section 9 - Other provisions

- i. Integrity Pact is Pact of the contract and both bidder and the principal and bound by its provisions
- ii. In the event of any contradiction between the Integrity Pact and its Annexure, the Clause in the Integrity Pact will prevail.
- iii. A person signing IP shall not approach the Courts while representing the matters to IEMS and he / she will await their decision in the matter.

Section 10- Facilitation of Investigation

The IEMs would be provided access to all documents/records pertaining to the tender for which a complaint or issue is raised before them, as and when warranted.

Section 11- Law and Place of Jurisdiction

This Pact is subject to Indian Law. The place of performance and jurisdiction is the seat of the BUYER.

Section 12 - Other Legal Actions.

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.

(For & On behalf of Bidder/Contractor)

For the BUYER

Name of the Officer _____

Designation _____

MOIL Limited

Witness:

Name _____

Designation _____

Name of the Company _____

For the BIDDER

Name of the Officer _____

Designation _____

Name of the Company _____

Witness:

Name _____

Designation _____

Name of the Company _____