

## **INTEGRITY PACT**

### **Between**

Bharat Dynamics Limited (BDL) hereinafter referred to as "The Principal", and  
..... Hereinafter referred to as "The Bidder / Contractor".

### **Preamble**

The Principal intends to award, under laid down organizational procedures, contracts for.....The Principal values full compliance with all relevant laws of the land, rules, regulations, economic use of resources and of fairness / Transparency in its relations with its Bidder(s) and / or Contractor(s).

In order to achieve these goals, the Principal will appoint an Independent External Monitor(s) (IEM), who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

### **Clause 1 - Commitments of the Principal**

- (1) The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles:-
  - a) No employee of the Principal, personally or through family members, will in connection with the tender for, or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
  - b) The Principal will, during the tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential /additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.
  - c) The Principal will exclude from the process all known prejudiced persons.
- (2) If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the IPC/PC Act, or if there be a substantive suspicion in this regard, the Principal will inform the Chief Vigilance Officer and in addition can initiate disciplinary actions.

## **Clause 2 - Commitments of the Bidder(s) / contractor(s)**

- (1) The Bidder(s) / Contractor(s) commit themselves to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.
- a) The Bidder(s) / Contractor(s) will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.
  - b) The Bidder(s) / Contractor(s) will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.
  - c) The Bidder(s) / Contractor(s) will not commit any offence under the relevant IPC/PC Act; further the Bidder(s) / Contractor(s) will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
  - d) The Bidder(s) / Contractors(s) of foreign origin shall disclose the name and address of the Agents/ representatives in India, if any. Similarly the Bidder(s) / Contractors(s) of Indian Nationality shall furnish the name and address of the foreign principals, if any. Further details as mentioned in the "Guidelines on Indian Agents of Foreign Suppliers" shall be disclosed by the Bidder(s) / Contractor(s). Further, as mentioned in the Guidelines all the payments made to the Indian agent/representative have to be in Indian Rupees only. Copy of the "Guidelines on Indian Agents of Foreign Suppliers" is placed at (page no.7).
  - e) The Bidder(s) / Contractor(s) will, when presenting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.
  - f) 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.

(2) The Bidder(s) / Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.

### **Clause 3 - Disqualification from tender process and exclusion from future contracts**

If the Bidder(s) / Contractor(s), before award or during execution has committed a transgression through a violation of Clause 2, above or in any other form such as to put his reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s) / Contractor(s) from the tender process or take action as per the procedure mentioned in the "Guidelines on Banning of business dealings". Copy of the "Guidelines on Banning of business dealings" is placed at (as per Annexure A below).

### **Clause 4 - Compensation for Damages**

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

### **Clause 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".

### **Clause 6 - Equal treatment of all Bidder(s) / Contractor(s) / Subcontractors**

- (1) The Bidder(s) / Contractor(s) undertake(s) to demand from all subcontractors a commitment in conformity with this Integrity Pact, and to submit it to the Principal before contract signing.

- (2) The Principal will enter into agreements with identical conditions as this one with all Bidders, Contractors and Subcontractors.
- (3) The Principal will disqualify from the tender process all bidders who do not sign this Pact or violate its provisions.

**Clause 7 - Criminal charges against violating Bidder(s) / Contractor(s) / Subcontractor(s)**

If the Principal obtains knowledge of conduct of a Bidder, Contractor or Subcontractor, or of an employee or a representative or an associate of a Bidder, Contractor or Subcontractor which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the same to the Chief Vigilance Officer.

**Clause 8 - Independent External Monitor / Monitors (IEM)**

- (1) The Principal appoints competent and credible Independent External Monitor for this Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.

IEMs appointed and currently holding office are:

- a) Mr. J.K. Khanna, IPS (Retd)  
Email: jkkhannaips@yahoo.com; Mobile: 9810940403 / 0120-4322330
- b) Shri. A. Seshagiri Rao, IRSSE(Retd)  
Email: seshagiri2@gmail.com; Mobile: 9717644078

- (2) The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. It will be obligatory for him to treat the information and documents of the Bidder(s) / Contractor(s) as confidential. He reports to the Chairman, BDL.
- (3) The Bidder(s) / Contractor(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the Principal including that provided by the Contractor. The Contractor will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project/operational documentation. The same is applicable to Subcontractors. The Monitor is under contractual obligation to treat the information

and documents of the Bidder(s) / Contractor(s) / Subcontractor(s) with confidentiality.

- (4) The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Contractor. The parties offer to the Monitor the option to participate in such meetings.
- (5) As soon as the Monitor(s) notices, or believes to notice, a violation of this agreement, he will so inform the Management of the Principal and request the Management to discontinue or take corrective action, or to take other relevant action. The monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.
- (6) The Monitor(s) will submit a written report to the CMD, BDL within 8 to 10 weeks from the date of reference or intimation to him by the Principal and, should the occasion arise, submit proposals for correcting problematic situations.
- (7) If the Monitor(s) has reported to the CMD BDL, a substantiated suspicion of an offence under relevant IPC / PC Act, and the CMD BDL has not, within the reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer, the Monitor(s) may also transmit this information directly to the Central Vigilance Commissioner.
- (8) The word 'Monitor' would include both singular and plural.

#### **Clause 9- Pact Duration**

This Pact begins when both parties have legally signed it. 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.

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 Chairman of BDL.

#### **Clause 10 - Other provisions**

- (1) This agreement is subject to Indian Law. Place of performance and jurisdiction is the Registered Office of the Principal, i.e. Hyderabad.

- (2) Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.
- (3) If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.
- (4) Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.
- (5) In the event of any contradiction between the Integrity Pact and its Annexure, the Clause in the Integrity Pact will prevail."

(For & On behalf of the Principal)

(For & On behalf of Bidder / Contractor)

(Office Seal)

(Office Seal)

Place: \_\_\_\_\_

Date: \_\_\_\_\_

Witness 1:

(Name & Address)

Witness 2:

(Name &. Address)

**GUIDELINES FOR INDIAN AGENTS OF FOREIGN SUPPLIERS**

- 1.1 There shall be compulsory registration of agents for all Global / Open Tender and Limited Tender. An agent who is not registered with BDL shall apply for registration.
- 1.2 Registered agents will file an authenticated Photostat copy duly attested by a Notary Public/ Original certificate of the principal confirming the agency agreement and giving the status being enjoyed by the agent and the commission/ remuneration/ salary/ retainer ship being paid by the principal to the agent before the placement of order by BDL.
- 1.3 Wherever the Indian representatives have communicated on behalf of their principals and the foreign parties have stated that they are not paying any commission to the Indian agents, and the Indian representative is working on the basis of salary or as retainer, a written declaration to this effect should be submitted by the party (i.e. Principal) before finalizing the order.

**2.0 DISCLOSURE OF PARTICULARS OF AGENTS / REPRESENTATIVES IN INDIA. IF ANY.**

**2.1) Tenderers of Foreign nationality shall furnish the following details in their offer:**

1.1.1) The name and address of the agents/ representatives in India, if any and the extent of authorization and authority given to commit the Principals. In case the agent/ representative be a foreign Company, it shall be confirmed whether it is real substantial Company and details of the same shall be furnished.

1.1.2) The amount of commission/remuneration included in the quoted price(s) for such agents/ representatives in India.

1.1.3) Confirmation of the Tenderer that the commission/ remuneration if any, payable to his agents / representatives in India, may be paid by BDL in Indian Rupees only.

**2.2) Tenderers of Indian Nationality shall furnish the following details in their offers;**

2.2.1) The name and address of the foreign principals indicating their nationality as well as their status, i.e, whether manufacturer or agents of manufacturer holding the

Letter of Authority of the Principal specifically authorizing the agent to make an offer in India in response to tender either directly or through the agents / representatives.

2.2.2) The amount of commission/remuneration included in the price (s) quoted by the Tenderer for himself.

2.2.3) Confirmation of the foreign principals of the Tenderer that the commission/ remuneration, if any, reserved for the Tenderer in the quoted price (s), may be paid by BDL in India in equivalent Indian Rupee on satisfactory completion of the Project or supplies of Stores and Spares in case of operation items.

2.3 In either case, in the event of contract materializing, the term of payment will provide for payment of the commission/ remuneration, if any payable to the agents/representatives in India in Indian Rupees on expiry of 90 days after the discharge of the obligations under the contract.

2.4 Failure to furnish correct and detailed information as called for in paragraph 2.0 above will render the concerned tender liable to rejection or in the event of a contract materializing, the same liable to termination by BDL. Besides this there would be a penalty of banning business dealings with BDL or damage or payment of a named sum.

## **Debarment**

### **GUIDELINES ON BANNING OF BUSINESS DEALINGS**

**Rule 151 of GFR, 2017 deals with debarment which is as under:**

- i. A bidder shall be debarred if he has been convicted of an offence
  - a. under the Prevention of Corruption Act, 1988; or
  - b. the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.
- ii. A bidder debarred under sub-section (i) or any successor of the bidder shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date of debarment. Department of Commerce (DGS&D) will maintain such list which will also be displayed on the website of DGS&D as well as Central Public Procurement Portal.



- iii. A procuring entity may debar a bidder or any of its successors, from participating in any procurement process undertaken by it, for a period not exceeding two years, if it determines that the bidder has breached the code of integrity. The Ministry / Department will maintain such list which will also be displayed on their website.
- iv. The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment.

### **Guidelines on Debarment of firms from Bidding**

The guidelines are classified under following two types:-

- i. In cases where debarment is proposed to be limited to a single Ministry, the appropriate Orders can be issued by that Ministry itself, thereby banning all its business dealing with the debarred firm.
- ii. Where it is proposed to extend the debarment beyond the jurisdiction of the particular Ministry i.e. covering to all central Ministries / Departments, the requisite Orders shall be issued by Department of Expenditure (DoE), Ministry of Finance (MoF).

#### **1. Definitions**

- i. **Firm:** The term 'firm' or 'bidder" has the same meaning for the purpose of these Guidelines, which includes an individual or person, a company, a cooperative society, a Hindu undivided family and an association or body of persons, whether incorporated or not, engaged in trade or business.
- ii. **Allied firm:** All concerns which come within the sphere of effective influence of the debarred firms shall be treated as allied firms. In determining this, the following factors may be taken into consideration:
  - a) Whether the management is common;
  - b) Majority interest in the management is held by the partners or directors of banned/ suspended firm;
  - c) Substantial or majority shares are owned by the banned/ suspended firm and by virtue of this it has a controlling voice.
  - d) Directly or indirectly controls, or is controlled by or is under common control with another bidder.
  - e) All successor firms will also be considered as allied firms.

The terms “banning of firm”, ‘suspension,’ ‘Black-Listing’ etc. convey the same meaning as of “Debarment”.

## **2. Debarment by a Single Ministry / Department**

Orders for Debarment of a firm(s) shall be passed by a Ministry / Department / Organizations, keeping in view of the following:

- i. A bidder or any of its successors may be debarred from participating in any procurement process for a period not exceeding two years
- ii. Firms will be debarred if it is determined that the bidder has breached the code of integrity as per Rule 175 of GFRs 2017.
- iii. A bidder can also be debarred for any actions or omissions by the bidder other than violation of code of integrity, which in the opinion of the Ministry/Department, warrants debarment, for the reasons like supply of sub-standard material, non-supply of material, abandonment of works, sub-standard quality of works, failure to abide “Bid Securing Declaration” etc.
- iv. It shall not be circulated to other Ministries / Departments. It will only be applicable to all the attached / subordinate offices, Autonomous bodies, Central Public Sector Undertakings (CPSUs) etc. of the Ministry / Department issuing the debarment Order.
- v. The concerned Ministry/ Department before issuing the debarment order against a firm must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm).
- vi. Secretary of Ministry / Department may nominate an officer at the rank of Joint Secretary / Additional Secretary as competent authority to debar the firms.
- vii. Ministry / Department that issued the order of debarment can also issue an Order for revocation of debarment before the period of debarment is over, if there is adequate justification for the same. Ordinarily, the revocation of the Order before expiry of debarred period should be done with the approval of Secretary concerned of Ministry / Department.
- viii. The Ministry / Department will maintain list of debarred firms, which will also be displayed on its website.
- ix. Debarment is an executive function and should not be allocated to Vigilance Department.

3. It is possible that the firm may be debarred concurrently by more than one Ministry / Department. Ministries / Departments at their option may also delegate powers to debar bidders to their CPSUs, Attached Offices / Autonomous Bodies etc. In such cases, broad principles for debarment in para 2 as above are to be kept in mind. Debarment by such bodies like CPSUs etc. shall be applicable only for the procurements made by such bodies. Similarly, Government e-Marketplace (GeM) can also debar bidders up to two years on its portal. In case of debarments done by CPSUs, revocation of the debarment orders before expiry of debarred period should be done only with the approval of Chief Executive Officer of concerned CPSUs etc.

#### 4. Debarment across All Ministries / Departments

- i. Where a Ministry / Department is of the view that business dealings with a particular firm should be banned across all the Ministries / Departments by debarring the firm from taking part in any bidding procedure floated by the Central Government Ministries / Departments, the Ministry / Department concerned, should after obtaining the approval of the Secretary concerned, forward to DoE a self-contained note setting out all the facts of the case and the justification for the proposed debarment, along with all the relevant papers and documents. DoE will issue the necessary orders after satisfying itself that proposed debarment across all the Ministries / Departments is in accordance with Rule 151 of GFRs, 2017. This scrutiny is intended to ensure uniformity of treatment in all cases.
- ii. The firm will remain in suspension mode (i.e. debarred) during the interim period till the final decision taken by DoE, only in the Ministry / Department forwarding such proposal.
- iii. Ministry / Department before forwarding the proposal to DoE must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm). If DoE realizes that sufficient opportunity has not be given to the firm to represent against the debarment, such debarment requests received from Ministries / Departments shall be rejected.
- iv. DoE can also give additional opportunity, at their option, to firm to represent against proposed debarment. DoE can also take suo-moto action to debar the firms in certain circumstances.

- v. No contract of any kind whatsoever shall be placed on the debarred firm, including its allied firms by any Ministries / Departments / Attached / Subordinate offices of the Government of India including autonomous body, CPSUs etc. after the issue of a debarment order.
- vi. DoE will maintain list of such debarred firms, which will be displayed on Central Public Procurement Portal.

#### **5. Revocation of Orders**

- i. An order for debarment passed shall be deemed to have been automatically revoked on the expiry of that specified period and it will not be necessary to issue a specific formal order of revocation.
- ii. A debarment order may be revoked before the expiry of the Order, by the competent authority, if it is of the opinion that the disability already suffered is adequate in the circumstances of the case or for any other reason.

#### **6. Other Provisions (common to both types of debarment)**

- i. No contract of any kind whatsoever shall be placed to debarred firm including its allied firms after the issue of a debarment order by the Ministry / Department. Bids from only such firms shall be considered for placement of contract, which are neither debarred on the date of opening of tender (first bid, normally called as technical bid, in case of two packet/two stage bidding) nor debarred on the date of contract. Even in the cases of risk purchase, no contract should be placed on such debarred firms.
- ii. If case, any debar firms has submitted the bid, the same will be ignored. In case such firm is lowest (L-1), next lowest firm shall be considered as L-1. Bid security submitted by such debarred firms shall be returned to them.
- iii. Contracts concluded before the issue of the debarment order shall, not be affected by the debarment Orders.
- iv. The Debarment shall be automatically extended to all its allied firms. In case of joint venture/ consortium is debarred all partners will also stand debarred for the period specified in Debarment Order. The names of partners should be clearly specified in the "Debarment Order".
- v. Debarment in any manner does not impact any other contractual or other legal rights of the procuring entities.
- vi. The period of debarment shall start from the date of issue of debarment order.

- vii. The Order of debarment will indicate the reason(s) in brief that lead to debarment of the firm.
- viii. Ordinarily, the period of debarment should not be less than six months.
- ix. In case of shortage of suppliers in a particular group, such debarments may also hurt the interest of procuring entities. In such cases, endeavour should be to pragmatically analyse the circumstances, try to reform the supplier and may get a written commitment from the supplier that its performance will improve.
- x. All Ministries / Departments must align their existing Debarment Guidelines in conformity with these Guidelines. Further, bidding documents must also be suitably amended, if required.

## **7. Levy of Financial Penalties**

Financial Penalties may be levied as provided in the pre contract Integrity pact or based on the contractual terms.

- a) Cases involving non-performance or under performance of contract or PO terms the performance bank guarantee / security deposit shall be revoked. Apart from other actions including cancellation of contract / PO.
- b) Cases involving violations of pre-contract integrity pact, apart from cancellation of concerned or all contracts/PO on the party, the following actions can be taken towards levying the financial penalties.
  - i. Forfeiture of performance bank guarantees either fully or partially.
  - ii. Recovery of all amount paid with interest there on at 2% higher than the prevailing base rate of SBI, in case of foreign vendor 2% higher than the London interbank offered rate. If any outstanding payment is due from BDL in connection with any other Contract / PO it can be utilized for the aforesaid amount and interest for recovery.
  - iii. If BDL is in the position of Performance cum Warranty Bond furnished by the party, it can be encashed or invoked to cover the payments already made along with interest.
  - iv. BDL can recover such an amount if party any agent or broker with a view to secure the Contract / PO in violation of Contract / PO Terms.
- c) If the party violates Contract / PO Standard Terms related to Agents / Agency Commission, apart from putting hold or cancellation of Contract / PO entirely or

in part, one or all of the following actions can be taken for levying financial penalty in case of foreign vendors.

- i. To deduct such amount paid as Gift, Reward, Fees, Commission or consideration at the rate of 2% per annum above London Interbank offered rate.
  - ii. Recovery of all the payments made in terms of the Contract / PO along with interest @ 2% per annum above London Interbank offered rate.
  - iii. Recovery of any such amount referred in (i) and (ii) above from other Contracts / PO of the firm with BDL.
- d) The Levy of Financial Penalty shall be laid under the specific clauses of Contract / PO by way of issuing show-cause notice (if required) - Order Letters for revoking Bank Guarantees etc. to the firm by the concerned IMM Head.
- e) The levy of Financial Penalty shall be initiated by the concerned IMM Head. The Order of levying Financial Penalty will be made only after issuing the show-cause notice explaining the grounds for the proposed action by providing an opportunity to the party for explaining its case.
- f) The show-cause notice should contain reasons for the proposed action and the grounds relied upon. The party is to be given 15 days to submit their response in writing after receipt of the notice.
- g) The Financial Penalty will be levied on the approval of CFA. The CFA is Functional Director / CMD.

Data of debarred vendors shall be maintained by Corporate Commercial and is placed in BDL website for the benefit of vendors. BDL Vendors are advised not to outsource any job to the debarred vendors.

On receipt of the orders from Government of India, Corporate Commercial shall put up the case to concerned Functional Director and with necessary approval, debar the firm and communicate the same to the vendor if it happens to be a registered vendor of BDL.

The details of all debarred vendors are hosted in the BDL website and accordingly marked in vendor master in case of a BDL registered vendor and no further enquiries are floated on them.