

PART IV

TENDER REF NO.: RC/IMM/ENGINE/8422LRU/68/1

Integrity Pact

Whereas Hindustan Aeronautics Ltd. ("HAL") having its registered office at 15/1, Cubbon Road, Bangalore – 560 001, India, acting through itsDivision, represented by General Manager / Executive Director hereinafter referred to as the Buyer and the first party, proposes to procure (Name or category of the Equipment, like Aircraft Parts/ Avionic Items/ Accessories etc), hereinafter referred to as Stores and / or Services and / or Works.

And

M/s....., represented by....., Chief Executive Officer (which term, unless expressly indicated by the contract, shall be deemed to include its successors and its assignee), hereinafter referred to as the Bidder/ Seller and the second party, is willing to offer/ has offered the Stores and / or Services and / or Works.

2. Whereas the Bidder / Seller is a private company/public company /partnership/ registered export agency, constituted in accordance with the relevant law in the matter and the Buyer is a Public Sector Undertaking and registered under Companies Act 1956. Buyer and Bidder/Seller shall hereinafter be individually referred to as "Party" or collectively as the "parties", as the context may require.

3. Preamble

Buyer has called for tenders under laid down organizational procedures intending to enter into contract/s for supply / purchase / Services / Works etc of.....and the Bidder / Seller is one amongst several bidders/Proprietary Vendor/Customer Nominated Source/Licenser who has indicated a desire to bid/supply in such tendering process. The Buyer values and takes primary responsibility for 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 Seller(s).

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

4. Commitments of the Buyer.

4.1 The Buyer commits itself to take all measures necessary to prevent corruption and fraudulent practices and to observe the following principles:-

- i) No employee of the Buyer, personally or through family members, will in connection with the tender, 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.
 - ii) The Buyer will during the tender process treat all Bidder(s) / Seller(s) with equity and reason. The Buyer will in particular, before and during the tender process, provide to all Bidder(s) / Seller(s) the same information and will not provide to any Bidder(s) / Seller(s) confidential / additional information through which the Bidder(s) / Seller(s) could obtain an advantage in relation to the process or the contract execution.
 - iii) The Buyer will exclude from the process all known prejudiced persons.
- 4.2 If the Buyer obtains information on the conduct of any of its employees which is a criminal offence under the Indian legislation Prevention of Corruption Act 1988 as amended from time to time or if there be a substantive suspicion in this regard, the Buyer will inform to its Chief Vigilance Officer and in addition can initiate disciplinary action.

5. Commitments of the Bidder(s)/Seller(s).

5.1 The Bidder(s)/Seller(s) commit himself to take necessary measures to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.

- i) The Bidder(s)/Seller(s) will not, directly or through any other persons or firm, offer promise or give to any of the Buyer'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 during the tendering or qualification process or during the execution of the contract.
- ii) The Bidder(s)/Seller(s) will not enter with other Bidders / Sellers 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.

- iii) The Bidder(s)/Seller(s) will not commit any offence under the Indian legislation, Prevention of Corruption Act 1988 as amended from time to time. Further, the Bidder(s)/Seller(s) will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Buyer as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
- 5.2 The Bidder(s)/Seller(s) shall ensure compliance of the provisions of this Integrity Pact by its sub-supplier(s)/ sub-contractor(s), if any. Further, the Bidder/Seller shall be held responsible for any violation/breach of the provisions by its sub-supplier(s)/sub-contractor(s).
- 5.3 The Bidder(s)/ Seller(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.
- 5.4 Agents / Agency Commission:

The Seller/Bidder confirms and declares to the buyer that the Seller/Bidder is the original manufacturer or authorized distributor / stockiest of original manufacturer or Govt. Sponsored / Designated Export Agencies (applicable in case of countries where domestic laws do not permit direct export by OEMS) of the stores and / or Services and / or Works referred to in this tender / offer / contract / Purchase order and has not engaged any individual or firm, whether Indian or Foreign whatsoever, to intercede, facilitate or in any way to recommend to Buyer or any of its functionaries, whether officially or unofficially, to the award of the tender / contract / purchase order to the Seller/Bidder; nor has any amount been paid, promised or intended to be paid to any such individual or firm in respect of any such intercession, facilitation or recommendation. The Seller/Bidder agrees that if it is established at any time to the satisfaction of the Buyer that the present declaration is in any way incorrect or if at a later stage it is discovered by the Buyer that the Seller/Bidder has engaged any such individual / firm, and paid or intended to pay any amount, gift, reward, fees, commission or consideration to such person, party, firm or institution, whether before or after the signing of this contract / purchase order, the Seller/Bidder will be liable to refund that amount to the Buyer. The Seller will also be debarred from participating in any RFQ / Tender for new projects / program with Buyer for a minimum period of five years. The Buyer will also have a right to consider cancellation of the Contract / Purchase order either wholly or in part, without any entitlement or compensation to the Seller/Bidder who shall in such event be liable to refund to the buyer, all agency commission payments made by the Seller/Bidder along with interest at the rate of 2% per annum above

LIBOR (London Inter Bank Offer Rate) (for foreign vendors) and Base Rate of SBI (State Bank of India) plus 2% (for Indian vendors). The Buyer will also have the right to recover any such amount from any contracts / Purchase order concluded earlier or later with Buyer.

6. Previous Transgression

6.1 The Bidder /Seller declares that no previous transgressions have occurred in the last three years from the date of signing of this Integrity Pact with any other company in any country conforming to the anti corruption approach or with any other Public Sector Enterprise in India that could justify Bidder's/ Sellers' exclusion from the tender process.

6.2 If the Bidder / Seller makes incorrect statement on this subject, Bidder / Seller can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason without any liability whatsoever on the Buyer.

7. Company Code of Conduct

Bidders / Sellers 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 of conduct throughout the company.

8. Sanctions for Violation

8.1 If the Bidder(s)/ Seller(s), before award or during execution has committed a transgression through a violation of Clause 5, above or in any other form such as to put his reliability or credibility in question, the Buyer is entitled to disqualify the Bidder(s)/ Seller(s) from the tender process or take action as per the procedure mentioned herein below:

- i) To disqualify the Bidder / Seller with the tender process & exclusion from future contracts.
- ii) To debar the Bidder / Seller from entering into any bid from Buyer for a period of two years.
- iii) To immediately cancel the contract, if already signed / awarded without any liability on the Buyer to compensate the Bidder /Seller for damages, if any. Subject to Clause 5.4 any lawful payment due to the Bidder/Seller for supplies effected till date of termination would be made in normal course.
- iv) To encash EMD / Advance Bank Guarantees / Performance Bonds/Warranty Bonds, etc. which may have been furnished by the

Bidder/Seller to the extent of the undelivered Stores and / or Services and / or Works.

- 8.2 If the Buyer obtains knowledge of conduct of a Bidder/ Seller or of an employee or a representative or an associate of a Bidder / Seller which constitutes corruption, or if the Buyer has substantive suspicion in this regard, the Buyer will inform to its Chief Vigilance Officer.

9. Compensation for Damages

- 9.1 If the Buyer has disqualified the Bidder(s) / Seller(s) from the tender process prior to the award according to Clause 8, the Buyer is entitled to demand and recover the damages equivalent to Earnest Money Deposit in case of open tendering.
- 9.2 If the Buyer has terminated the contract according to Clause 8, or if the Buyer is entitled to terminate the contract according to Clause 8, the Buyer shall be entitled to encash the advance bank guarantee and performance bond/ warranty bond, if furnished by the Bidder / Seller, in order to recover the payments, already made by the Buyer for undelivered Stores and / or Services and / or Works.
- 9.3 The Seller / Bidder shall also be liable to refund to the Buyer, the Agency Commission / payments made by the Seller / Bidder along with interest at the rate of 2% per annum above LIBOR (London Inter Bank Offer Rate) (for foreign vendors) and Base Rate of SBI (State Bank of India) plus 2% (for Indian vendors).

10. Independent External Monitor(s)

- 10.1 The Buyer has appointed Independent External Monitor(s) for this Integrity Pact in consultation with the Central Vigilance Commission.
- 10.2 As soon as the Integrity Pact is signed, the Buyer shall provide a copy thereof, along with a brief background of the case to the Independent External Monitor(s).
- 10.3 The Bidder(s)/Seller(s), if they deem it necessary, may furnish any information as relevant to their bid to the Independent External Monitor(s).
- 10.4 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 External Monitor(s) for their comments / enquiry.
- 10.5 If the Independent External Monitor(s) need to peruse the 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 External Monitor(s).

10.6 The report of enquiry, if any, made by the Independent External Monitor(s) shall be submitted to CMD, HAL within 2 weeks, for a final and appropriate decision in the matter keeping in view the provision of this Integrity Pact.

11. Law and Place of Jurisdiction

This Integrity pact is subject to Indian Laws, and exclusive Jurisdiction of Courts at Bangalore, India.

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.

13. Integrity Pact Duration

13.1 This Integrity Pact begins when both parties have legally signed it. It expires for the successful Bidder / Seller 12 months after the last payment under the contract, and for all other unsuccessful Bidders / Sellers within 6 months from date of placement of order / finalization of contract against this tender.

13.2 If any claim is made / lodged during this time, the same shall be binding and continue to be valid despite the lapse of this Integrity Pact as specified above, unless it is discharged / determined by CMD, HAL.

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

14. Other Provisions

14.1 Changes and supplements need to be made in writing. Side agreements have not been made.

14.2 The Bidder(s)/Seller(s) signing this IP shall not initiate any Legal action or approach any court of law during the examination of any allegations/complaint by IEM and until the IEM delivers the report.

14.3 In view of the nature of this Integrity Pact, this Integrity Pact shall not be terminated by any party and will subsist throughout its stated period.

14.4 Nothing contained in this Integrity Pact shall be deemed to assure the Bidder/ Seller of any success or otherwise in the tendering process.

15. This Integrity Pact is signed with HAL exclusively and hence shall not be treated as precedence for signing of IP with MoD or any other Organization.

16. The Parties hereby sign this Integrity Pact at _____ on _____ (Bidder/Seller) and at _____ on _____ (Buyer)

BUYER

BIDDER / SELLER

Signature:

Signature:

Executive Director/General Manager
Hindustan Aeronautics Ltd.,
.....Division

Authorized Signatory (*)

Date:

Date:

Stamp:

Stamp:

Witness

Witness

1. _____

1. _____

2. _____

2. _____

(*) – Authorized signatory of the company / authorized person who has signed the offer.