

FORMAT OF INTEGRITY PACT FOR JNPA

INTEGRITY PACT BETWEEN

JAWAHARLAL NEHRU PORT AUTHORITY (JNPA) hereinafter referred to as "The Principal"

AND

(Name of The bidders and consortium members)
.....hereinafter referred to as "The Bidder/Contractor"

Preamble: The Principal intends to award, under laid down organizational procedures, contract/concession for Tender No. The Principal values full compliance with all relevant laws and regulations, and the principles of economic use of resources, and of fairness and transparency in its relations with its Bidders. The Central Vigilance Commission (CVC) has been promoting Integrity, transparency, equity and competitiveness in Government / PSU transactions and as a part of Vigilance administration and superintendence, CVC has, recommended adoption of Integrity Pact and provided basic guidelines for its implementation in respect of major procurements in the Government Organizations in pursuance of the same, the Principal agrees to appoint an external independent Monitor who will monitor the execution of the contract for compliance with the principles mentioned above.

Section 1: Commitments of the Principal

- i. 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 execution of a contract, demand, take a promise for or accept, for him/herself or third person, any material or immaterial benefit which he/she is not legally entitled to.
 - (b) The Principal 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.
 - (c) The Principal will exclude from the process all known prejudicial persons.
 - ii. If the Principal obtains information on the conduct of any of its
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employees which is a criminal offence under the relevant Anti-Corruption Laws of India, or if there be a substantive suspicion in this regard, the Principal will inform its Vigilance Office and in addition can initiate disciplinary actions. In such a case, while an enquiry is being conducted by the Principal, the proceedings under the contract would not be stalled.

Section 2: Commitments of the Bidder / Contractor

- (1) The Bidder/Contractor commits themselves to take all measures necessary to prevent corrupt practices, unfair means and illegal activities, during pre-contract as well as post-contract stages. He commits himself to observe the following principles during the contract execution.
 - (a) The Bidder/Contractor will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in the execution of the contract or to any third person any material or immaterial benefit, which he/she is not legally entitled to, in order to obtain in exchange of advantage of any kind, whatsoever during the execution of the contract.
 - (b) The Bidder/Contractor 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/Contractor will not commit any offence, under the relevant Anticorruption Laws of India; further the Bidder/Contractor 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 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.
 - (e) The Bidder/Contractor 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) The Bidder commits to refrain from giving any compliant directly or through any other manner without supporting it with full and verifiable facts.
 - (g) 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 Principal.
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(2) The Bidder/Contractor will not instigate third persons to commit offences outlined above or be an accessory to such offences.

Section 3: Disqualification from or exclusion from future contracts

If the Bidder, before award of contract, has committed a transgression, through a violation of Section-2 or in any other form, such as to put his reliability 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.

- i. If the Bidder/Contractor has committed a transgression, through a violation of Section-2, such as to put his reliability, or credibility into question, the Principal is entitled to disqualify the Bidder/Contractor from the tender process, terminate the contract if already awarded and also, to exclude the Bidder/Contractor 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 transgressions, within the company hierarchy of the Bidder and the amount of the damage. The execution will be imposed for a minimum of 6 months and maximum of 3 years.

Note: A transgression is considered to have occurred, if in the light of available evidence, no reasonable doubt is possible.

- ii. 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.
- iii. If the Bidder/Contractor 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

- i. If the Principal has disqualified the Bidder, 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.
 - ii. 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
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the Contractor, liquidated damages equivalent to 5% of the contract value, or the amount equivalent to Security Deposit/Performance Bank Guarantee, whichever is higher.

- iii. The Bidder agrees and undertakes to pay the said amounts, without protest or demur, subject only to condition that, if the Bidder/Contractor can prove and establish that the termination of the contract, after the contract award has caused no damage or less damage than the amount of the liquidated damages, the Bidder/Contractor shall compensate the principal, only to the extent of the damage in the amount proved.

Section 5: Previous transgression

- i. The Bidder declares that, no previous transgression has occurred in the last 3 years, with any other company, in any country, or with any other Public Sector Enterprises in India, that could justify his exclusion from the award of the contract.
- ii. If the Bidder makes incorrect statement on this subject, it can be declared disqualified for the purpose of the contract and the same can be terminated for such reason.

Section 6: Equal treatment of all Bidders/Contractors/Subcontractors

- i. The Bidder/Contractor undertakes to demand from all subcontractors, a commitment in conformity with this Integrity Pact, and to submit it to the Principal before contract signing.
- ii. The Principal will enter into agreements with identical conditions as this one which all Bidders, Contractors and Subcontractors.
- iii. The Principal will disqualify from the tender process all Bidders, who do not sign this part or violates its provisions.

Section 7: Criminal charges against violating Bidders / Contractors / Subcontractors

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 Vigilance office.

Section 8: External Independent Monitor

- i. Pursuant to the need to implement and operate this Integrity Pact the Principal has appointed Shri _____ independent Monitor, for this Pact. The task of the Monitor, is to review
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independently and objectively, whether and to what extent, the parties comply with the obligations under this agreement.

- ii. The Monitor is not subject to instructions, by the representative of the parties to the Chairperson of the Board of the Principal.
- iii. The Bidder/Contractor 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 Bidder/Contractor will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access, to the project documentation. The same is applicable to Subcontractors. The monitor is under contractual obligation, to treat the information and documents of the Bidder/Contractor/Subcontractor with confidentiality.
- iv. 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 Bidder/Contractor. The parties offer to the Monitor the option to participate in such meetings.
- v. As soon as the Monitor notices a violation of this agreement, he will so inform the Management of the Principal and request the management to discontinue, or heal the violation. Or to take other relevant action. The Monitor can in this regard submit nonbinding 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.
- vi. The Monitor will submit a written report, to the Chairman of the Board of the Principal, within 8 to 10 weeks, from the date of reference of intimation to him by the 'Principal' and, should the occasion arise, submit proposals for correcting problematic situations.
- vii. If the Monitor has reported to the Chairman of the Board, a substantiate suspension of an offence, under relevant Anti-Corruption Laws of India, and the Chairperson has not, within reasonable time, taken visible action to proceed against such offence, or reported it to the Vigilance Office, the Monitor may also transmit this information directly to the Central Vigilance Commissioner, Government of India.

Section 9: Pact Duration

This Pact begins when both parties have signed it. It expires 12 months after the last payment under the contract Agreement is

made. If any claim is made/lodged during this time, the same shall be binding and continue be valid, despite the lapse of this Pact, as specified above, unless it is discharged/determined Chairperson of the Principal. The Pact duration in respect of unsuccessful Bidders shall expire after 3 months of the award of the contract.

Section 10: Other Provisions

- i. This agreement is subject to Indian Law. Place of performance and jurisdiction is the Registered Office of the Principal, i.e. Jawaharlal Nehru Port Authority, Administration Building, Sheva, Navi Mumbai - 400 707.
- ii. 2. Changes and supplements as well as termination notices, need to be made in writing, before they become effective and binding on the both parties.
- iii. 3. If the Bidder / Contractor is a partnership or a consortium, this agreement must be, signed by all partners or consortium members.
- iv. 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.

For the Principal

For the Bidder/Contractor

Place: JNPA, Navi Mumbai

Witness-1:

Witness-2.....

Date: ____/____/____
