

PROFORMA OF PRE-CONTRACT INTEGRITY PACT

General

This Pre-Bid, Pre-Contract Agreement (hereinafter called the Integrity Pact) is made on this, the day of themonth of 20...., between, the Board of Trustees of Cochin Port Trust acting through Shri., (Designation of the Officer), Cochin Port Trust (hereinafter called the 'BUYER/ EMPLOYER', 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 Shri....., 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/EMPLOYER has invited Bids for the project of _____ (**hereinafter referred to as the "Project"**) and the BIDDER/SELLER is submitting his Bid for the Project and

WHEREAS the BIDDER/SELLER is a Private Limited Company/Public Limited Company/ Government Undertaking/Registered Partnership Firm constituted in accordance with the relevant law in the matter/ JV/Consortium and the BUYER/ EMPLOYER is Cochin Port Trust.

NOW, THEREFORE,

To avoid all forms of corruption by following a system that is fair, transparent and free from any influence/prejudiced dealings prior to, during and subsequent to the currency of the Contract to be entered into, with a view to:-

Enabling Bidders to abstain from bribing or indulging in any corrupt practice in order to secure the Contract by providing assurance to them that their competitors will also abstain from bribing and other corrupt practices and the BUYER/ EMPLOYER will commit to prevent corruption, in any form, by its officials by following transparent procedures.

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

1. Commitments of the BUYER/ EMPLOYER

- 1.1 The BUYER/ EMPLOYER undertakes that no official of the BUYER/ EMPLOYER, 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/SELLER, 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.
- 1.2 The BUYER/ EMPLOYER will, during the pre-Contract stage, treat all BIDDERS/SELLERS alike and will provide to all BIDDERS/SELLERS the same information and will not provide any such information to any particular BIDDER/SELLER which could afford an advantage to that particular BIDDER/SELLER in comparison to other BIDDERS/SELLERS.
- 1.3 All the officials of the BUYER/ EMPLOYER 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.

2. In case any such preceding misconduct on the part of such official(s) is reported by the BIDDER/SELLER to the BUYER/ EMPLOYER with full and verifiable facts and the same is prima facie found to be correct by the BUYER/ EMPLOYER, necessary disciplinary proceedings or any other action as deemed fit, including criminal proceedings may be initiated by the BUYER/ EMPLOYER and such a 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/ EMPLOYER, the proceedings under the Contract would not be stalled.

3. Commitments of BIDDERS

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 and in particular commit itself to the following:-

- 3.1 The BIDDER/SELLER 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/ EMPLOYER 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.
- 3.2 The BIDDER/SELLER further undertakes that it 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/ EMPLOYER 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 BUYER/ EMPLOYER for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other Contract with the BUYER/ EMPLOYER.
- 3.3* BIDDERS/SELLERS shall disclose the name and address of agents and representatives and Indian BIDDERS/SELLERS shall disclose their foreign principals or associates.
- 3.4* BIDDERS/SELLERS shall disclose the payments to be made by them to agents/brokers or any other intermediary, in connection with this Bid/Contract.
- 3.5* The BIDDER/SELLER further confirms and declares to the BUYER/ EMPLOYER that the BIDDER/SELLER 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/EMPLOYER or any of its functionaries, whether officially or unofficially to the award of the Contract, the BIDDER/SELLER, nor has any amount been paid, promised or intended to be paid to any such individual, firm or company in respect of any such intercession, facilitation or recommendation.
- 3.6 The BIDDER/SELLER, either while presenting the Bid or during pre-Contract negotiations or before signing the Contract, shall disclose any payments he has made, is committed to or intends to make to officials of the BUYER/ EMPLOYER or their family members, agents, brokers or any other intermediaries in connection with the Contract and the details of services agreed upon for such payments.

- 3.7 The BIDDER/SELLER 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.
- 3.8 The BIDDER/SELLER will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.
- 3.9 The BIDDER/SELLER shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information provided by the BUYER/EMPLOYER as part of the business relationship, regarding plans, technical proposals and business details, including information contained in any electronic data carrier. The BIDDER/SELLER also undertakes to exercise due and adequate care lest any such information is divulged.
- 3.10 The BIDDER/SELLER commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.
- 3.11 The BIDDER/SELLER shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.
- 3.12 If the BIDDER/SELLER or any employee of the BIDDER/SELLER or any person acting on behalf of the BIDDER/SELLER, either directly or indirectly, is a relative of any of the officers of the BUYER/EMPLOYER or alternatively, if any relative of an officer of the BUYER/EMPLOYER has financial interest/stake in the Bidder/SELLER's firm, the same shall be disclosed by the BIDDER/SELLER at the time of filing of tender.
- The term 'relative' for this purpose would be as defined in Section 6 of the Companies Act 1956.
- 3.13 The BIDDER/SELLER 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/EMPLOYER.

4. Previous Transgression

- 4.1 The BIDDER/SELLER declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any other Port/Ministry/ Department of the Government in India or PSU/PSE in India, that could justify Bidder/SELLER's exclusion from the tender process.
- 4.2 The BIDDER/SELLER agrees that if it 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.

5. Earnest Money (Performance Security)

5.1 While submitting commercial bid, the BIDDER/SELLER shall deposit an amount (to be specified in Bid Document) as Earnest Money, with the BUYER/EMPLOYER through any of the following instruments:

- (i) Bank Draft or a Pay Order or Banker's Cheque in favour of the FA & CAO, CoPT;
- (ii) Any other mode or through any other instrument (to be specified in the Bid Document).

- 5.2 The Earnest Money shall be valid upto a period of 148 days from the Bid Due Date.
- 5.3 In case of the successful BIDDER/SELLER, a Performance Security in the form of Bank Guarantee valid till 30 days after the end of defect liability period or any other mode or through any other instrument (to be specified in the Bid Document) will also be furnished to the BUYER/ EMPLOYER, within 21 days of Letter of Acceptance of the bid by the BUYER/ EMPLOYER.
- 5.4 In case of the successful BIDDER/SELLER, a clause would also be incorporated in the Article pertaining to Performance Security in the Project Contract that the provisions of ‘Sanctions for Violations’ shall be applicable for forfeiture of Performance Security in case of a decision by the BUYER/ EMPLOYER to forfeit the same without assigning any reason for imposing Sanction for Violation of this Pact.
- 5.5 No interest shall be payable by the BUYER/ EMPLOYER to the BIDDER/SELLER on Earnest Money/Performance Security for the period of its currency.

6. **Sanctions for Violations**

6.1 Any breach of the aforesaid provisions by the BIDDER/SELLER or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER/SELLER) shall entitle the BUYER/ EMPLOYER 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/SELLER. However, the proceedings with the other BIDDER/SELLER (s) would continue.
- (ii) The Earnest Money Deposit (in pre-Contract stage) and/or Performance Security (after the Contract is signed) shall stand forfeited either fully or partially, as decided by the BUYER/ EMPLOYER and the BUYER/ EMPLOYER shall not be required to assign any reason therefore.
- (iii) To immediately cancel the Contract, if already signed, without giving any compensation to the BIDDER/SELLER.
- (iv) If the BUYER/ EMPLOYER has disqualified the Bidder from the tender process according to Section-4 prior to the award, the BUYER/ EMPLOYER is entitled to demand and recover the damages equivalent to Earnest Money Deposit.

If the BUYER/ EMPLOYER has terminated the Contract according to Section-4, or if the BUYER/ EMPLOYER is entitled to terminate the Contract according to Section-4, the BUYER/ EMPLOYER shall be entitled to demand and recover from the Contractor, liquidated damages equivalent to 5% of the Contract value, or the amount equivalent to Performance Security, whichever is higher.

The BIDDER/SELLER agrees and undertakes to pay the said amounts, without protest or demur, subject only to the condition that, if the BIDDER/ SELLER/ 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/SELLER/Contractor shall compensate the BUYER/ EMPLOYER, only to the extent of the damage in the amount proved.

- (v) To debar the BIDDER/SELLER from participating in future Bidding processes of the BUYER/ EMPLOYER for a minimum period of five years, which may be further extended at the discretion of the BUYER/ EMPLOYER.

- (vi) To recover all sums paid in violation of this Pact by BIDDER(s)/SELLERS to any middleman or agent or broker with a view to securing the Contract.
- (vii) Forfeiture of Performance Security in case of a decision by the BUYER/EMPLOYER to forfeit the same without assigning any reason for imposing Sanction for Violation of this Pact.
- 6.2 The BUYER/ EMPLOYER will be entitled to take all or any of the actions mentioned at paras 6.1(i) to (vii) of this Pact also on the commission by the BIDDER/SELLER or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER/SELLER), of an offence as defined in Chapter IX of the Indian Penal Code, 1860 or Prevention of Corruption Act, 1988 or any other statute enacted for prevention of corruption.
- 6.3. In case of a final decision by the BUYER/EMPLOYER to the effect that a breach of the provisions of this Pact has been committed by the BIDDER/SELLER, it shall be binding and therefore, notified to the BIDDER/SELLER forthwith. However, the BIDDER/SELLER can approach the Independent Monitor(s) appointed for the purposes of this Pact in appeal, under intimation to the BUYER/EMPLOYER, within a period not later than of one month of the date of such notification. In such cases, the decision of the Independent Monitor(s) will be final, conclusive and binding on both the BIDDER/SELLER and the BUYER/EMPLOYER.

7. **Fall Clause**

- 7.1 The BIDDER/SELLER undertakes that it has not performed/is not performing **Similar Project** at a price lower than that offered in the present Bid in respect of any other Port/Ministry/Department of the Government of India or PSU/PSE and if it is found at any stage that **Similar Project** was performed by the BIDDER/SELLER to any other Port/Ministry/Department of the Government of India or a PSU/PSE at a lower price, then that very price, with due allowance for elapsed time, will be applicable to the present case and the difference in the cost would be refunded by the BIDDER/SELLER to the BUYER/ EMPLOYER, if the Contract has already been concluded.

“**Similar Project**” means a Project with similar location, topography, soil conditions, scope of work, terms and conditions of Contract and such other aspects which would have material effect on the Bid price.

8. **Independent Monitors**

- 8.1 The BUYER/ EMPLOYER has appointed the following Independent Monitor (hereinafter referred to as Monitor) for this Pact in consultation with the Central Vigilance Commission.

Shri. P R Ravikumar, IRS (Retd.),
Akshath, No.84, First Avenue,
Kumaranasan Nagar,
Elamkulam (PO),
Ernakulam – 682020.

- 8.2 The task of the Monitor shall be to review independently and objectively, whether and to what extent the Parties comply with the obligations under this Pact.
- 8.3 The Monitor shall not be subject to instructions by the representatives of the Parties and perform their functions neutrally and independently.
- 8.4 Both the parties accept that the Monitor have the right to access all the documents relating to the Project/Bidding, including minutes of meetings.
- 8.5 As soon as the Monitor notices or has reason to believe that a violation of this Pact has occurred, he will so inform the Authority designated by the BUYER/ EMPLOYER.
- 8.6 The BIDDER/SELLER accepts that the Monitor has the right to access without restriction to all Project documentation of the BUYER/ EMPLOYER, including that provided by the BIDDER/SELLER. The BIDDER/SELLER will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his Project documentation. The same is applicable to Subcontractors. The Monitor shall be under Contractual obligation to treat the information and documents of the BIDDER//SELLER/Subcontractor(s) with confidentiality.
- 8.7 The BUYER/ EMPLOYER, 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 parties. The Parties will offer to the Monitor, the option to participate in such meetings.
- 8.8 The Monitor will submit a written report to the designated Authority of BUYER/ EMPLOYER within 8 to 10 weeks from the date of reference or intimation to him by the BUYER/ EMPLOYER/ BIDDER/SELLER and, should the occasion arise, submit proposals for correcting problematic situations.

9. Facilitation of Investigation

In case of any allegation of violation of any provisions of this Pact or payment of commission, the BUYER/ EMPLOYER or its agencies shall be entitled to examine all the documents including the Books of Accounts of the BIDDER/SELLER and the BIDDER/SELLER shall provide necessary information and documents in English and shall extend all possible help for the purpose of such examination.

10. Law and Place of Jurisdiction

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

11. 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.

12. Validity

- 12.1 The validity of this Integrity Pact shall be from the date of its signing and extend upto the complete execution of the Contract to the satisfaction of both the BUYER/ EMPLOYER and the BIDDER/SELLER, including warranty/defects liability period. In case the BIDDER is unsuccessful, this Integrity Pact shall expire after six months from the date of the signing of the Contract.

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

13. The Parties hereby sign this Integrity Pact at on

BUYER/ EMPLOYER

BIDDER/SELLER

Name of the Officer

CHIEF EXECUTIVE OFFICER

Designation

Cochin Port Trust

Witness:

Witness:

1.

1.....

2.

2.....

* Provisions of these clauses would need to be amended/ deleted in line with the policy of the BUYER/ EMPLOYER in regard to involvement of Indian agents of foreign bidders.