

The specimen of the Pre-Contract Integrity Pact which is part of tender documents is as follows:-

### **Integrity Pact**

Whereas Hindustan Aeronautics Ltd. ("HAL") having its registered office at 15/1, Cubbon Road, Bangalore - 560 001, India, acting through its .....Division, 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 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.

2. Whereas the Bidder 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 (Defence Public Sector Undertaking) wholly owned by the Government of India.

### **Objectives**

3. Now, therefore, the Bidder and Buyer agree to enter into this pre-contract agreement, hereinafter referred to as Integrity Pact, to avoid all forms of corruption by following a system that is fair, transparent and free from any influence/ unprejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:

- 3.1 Enabling the Buyer to obtain the desired product at a competitive price in accordance with the specifications by avoiding the high cost and the distortionary impact of corruption on public procurement, and

- 3.2 Enabling bidder to abstain from bribing or any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also refrain from bribing and other corrupt practices and the Buyer will commit to prevent corruption in any form by their officials by following transparent procedures.

### **Commitments of the Buyer**

4. The Buyer commits itself to the following:

- 4.1 The Buyer undertakes that no official of the Buyer, 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, 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.

- 4.2 The Buyer 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.
  - 4.3 All the officials of the Buyer will report to the Management any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.
  - 4.4 No employee of the Buyer, personally or through family members, will in connection with the tender for, or the execution of contract, demand, take a promise for or accept, for self or third person, any material benefit which the person is not legally entitled to.
5. In case any such preceding misconduct on the part of such official (s) is reported by the Bidder to the Buyer, with full and verifiable facts and the same is prima facie found to be correct by the Buyer, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the Buyer 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 the proceedings under the contract would not be stalled.

#### **Commitments of Bidders**

6. The Bidder commits himself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of his bid or during any pre-contract or post-contract stage in order to secure the contract or in furtherance to secure it and in particular commits himself to the following:
  - 6.1 The Bidder will not offer, directly or through intermediaries, any bribe, consideration, gift, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Buyer, connected directly or indirectly with bidding process, or to any person, organization or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the Contract.
  - 6.2 The Bidder further undertakes that he 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 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 for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other Contract with respect to the Buyer's Organisation.

- 6.3 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.
- 6.4 The Bidder will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.
- 6.5 The Bidders further confirms and declares to the BUYER that the Bidder is the original manufacturer/ integrator/ authorized Govt. sponsored Export entity of the stores and 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, or any of its functionaries, whether officially or unofficially to the award of the contract to the Bidder; 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.
- 6.6 The Bidder, 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 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.
- 6.7 The Bidder shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information provided by the Buyer as part of the business relationship, regarding plans, technical proposals and business details; including information contained in any electronic data carrier. The Bidder also undertakes to exercise due and adequate care lest any such information is divulged.
- 6.8 The Bidder commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.
- 6.9 The Bidder shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.

## **7. Previous Transgression**

- 7.1 The Bidder 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

herein or with any Public Sector Enterprise in India or any Government Department in India, that could justify bidders' exclusion from the tender process.

- 7.2 If the Bidder makes incorrect statement on this subject, Bidder can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

## 8 Earnest Money/Security Deposit

- 8.1 Every bidder, while submitting commercial bid, shall deposit an amount \* \_\_\_\_\_ as Earnest Money/ Security Deposit with the buyer through any of the following instruments:

(i) Bank Draft or a Pay Order in favour of the Buyer payable at location of/specified by the buyer.

(ii) A confirmed guarantee by an Indian Nationalized Bank, promising payment of the guaranteed sum to the Buyer, on demand within three working days without any demur whatsoever and without seeking any reasons whatsoever. The demand for payment by the Buyer shall be treated as conclusive proof for payment. A model Bank Guarantee Format is enclosed at Annexure-1.

(iii) Any other mode or through any other instrument (to be specified in the RFP).

\* At Present amount of Earnest Money/ Security Deposit are as follows:

Estimated Value of Tender	EMD/SD
Above Rs. 20-50 Crs	Rs. 20 Lakhs
Above Rs. 50- 100 Crs	Rs. 50 Lakhs
Above Rs. 100- 300 Crs	Rs. 1 Cr
Above Rs. 300 Crs	Rs. 3 Crs

- 8.2. The Earnest Money/Security Deposit shall be valid up to a period of five years or the complete conclusion of contractual obligations to complete satisfaction of both the bidder and the buyer, whichever is later. In case there are more than one bidder, the Earnest Money/Security Deposit shall be refunded by the buyer to those bidder(s) whose bid(s) does/do not qualify for negotiation by the Price Negotiation Committee (PNC), as constituted by the Buyer.

- 8.3 In the case of successful bidder a clause would also be incorporated in the Article pertaining to Performance Bond in the Purchase Contract that the provisions of Sanctions for Violation shall be applicable for

forfeiture of Performance Bond in case of a decision by the Buyer to forfeit the same without assigning any reason for imposing sanction for violation of this pact.

- 8.4 The provisions regarding Sanctions for Violation in Integrity Pact include forfeiture of Performance Bond in case of a decision by the Buyer to forfeit the same without assigning any reason for imposing sanction for violation of Integrity Pact.
- 8.5 No interest shall be payable by the Buyer to the Bidder(s) on Earnest Money/ Security Deposit for the period of its currency.
- 8.6 Integrity Pact has to be signed with vendors in case estimated values of each contract(s) exceed Rs.20 Crs. Against the subject RFP, the vendor is required to sign and submit Integrity Pact and shall also deposit as mentioned at Para 8.1 \* as earnest money deposit through any of the instruments mentioned therein. This would be submitted in a separate envelope clearly marked as IP and EMD at the time of submission of technical and price offers. Vendors not submitting IP and EMD due to lesser value of their price offer vis-à-vis applicable price limit for Integrity Pact, must submit a certificate to this effect in lieu of IP and EMD.

## **9. Company Code of Conduct**

Bidders 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.

## **10. Sanctions for Violation**

10.1 Any breach of the aforesaid provisions by the Bidder or any one employed by him or acting on the behalf (whether with or without the knowledge of the Bidder) or the commission of any offence by the Bidder or any one employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act 1988 or any other act enacted for the prevention of corruption shall entitle the BUYER to take all or any one of the following action, wherever required:-

- (i) To immediately call off the pre-contract negotiations without assigning any reason or giving any compensation to the Bidder and to impound any

earnest deposit, if made by the Bidder. However the proceedings with the other Bidder(s) would continue.

- (ii) The Earnest Money/ Security Deposit shall stand forfeited either fully or partially, as decided by the Buyer and the Buyer 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.
- (iv) To recover all sums already paid by the Buyer, and in case of an Indian Bidder with interest thereon at 2% higher than the prevailing Prime Lending Rate, while in case of a Bidder from a country other than India with interest thereon at 2% higher than the LIBOR. If any outstanding payment is due by the Buyer to the Bidder in connection with any other contract for any other stores, such outstanding payment could also be utilized to recover the aforesaid sum and interest.
- (v) To encash the advance bank guarantee and performance bond/warranty bond, if furnished by the Bidder, in order to recover the payments, already made by the Buyer, along with interest,
- (vi) To cancel all or any other Contracts with the Bidder.
- (vii) To debar the Bidder from entering into any bid from the Buyer for a minimum period of five years, which may be further extended at the discretion of the Buyer.
- (viii) To recover all sums paid in violation of this pact by the Bidder(s) to any middleman or agent or broker with a view to securing the contract.
- (ix) If the Bidder or any employee of the Bidder or any person acting on behalf of the Bidder, either directly or indirectly, is closely related to any of the officers of the Buyer, or alternatively, if any close relative of an officer of the Buyer has financial interest/stake in the Bidder's firm, the same shall be disclosed by the Bidder at the time of filing of tender. Any failure to disclose the interest involved shall entitle the Buyer to rescind the contract without payment of any compensation to the Bidder.  
The term 'close relative' for this purpose would mean spouse whether residing with the Government servant or not, but not include a spouse separated from the Government servant by a decree or order of a competent court; son or daughter or step son or step daughter and wholly dependent upon Government servant, but does not include a child or step child who is no longer in any way dependent upon the Government

servant or of whose custody the Government servant has been deprived of by or under any law; any other person related, whether by blood or marriage, to the Government servant or to the Government servant's wife or husband and wholly dependant upon Government servant.

- (x) 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 Buyer, and if he does so, the Buyer shall be entitled forthwith to rescind the contract and all other contracts with the Bidder. The Bidder shall be liable to pay compensation for any loss or damage to the Buyer resulting from such rescission and the Buyer shall be entitled to deduct the amount so payable from the money(s) due to the Bidder.
- (xi) In cases where irrevocable Letters of Credit have been received in respect of any contract signed by the Buyer with the Bidder, the same shall not be opened.

10.2 The decision of the BUYER or his nominee to the effect that the Bidder has committed breach of the provisions of this Integrity Pact shall be final and binding on the Bidder, however the Bidder can approach monitor (s) appointed for the purpose of this Pact as per Clause 12 of Pact agreement.

## **11. Fall Clause**

The Bidder undertakes that he has not supplied/is not supplying the similar systems or subsystems at a price lower than that offered in the present bid in respect of any other Defence Public Sector Undertakings ,IAF, Ministry of Defence and if it is found at any stage that the similar system or sub-system was supplied by the Bidder to any other Defence Public Sector Undertakings ,IAF, Ministry of Defence 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 to the Buyer, if the contract has already been concluded.

## **12 Independent External Monitor(s)**

12.1 The Buyer appoints competent and credible Independent External Monitor for this Pact in consultation with Central Vigilance Commission (Names and addresses of the Monitors to be given). 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.

- 12.2 The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He will convey his observations to the Chairman, HAL.
- 12.3 The Bidder(s) / Contractor(s) accepts that the Monitor has the right to access without restriction to all project documentation of the Buyer 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 documentation. The same is applicable to Subcontractors. The Monitor is under obligation to treat the information and documents of the Bidder(s) / Contractor(s) / Subcontractor(s) with confidentiality.
- 12.4 The Buyer 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 Buyer and the Contractor. The parties offer to the Monitor the option to participate in such meetings.
- 12.5 As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform the Management of the Buyer and request the Management to discontinue or take corrective action, or to take other relevant action.
- 12.6 The Monitor will submit a written report to the Chairman, HAL within 8 to 10 weeks from the date of reference or intimation to him by the Buyer and, should the occasion arise, submit proposals for correcting problematic situations.
- 12.7 Monitor shall be entitled to compensation on the same terms as being extended to/ provided to Independent Directors on the HAL Board.
- 12.8 If the Monitor has reported to the Chairman HAL, a substantiated suspicion of an offence under relevant IPC / PC Act, and the Chairman HAL has not, within the reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.
- 12.9 The word 'Monitor' would include both singular and plural.

### **13. Examination of Books of Accounts**

In case of any allegation of violation of any provisions of this Integrity Pact to the satisfaction of the Buyer, the Buyer or its agencies shall be entitled to examine/ investigate the Books of Accounts of the Bidder and the Bidder shall provide

necessary information of the relevant financial documents in English and shall extend all possible help for the purpose such examination/ investigation.

**14. Law and Place of Jurisdiction**

This Pact is subject to Indian Law. The place of performance and Jurisdiction is Bangalore.

**15. 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

**16. Validity**

16.1 The validity of this Integrity Pact shall be from date of its signing and extend up to 5 years or till the complete execution of the contract to the satisfaction of both the Bidder and the Buyer, whichever is later.

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

17 The Parties hereby sign this Integrity Pact at \_\_\_\_\_ on \_\_\_\_\_

BUYER

BIDDER

General Manager  
Hindustan Aeronautics Ltd.,  
.....Division

Chief Executive Officer

Witness

Witness

1. \_\_\_\_\_

1. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



No. HAL/CD/617/2010

Dt. 07-04-2010

**AMENDMENT NO.2 TO**  
**MATERIALS MANAGEMENT CIRCULAR NO.36**

**Sub : INTEGRITY PACT**

Reference is made to MM Circular No. 36 Amendment No.1 issued vide Corporate Office letter No. HAL/CD/617/2008 dated 04-11-2008 on Integrity Pact.

2. The guidelines stipulated in Clause 8 - EMD of Integrity Pact is amended as stated below :

<b>Existing</b>	<b>Amended as :</b>																									
<p><b>8.1 (iii) :</b> At present amount of Earnest Money / Security Deposit are as follows :</p> <table border="1"><thead><tr><th>Estimated value of Tender</th><th>EMD/SD</th></tr></thead><tbody><tr><td>Above Rs. 20-50 Crs.</td><td>Rs.20 Lakhs</td></tr><tr><td>Above Rs. 50-100 Crs.</td><td>Rs.50 Lakhs</td></tr><tr><td>Above Rs.100-300 Crs.</td><td>Rs.1 Cr.</td></tr><tr><td>Above Rs.300 Crs.</td><td>Rs.3 Crs.</td></tr></tbody></table>	Estimated value of Tender	EMD/SD	Above Rs. 20-50 Crs.	Rs.20 Lakhs	Above Rs. 50-100 Crs.	Rs.50 Lakhs	Above Rs.100-300 Crs.	Rs.1 Cr.	Above Rs.300 Crs.	Rs.3 Crs.	<p><b>8.1 (iii) :</b> The amount of Earnest Money Deposit in Rs. / US\$ or Equivalent in Foreign Currency as hereunder :</p> <table border="1"><thead><tr><th>HAL's Estimated value of Tender</th><th>EMD</th><th>Foreign US\$</th></tr></thead><tbody><tr><td>Above Rs.20-50 Crs.</td><td>Rs.20 Lakhs</td><td>44,450</td></tr><tr><td>Above Rs.50-100 Crs.</td><td>Rs.50 Lakhs</td><td>1,11,120</td></tr><tr><td>Above Rs.100-300 Crs</td><td>Rs.1 Cr.</td><td>2,22,230</td></tr><tr><td>Above Rs.300 Crs.</td><td>Rs.3 Crs.</td><td>6,66,670</td></tr></tbody></table>	HAL's Estimated value of Tender	EMD	Foreign US\$	Above Rs.20-50 Crs.	Rs.20 Lakhs	44,450	Above Rs.50-100 Crs.	Rs.50 Lakhs	1,11,120	Above Rs.100-300 Crs	Rs.1 Cr.	2,22,230	Above Rs.300 Crs.	Rs.3 Crs.	6,66,670
Estimated value of Tender	EMD/SD																									
Above Rs. 20-50 Crs.	Rs.20 Lakhs																									
Above Rs. 50-100 Crs.	Rs.50 Lakhs																									
Above Rs.100-300 Crs.	Rs.1 Cr.																									
Above Rs.300 Crs.	Rs.3 Crs.																									
HAL's Estimated value of Tender	EMD	Foreign US\$																								
Above Rs.20-50 Crs.	Rs.20 Lakhs	44,450																								
Above Rs.50-100 Crs.	Rs.50 Lakhs	1,11,120																								
Above Rs.100-300 Crs	Rs.1 Cr.	2,22,230																								
Above Rs.300 Crs.	Rs.3 Crs.	6,66,670																								
<p><b>8.6</b> Integrity Pact has to be signed with vendors in case estimated values of each contract(s) exceed Rs.20 Crs. Against the subject RFP, the vendor is required to sign and submit Integrity Pact and shall also deposit as mentioned at Para 8.1 * as earnest money deposit through any of the instruments mentioned therein. This would be submitted in a separate envelope clearly marked as IP and EMD at the time of submission of technical and price offers. Vendors not submitting IP and EMD due to lesser value of their price offer vis-à-vis applicable price limit for Integrity Pact, must submit a certificate to this effect in lieu of IP and EMD.</p>	<p><b>8.6</b> Integrity Pact has to be signed with vendors in case <b>HAL's</b> estimated value of each contract(s) exceed Rs.20 Crs. Against the subject RFP, the vendor is required to sign and submit Integrity Pact and shall also deposit as mentioned at Para 8.1 * as earnest money deposit through any of the instruments mentioned therein. This would be submitted in a separate envelope clearly marked as '<b>IP and EMD</b>' at the time of submission of technical and <b>commercial</b> offers. <b>The vendor is required to sign and submit Pre-Contract Integrity Pact irrespective of the value of the commercial bid submitted by the vendor .</b></p>																									

3. The wordings in the following Paragraphs in IP are amended as hereunder :

<u>Para</u>	<u>FOR</u>	<u>AMENDED AS</u>
8	Earnest Money / Security Deposit	Earnest Money Deposit
8.1	Earnest Money / Security Deposit	Earnest Money Deposit
8.2	Earnest Money / Security Deposit	Earnest Money Deposit
8.5	Earnest Money / Security Deposit	Earnest Money Deposit
10.1(ii)	Earnest Money / Security Deposit	Earnest Money Deposit

4. **Addition :** The following is incorporated as additional para under Clause 8 in IP :

“8.1 (iv) EMD by Foreign Bidder shall be in the currency of Bidder’s country or any other convertible equivalent Foreign Currency.”

5. The existing Clause 12 Independent External Monitors (Para 12.1 to 12.9) of Integrity Pact to be replaced by a New Clause 12 Independent External Monitors (Para 12.1 to 12.6) as follows :

“12.1 The Buyer has appointed Independent Monitors for this Pact in consultation with the Central Vigilance Commission (Names and Addresses of the Monitors to be given in RFQ).

12.2 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 Monitors.

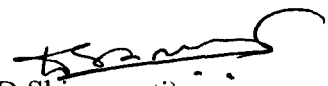
12.3 The bidder(s), if they deem it necessary, may furnish any information as relevant to their bid to the Independent Monitors.

12.4 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 Monitors for their comments / enquiry.

12.5 If the Independent Monitors 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 Monitors.

12.6 The report of enquiry, if any, made by the Independent Monitors shall be submitted to Chairman, HAL for a final and appropriate decision in the matter keeping in view the provision of this pact.”

6. Divisions are directed to take note of this and ensure strict compliance

  
(D. Shivamurti)  
Director (Finance)