

CORPORATE OPERATIONS MANAGEMENT

SOURCING STRATEGY & POLICY

Ref: AA:SSP:IP

Dt: 16.07.2018

Circular No. 18 of 2018-19

Sub: Implementation of Integrity Pact (IP) in BHEL- reg.

Integrity Pact (IP) was implemented in BHEL w.e.f 19-02-2009 for all major tenders/ contracts above a certain threshold limit. Standard Operating Procedure (SOP) for adoption of Integrity Pact issued by CVC vide Circular No.10/5/09 dated 18-05-2009 has been reviewed by CVC and revised SOP has been formulated vide Circular No. 02/01/2017 dated 13-01-2017. The instructions for implementation of Integrity Pact in BHEL which were issued from time to time have also been reviewed w.r.t new SOP and revised instructions for compliance are issued as given below. This supersedes all earlier instructions issued on the subject.

1. IP is applicable for all major tenders/ contracts (both under Purchase Policy and Works Policy) above a certain threshold limit (presently Rs 5 Crs and above)
2. The Integrity Pact (IP) duly revised in line with new SOP is also enclosed as Annexure-1
3. The pact essentially envisages an agreement between the prospective vendors/ bidders and the buyer, committing the person/ officials of both parties, not to resort to any corrupt practices in any aspect/ stage of the contract.
4. Only those vendors/ bidders who commit themselves to such a Pact with BHEL, would be considered competent to participate in the bidding process. In other words, submitting duly signed IP would be a preliminary qualification.
5. This IP (pre-signed by the Purchase Officer) shall be issued as an "offer" alongwith the bidding documents and bidder shall return it along with techno-commercial bid (Part-I, in case of two/ three part bid), duly signed by their authorised signatory. The officer signing the PO/ WO/ Contract shall be the authorized official for signing the IP on behalf of BHEL. The IP signed by authorised signatory of both the parties (Bidder/ Vendor/ Contractor and BHEL) will form part of the purchase order/ work order/ contract.
6. IP is to be made part of NIT for which suitable alert/ lock should be incorporated in the system to make the system 'Fail safe', to avoid any lapses. Small units, where enquiries/ NITs are not generated through computer system, should incorporate suitable checks on applicability of IP in the NIT/ enquiry format itself.
7. Independent External Monitors (IEMs) are vital to the implementation of the IP. Integrity Pact (IP) clause, as specified in Annexure-2 and the details of all IEMs on the panel shall invariably be made part of NIT. In case of any complaint arising out of tendering process, the matter should be examined by the full panel of IEMs, jointly as far as possible, who would look into the records, conduct an investigation and submit their joint recommendations to the Management. The IEMs would examine all complaints received by them in line with CVC Circular No. 02/01/2017 dated 13.01.2017.
8. Soft copy of only the relevant pages of NIT, cover page, IP clause, panel of IEMs with contact details shall only be sent to the IEM(s) instead of the hard copy of entire set of tender documents
9. Vendors should be familiarised with Integrity Pact and its implementation in BHEL during the vendor meets in units/ regions, to percolate principals of Integrity Pact and reinforce their belief in transparent, fair and equitable dealings by BHEL in its procurements.

10. **Independent External Monitor(s):** Section 8 of the IP envisages appointment of IEM(s) to oversee the compliance of obligations under the IP.

The IEMs* shall be appointed by CMD, BHEL with the approval of CVC in accordance with its guidelines.

The responsibilities and functions of the Monitor shall be in accordance with the relevant stipulations of the Integrity Pact.

Shri P.K.Jain, GM (SS&P), Corporate Office (Ph: +91-11-66337202; email: mmpkj@bhel.in) will be the Nodal Officer for necessary coordination.

11. Structured review meetings of the IEMs with CMD, BHEL shall be held on a quarterly basis including an annual meeting to discuss/ review the information on tenders awarded during the previous quarter. CVO shall also be invited in all quarterly structured review meetings of IEMs with CMD, BHEL.

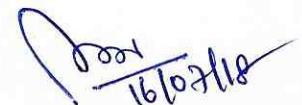
Additional sittings, with top management of BHEL unit, can also be held as per requirement.

12. Unit head shall be responsible for the implementation of IP in their respective unit. MM Head (or designated officer) of the unit shall be the focal point for the implementation of IP
13. Unit/ Region Heads are authorized for issuing any clarifications relating to the IP including minor modifications (incl. place of jurisdiction) without diluting the intent and spirit of the Pact.
14. The status of tenders/ contracts covered under IP like tender issued/ progress/ PO placed is to be updated in the system as being done presently on IP portal <http://sson.bhel.in/intpact/index.jsp> for Consolidation of the IP-MIR at Corp level and sharing it with the IEMs and CVO on monthly basis.

This should be widely circulated among all officers of the purchase/ contracting departments for implementation.

This will come into effect for all tenders (covered under Purchase Policy/ Works Policy) above threshold value (presently Rs. 5 Cr.) floated on or after 01st Aug 2018.

This is issued with the approval of competent authority.


ED (COM)

Distribution:

- All Unit/Region Heads
- All MM Heads of Units/Regions
- GM (Corp. Fin)
- GM (IA)/ GM (SS&P)
- SS&P page on Corporate Office intranet --- <http://intranet.bhel.in>

- CVO }
- Directors --- (E,R&D)/ (Power)/ (IS&P) / (HR)/ (Finance) } For kind information
- SA to CMD } For kind information of CMD

* Present Panel of IEMs

| Sl | IEM | Address | Phone & Email |
|----|--|---|---|
| 1. | Shri D.R.S Chaudhary, IAS (Retd.) | E-1/164, Arera Colony Bhopal 462016 (M.P.) | Ph: +91 755 4050495, dilip.chaudhary@icloud.com |
| 2. | Mrs. Pravin Tripathi, IA & AS (Retd.) | D-243, Anupam Gardens, Lane IB, Neb Sarai, Sainik Farms, New Delhi – 110 068 | Ph : +91 11 29533206 / 29531715, pravin.tripathi@gmail.com |

INTEGRITY PACT

Between

Bharat Heavy Electricals Ltd. (BHEL), a company registered under the Companies Act 1956 and having its registered office at "BHEL House", Siri Fort, New Delhi - 110049 (India) hereinafter referred to as "The Principal", which expression unless repugnant to the context or meaning hereof shall include its successors or assigns of the ONE PART

and

_____, (description of the party along with address), hereinafter referred to as "The Bidder/ Contractor" which expression unless repugnant to the context or meaning hereof shall include its successors or assigns of the OTHER PART

Preamble

The Principal intends to award, under laid-down organizational procedures, contract/s for

_____. The Principal values full compliance with all relevant laws of the land, rules and regulations, and the principles of economic use of resources, and of fairness and transparency in its relations with its Bidder(s)/ Contractor(s).

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

Section 1- Commitments of the Principal

1.1 The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles:-

1.1.1 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.

1.1.2 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.

1.1.3 The Principal will exclude from the process all known prejudiced persons.

1.2 If the Principal obtains information on the conduct of any of its employees which is a penal offence under the Indian Penal Code 1860 and Prevention of Corruption Act 1988 or any other statutory penal enactment, or if there be a substantive suspicion in this regard, the Principal will inform its Vigilance Office and in addition can initiate disciplinary actions:

Section 2 - Commitments of the Bidder(s)/ Contractor(s)

- 2.1 The Bidder(s)/ Contractor(s) commit himself 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.
- 2.1.1 The Bidder(s)/ Contractor(s) will not, directly or through any other person or firm, offer, promise or give to the Principal or 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, immaterial or any 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.
- 2.1.2 The Bidder(s)/ Contractor(s) will not enter with other Bidder(s) into any illegal or 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.
- 2.1.3 The Bidder(s)/ Contractor(s) will not commit any penal offence under the relevant Indian Penal Code (IPC) and Prevention of Corruption 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.
- 2.1.4 Foreign Bidder(s)/ Contractor(s) shall disclose the name and address of agents and representatives in India and Indian Bidder(s)/ Contractor(s) to disclose their foreign principals or associates. The Bidder(s)/ Contractor(s) will, when presenting his bid, disclose any and all payments he has made, and is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.
- 2.2 The Bidder(s)/ Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.
- 2.3 The Bidder(s)/ Contractor(s) shall not approach the Courts while representing the matters to IEMs and will await their decision in the matter.

Section 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 Section 2 above, or acts in any other manner 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 separate "Guidelines on Banning of Business dealings with Suppliers/ Contractors", framed by the Principal.

Section 4 - Compensation for Damages

- 4.1 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 Earnest Money Deposit/ Bid Security.
- 4.2 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 the Contractor liquidated damages equivalent to 5% of the contract value or the amount equivalent to Security Deposit/ Performance Bank Guarantee, whichever is higher.

Section 5 - Previous Transgression

- 5.1 The Bidder declares that no previous transgressions occurred in the last 3 years 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 his exclusion from the tender process.
- 5.2 If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

Section 6 - Equal treatment of all Bidders/ Contractors / Sub-contractors

- 6.1 The Principal will enter into agreements with identical conditions as this one with all Bidders and Contractors. In case of sub-contracting, the Principal contractor shall be responsible for the adoption of IP by his sub-contractors and shall continue to remain responsible for any default by his sub-contractors.
- 6.2 The Principal will disqualify from the tender process all bidders who do not sign this pact or violate 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 - Independent External Monitor(s)

- 8.1 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.
- 8.2 The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He reports to the CMD, BHEL.
- 8.3 The Bidder(s)/ Contractor(s) accepts that the Monitor has the right to access without restriction to all contract documentation of the Principal including that provided by the Bidder(s)/ Contractor(s). The Bidder(s)/ Contractor(s) will grant the monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his contract documentation. The same is applicable to Sub-contractor(s). The Monitor is under contractual obligation to treat the information and documents of the Bidder(s)/ Contractor(s) / Sub-contractor(s) with confidentiality in line with Non- disclosure agreement.
- 8.4 The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the contract 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.

- 8.5 The role of IEMs is advisory, would not be legally binding and it is restricted to resolving issues raised by an intending bidder regarding any aspect of the tender which allegedly restricts competition or bias towards some bidders. At the same time, it must be understood that IEMs are not consultants to the Management. Their role is independent in nature and the advice once tendered would not be subject to review at the request of the organization.
- 8.6 For ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process, the matter should be examined by the full panel of IEMs jointly as far as possible, who would look into the records, conduct an investigation, and submit their joint recommendations to the Management.
- 8.7 The IEMs would examine all complaints received by them and give their recommendations/ views to CMD, BHEL, at the earliest. They may also send their report directly to the CVO and the Commission, in case of suspicion of serious irregularities requiring legal/ administrative action. IEMs will tender their advice on the complaints within 10 days as far as possible.
- 8.8 The CMD, BHEL shall decide the compensation to be paid to the Monitor and its terms and conditions.
- 8.9 IEM should examine the process integrity, they are not expected to concern themselves with fixing of responsibility of officers. Complaints alleging mala fide on the part of any officer of the organization should be looked into by the CVO of the concerned organisation.
- 8.10 If the Monitor has reported to the CMD, BHEL, a substantiated suspicion of an offence under relevant Indian Penal Code/ Prevention of Corruption Act, and the CMD, BHEL 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.
- 8.11 The number of Independent External Monitor(s) shall be decided by the CMD, BHEL.
- 8.12 The word 'Monitor' would include both singular and plural.

Section 9 - Pact Duration

- 9.1 This Pact shall be operative from the date IP is signed by both the parties till the final completion of contract for successful bidder and for all other bidders 6 months after the contract has been awarded. Issues like warranty / guarantee etc. should be outside the purview of IEMs.
- 9.2 If any claim is made/ lodged during currency of IP, 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 the CMD, BHEL.

Section 10 - Other Provisions

- 10.1 This agreement is subject to Indian Laws and jurisdiction shall be registered office of the Principal, i.e. New Delhi.

- 10.2 Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.
- 10.3 If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.
- 10.4 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.
- 10.5 Only those bidders / contractors who have entered into this agreement with the Principal would be competent to participate in the bidding. In other words, entering into this agreement would be a preliminary qualification.

For & On behalf of the Principal

For & On behalf of the Bidder/

Contractor

(Office Seal)

(Office Seal)

Place-----

Date-----

Witness:_____

Witness:_____

(Name & Address) _____

(Name & Address) _____

Clause on IP in the tender**“Integrity Pact (IP)**

- (a) IP is a tool to ensure that activities and transactions between the Company and its Bidders/ Contractors are handled in a fair, transparent and corruption free manner. Following Independent External Monitors (IEMs) on the present panel have been appointed by BHEL with the approval of CVC to oversee implementation of IP in BHEL.

| Sl | IEM | Address | Phone & Email |
|----|--|---|--|
| 1. | Shri D.R.S Chaudhary, IAS (Retd.) | E-1/164, Arera Colony Bhopal 462016 (M.P.) | dilip.chaudhary@icloud.com |
| 2. | Mrs. Pravin Tripathi, IA & AS (Retd.) | D-243, Anupam Gardens, Lane IB, Neb Sarai, Sainik Farms, New Delhi – 110 068 | pravin.tripathi@gmail.com |

- (b) The IP as enclosed with the tender is to be submitted (duly signed by authorized signatory) along with techno-commercial bid (Part-I, in case of two/ three part bid). Only those bidders who have entered into such an IP with BHEL would be competent to participate in the bidding. In other words, entering into this Pact would be a preliminary qualification.
- (c) Please refer Section-8 of IP for Role and Responsibilities of IEMs. In case of any complaint arising out of the tendering process, the matter may be referred to any of the above IEM(s). All correspondence with the IEMs shall be done through email only.

Note:

No routine correspondence shall be addressed to the IEM (phone/ post/ email) regarding the clarifications, time extensions or any other administrative queries, etc on the tender issued. All such clarification/ issues shall be addressed directly to the tender issuing (procurement) department's officials whose contact details are provided below:

Details of contact person(s):

(1)
Name: _____
Deptt: _____
Address: _____
Phone: (Landline/ Mobile) _____
Email: _____
Fax: _____

(2)
Name: _____
Deptt: _____
Address: _____
Phone: (Landline/ Mobile) _____
Email: _____
Fax: _____