

Ref No. MMTC/CO/e-Proc/2017-18/10797

Dated: 3<sup>rd</sup> August 2017



## **MMTC LIMITED**

(A Govt. of India Enterprise)  
Core-1, Scope Complex,  
7 Institutional Area,  
Lodi Road,  
New Delhi-110 003

**Request for Proposal (RFP)**  
**for**  
**“E-tendering & E-Auction facility on Application Usage Basis**  
**by MMTC and its Clients”**

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## **MMTC LIMITED**

(A Govt. of India Enterprise)  
Core-1, Scope Complex,  
7 Institutional Area,  
Lodi Road,  
New Delhi-110 003

### **Eligibility, Functional, Technical and Operational Requirement**

**for**

**“E-tendering & E-Auction facility on Application Usage Basis by  
MMTC and its Clients”**

**PART-A**

**CONFIDENTIALITY STATEMENT:**

“The information contained in this document, all portions thereof, including, but not limited to, any copyright, other intellectual data of this document at all times shall remain the sole property of MMTC Limited.

The title and full ownership rights in the information contained herein and all portions thereof are reserved to and at all times shall remain with MMTC Limited.

The stakeholders of the Implementation of **“E-tendering & E-Auction (forward and reverse) facility on APPLICATION USAGE BASIS by MMTC and its Clients.”** for MMTC Limited are required to take utmost care in protecting the proprietary and confidential nature of the information contained herein."



## 1. ACRONYMS AND ABBREVIATIONS

### List of Abbreviations

| Abbreviation | Description  |
|--------------|--|
| MMTC         | MMTC LIMITED   |
| CA           | Chartered Accountant                                 |
| DSC          | Digital Signature Certificate                        |
| EMD          | Earnest Money Deposit                                |
| IPR          | Intellectual Property rights                         |
| E-Mail       | Electronic Mail                                      |
| FRS          | Functional Requirement Specification                 |
| CO           | Corporate Office                                     |
| MIS          | Management Information System                        |
| MoU          | Memorandum of Understanding                          |
| OEM          | Original Equipment Manufacturer                      |
| OSM          | Original Software Manufacturer                       |
| PE           | Purchasing Entity or Buyer                           |
| PKI          | Public Key infrastructure                            |
| IT           | Information Technology                               |
| INR          | Indian Rupee   |
| KPI          | Key performance Indicators                           |
| NA           | Not Applicable                                       |
| PO           | Purchase Order                                       |
| RFP          | Request for Proposal                                 |
| TDS          | Tax Deducted at Source                               |
| UAT          | User Acceptance testing                              |
| STQC         | Standardization Testing and Quality Certification    |
| CVC          | Central Vigilance Commission                         |
| ISO          | International Organization for Standardization       |
| OWASP        | Open Web Application Security Project                |
| GFR          | General Financial Rules                              |
| DeitY        | Department of Electronics and Information Technology |
| AMC          | Annual Maintenance Contract                          |
| SLA          | Service-level agreement                              |
| PMU          | Project. Management Unit                             |
| TD           | Tender Document                                      |
| FAQ          | Frequently Asked Question                            |
| POD          | Proof of demonstration                               |
| CPSE         | Central Public Sector Enterprise                     |
| CMMI         | Capability Maturity Model Integration                |
| NCR          | National Capital Region                              |

| Abbreviation | Description                         |
|--------------|-------------------------------------|
| PBG          | Performance Bank Guarantee          |
| BG           | Bank Guarantee                      |
| PAN          | Permanent Account Number            |
| INR          | Indian Rupees                       |
| MSA          | Master Service Agreement            |
| O&S          | Operations and Services             |
| DC           | Data Center                         |
| WAN          | Wide-area networks                  |
| NDA          | Non-disclosure agreement            |
| CCN          | Contract change notification        |
| RFP          | Request for proposal                |
| SRS          | Software requirements specification |
| RO           | Regional office                     |
| EPS          | e-procurement system                |
| LoI          | Letter of Intent                    |
| GST          | Goods & Services Tax                |

## 2.0 CRITICAL INFORMATION

### 2.1 RFP/BID Schedule and Address

| S.No. | Description   | Detailed Information  |
|-------|---|---|
| 1     | Name of Purchaser   | MMTC LIMITED, New Delhi   |
| 2     | Tender Reference Number   | Ref No. MMTC/CO/e-Proc/2017-18/10797 Dated: 3 <sup>rd</sup> August 2017   |
| 3     | Contact and Address   | Mr. Harmesh Kumar Bagha, AGM (Systems),<br>Landline Phone No. 011-24362200/ Extn. 1352<br>Mobile No. 9810364512<br>e-mail : bagha@mmtclimited.com<br><br>Mr. Bharat Bhargava, Chief Manager (Systems)<br>Mobile No. 9414046344<br>Landline Phone No. 011-24362200 Extn. 1453<br>e-mail : <a href="mailto:bharat@mmtclimited.com">bharat@mmtclimited.com</a> |
| 4     | Place of Pre Bid Conference, Bid Opening  | 6 <sup>th</sup> Floor, Conference Room, MMTC Limited<br>Core-1, SCOPE Complex,<br>Lodi Road, New Delhi-110 003.   |
| 5     | Nature of bid process   | Bid Submission in the tender box.   |
| 6     | Correspondence details for pre-bid queries and any other information              | <a href="mailto:bharat@mmtclimited.com">Email:- bharat@mmtclimited.com</a> , <a href="mailto:mamta@mmtclimited.com">mamta@mmtclimited.com</a><br>& cc to <a href="mailto:bagha@mmtclimited.com">bagha@mmtclimited.com</a> , <a href="mailto:acs@mmtclimited.com">acs@mmtclimited.com</a>  |
| 7     | Date of Publication   | 3 <sup>rd</sup> August 2017, Thursday   |
| 8     | Last date for submission of written queries for clarifications on tender document | 11 <sup>th</sup> August 2017, Friday  |
| 9     | Pre-bid meeting   | 16 <sup>th</sup> August 2017, Wednesday, at 1430 Hrs  |
| 10    | Last date and time for submission of bids   | 24 <sup>th</sup> August 2017, Thursday 1400 Hrs   |
| 11    | Pre-qualification bid opening   | 24 <sup>th</sup> August 2017, Thursday 1430 Hrs   |
| 12    | Technical bid opening   | To be communicated later by the MMTC to eligible bidders  |
| 13    | Commercial bid opening  | To be communicated later by the MMTC to eligible bidders  |

- Note:
1. Bids will be opened in the presence of the Bidders' representatives who choose to attend.
  2. Date and Time & Address for Commercial Bid Opening will be intimated later to Eligible & Technically qualified Bidders.
  3. Only those Bids that qualify the Eligibility Criteria Response and the Technical & Functional Requirement shall be intimated for Commercial Bid Opening.

## 2.2 Other Important information related to RFP

|    | Item   | Description  |
|----|--|--|
| 1. | Earnest Money Deposit (EMD)                    | Rs.50,000/- (Rupees Fifty Thousand only)   |
| 2. | Bid Validity Period                            | <b>Sixty (60) days</b> from the date of opening of bid.                                    |
| 3. | Implementation Period                          | As per the RFP clauses   |
| 4. | Period for signing contract                    | Within Fifteen (15) days from the date of receipt of letter of notification of award/ LoI. |
| 5. | Period for submission of Performance Guarantee | Within Fifteen (15) days from the date of receipt of letter of notification of award/ LoI. |
| 6. | Penalty for delay in implementation            | Please refer penalty clause of RFP.  |

## 3. INTERPRETATIONS

The following terms wherever occurring in the tender and wherever used throughout the execution of the work, shall, unless excluded by or repugnant to the context, have the meaning attributed there to as follows:

- 3.1 "CONTRACT" means the Contract resulting from the acceptance by the purchaser of this Tender.
- 3.2 "BIDDER" means and includes any firm or any company or body, corporate or otherwise, who submit the tender which has been invited.
- 3.3 "VENDOR" refers to the bidder who will be selected as the 'Application service provider' for the project.
- 3.4 "BIDDER's REPRESENTATIVE" shall mean a person in supervisory capacity who shall be so declared by the Bidder and who shall be authorized under a duly executed power of attorney. He shall be responsible for proper execution of contract at MMTC and shall take orders from MMTC and carry out the same.
- 3.5 "MONTH" means any consecutive period of thirty days.
- 3.6 "PURCHASER" means M/s MMTC LIMITED, Core-1, SCOPE COMPLEX, 7 Institutional Area,  
a. Lodi Road, New Delhi-110003
- 3.7 "MMTC" means M/s MMTC LIMITED, Core-1, SCOPE COMPLEX, 7 Institutional Area, Lodi Road, New Delhi – 110 003.
- 3.8 "WRITING" includes all matters written, typewritten or printed either in whole or in part.
- 3.9 "Project" means Procurement of software/platform for setting up of MMTC e-Procurement portal in Application Service Provider (ASP) mode for offering electronic tendering services.

## 4.0 BACKGROUND OF MMTC

MMTC was established in 1963, and is today India's leading international trading company. It is the first international trading company of India to be given the coveted status "SUPER STAR TRADING HOUSE" and it is the first Public Sector Enterprise to be accorded the status of "GOLDEN SUPER STAR TRADING HOUSE" for long standing contribution to exports. MMTC is the largest non-oil importer in India. MMTC's diverse trade activities encompass Third Country Trade, Joint Ventures, and Link Deals - all modern day tools of international trading. Its vast international trade network, which includes a wholly owned international subsidiary in Singapore, spans more than 85 countries in Asia, Europe, Africa, Oceania and Americas, giving MMTC global market coverage.

### 5.0 PURPOSE/OBJECTIVE OF DOCUMENT

- 5.1 **MMTC intends to have E-tendering & E-Auction (Forward and Reverse) facility on Application Usage Basis on an Electronic Procurement Platform, with the objective of automating the entire Procurement process from Indenting to Award of Contract for MMTC Limited and its business associates/clients. The key objective of this platform is to achieve process efficiency, reduce processing time, greater transparency, reduced cost, consistent and sustainable vendor & customer development etc.**
- 5.2
  - a. **CONTRACT DURATION. The duration of contract shall be for a period of one (1) year from the date of award of contract. However, the same may be extended for a further period of two (2) years, if required, at the option of MMTC, on Year-on-Year basis on the same or mutually agreed terms and conditions of the contract subject to satisfactory performance by bidder.**
  - b. **The platform must be ready for operation by MMTC within 7 (seven working days) from the date of LoI/work order,**
- 5.3 This web portal would be Standardization Testing and Quality Certification (STQC) tested & certified adhering to “Guidelines for Compliance to Quality requirements of e-Procurement dated 31.08.2011 issued by STQC Directorate Department of Information Technology, Ministry of Communication and Information Technology, New Delhi”, issued from time to time.
- 5.4 From single instance of a common portal, the software should be able to cater to the differences in tendering policies and procedures of varied Government Buyer organizations. This is important so that for main tendering processes, no customization of the software is required for any organization which is following the legitimate processes of tendering as prescribed by the Government of India, and multi-lateral agencies.
- 5.5 This document provides all required information and formats to prepare a bid. The RFP has been divided in sections to communicate the e-procurement requirements, scope, general terms and conditions, special terms and conditions, bidding process, response formats and evaluation process etc.
- 5.6 The RFP instructions, forms, terms, project requirements and other terms & conditions & information have been detailed in
  - a. Part – A “Eligibility, Functional, Technical & operational requirements”
  - b. Part – B “Commercial & Bidding terms” and

c. Part - C “Contractual & Legal specifications

- 5.7** This RFP is not an offer by MMTC, but an invitation for vendor response.
- 5.8** No contractual obligation whatsoever shall arise from the RFP process unless and until a formal contract is signed and executed by duly authorized officers of MMTC and the Bidder.
- 5.9** MMTC reserves the right to accept or reject any and all proposals, to revise the RFP, to request one or more re-submissions or clarifications from one or more Bidder, or to cancel the process in part or whole. No Vendor is obligated to respond to or to continue to respond to the RFP.
- 5.10** Additionally, MMTC reserves the right to alter the specifications, in part or whole, during the RFP process, and (without reissuing the RFP) following the selection of the Bidder. **Each party shall be entirely responsible for its own costs and expenses, which are incurred while participating in the RFP, preparation and demonstration of proof of concept and contract negotiation processes.**
- 5.11** The scope of the project envisages a complete turnkey solution which includes
- 5.12.1 E-Procurement/ e-Tendering/ e-Auction Software as per the functional and technical requirement(s) given in the tender document.
  - 5.12.2 The ready-to-use software has to be fully in-line with “Guidelines for Compliance to Quality requirements of e-Procurement dated 31.08.2011 issued by STQC Directorate Department of Information Technology, Ministry of Communication and Information Technology, New Delhi”, in letter and spirit, and should have been certified by STQC for compliance with these guidelines before the time of bidding. Over and above this, if any minor changes are required in the software, these will be within the ambit of the DeitY Guidelines, CVC Circulars, Finance Ministry Guidelines, any other Government of India regulatory requirements.
  - 5.12.3 Renewal of STQC Certification for the e-Procurement software, each year during the duration of the contract.
  - 5.12.4 Integration of payment gateways, as required.
  - 5.12.5 Training to staff of MMTC & its clients including the following:
    - 5.15.5a Marketing/business-development
    - 5.15.5b Customer support personnel for training end-users
    - 5.15.5c Customer support personnel for on-site support to end-users
    - 5.15.5d e-Procurement application administrators
- 5.12** All bids must be accompanied by an earnest money deposit (EMD). EMD is to be submitted in form of a demand draft drawn on a scheduled commercial bank in favor of “MMTC LIMITED” payable at New Delhi. The bidder under MSME category as per Govt. Of India Guidelines is exempted from submission of EMD. The bidder must submit a valid certificate from the authorized issuing authorities duly certified by the bidder’s authorized signatory.
- 5.13** The tender document is available at MMTC’s corporate website [www.mmtclimited.com](http://www.mmtclimited.com) & NIC portal <http://eprocure.gov.in>
- 5.14** Prospective bidders desirous of participating in this tender may view and download the tender document

free of cost from above mentioned websites. .

## **6. REQUIREMENTS OF E-PROCUREMENT APPLICATION**

### **6.1 Organizational Coverage**

- 6.1.1 The proposed E-Procurement application is envisaged to be accessible to all MMTC's offices across all locations and its clients through internet gateway.

### **6.2 Functional Coverage**

- 6.2.1 E-Procurement software key functional areas/activities are detailed as per Annexure-A1.
- 6.2.2 The Software should be Role Based, Workflow Driven Web Application, providing real-time bidding solutions for buyers and sellers that bring Efficiency, Control, and Simplicity.
- 6.2.3 The Software should be compatible with the "Guidelines for Compliance to Quality requirements of e-Procurement dated 31.08.2011 issued by STQC Directorate Department of Information Technology, Ministry of Communication and Information Technology, New Delhi" and any other guidelines specified from time to time. It should also be compliant with all relevant Government rules, laws, instructions, Acts including provisions of IT Act.
- 6.2.4 The proposed e-Procurement application should be highly robust, scalable. The Bidder needs to check the scalability, interoperability of its e-Procurement application and the data on the maximum number of concurrent users and transactions the system can handle.
- 6.2.5 The e-Procurement application shall be a n-tiered (3 or more) architecture with Web, Application and Database Server & offers a superior level of security with Secure Socket Layer (SSL) encryption, strong authentication with digital certificates and speed to conduct real time bidding over the Internet.
- 6.2.6 Version archiving and version control.
- 6.2.7 The solution should integrate in providing E-Payments, Public Key Infrastructure and security solutions.
- 6.2.8 Application to take care of all localized factors such as tax requirements including prevalent taxes like GST & duties, Customs etc.

### **6.3 E-procurement Users**

- 6.3.1 The proposed E-Procurement solution will be used by MMTC for Registering the Buyers & Bidders and approve their registration for usage. The proposed solution will be used by various clients for participation in tendering & auction process. EPS application should have provision for creation of role based users.

- 6.3.2 Facility for User Authentication & Role based access control. The user ID and Password policy should be same as of a Certifying Authority.

## 7.0 HELP DESK

- 7.1 The service provider shall depute one experienced executive (having knowledge of their e-procurement system) at MMTC's Corporate Office during MMTC's working hours to support/ on the job training etc. to stakeholders during the contract period. The service provider should recognizes the fact that the executive will require to work beyond the business hours and holidays on need basis.
- 7.2 The service provider shall display the contact details of helpdesk executives with mobile number and e-mail ids on front page of their e-procurement portal with escalation matrix.

## 8.0 SCOPE OF WORK

### 8.1 The scope of the project envisages a complete turnkey solution which includes

- 8.1.1 The supplier shall be responsible for training to MMTC's designated personnel.
- 8.1.2 To setup Help Desk for guiding the usage of e-Procurement portal across MMTC locations.
- 8.1.3 The supplier shall be responsible to get STQC certification done for above e-Portal Setup.
- 8.1.4 The system shall cover full life cycle of purchasing (indent to placing of Purchase Order). MMTC's data shall be encrypted and stored in secured format.
- 8.1.5 E-procurement life cycle consist of the following activity:
  - i. Centralized Registration of Vendors/ Contractors
  - ii. E-payment i.e. provision of Payment Gateway - for collecting revenue from Buyer/Bidder
  - iii. Workflow approval
  - iv. Selection/Requisition
  - v. Indenting (approval /rejection / splitting )
  - vi. Tendering process must have provision for
    - a. Setting of tender policies
    - b. Designing of Responsive Electronic forms
    - c. Uploading, Downloading facility
  - vii. Cancel/Re-invite Tender
  - viii. Prepare Tender document online
  - ix. Provision of accounting i.e. Provision to configure the policy in this regards.
  - x. Approve Tender online
  - xi. Create Bidding formats
  - xii. Uploading of Tenders
  - xiii. Downloading of Tenders by prospective Vendors
  - xiv. Facility for online Pre-Bid Meetings
  - xv. Publish Minutes of Pre-Bid Meeting
  - xvi. Submit Bids Online



- xvii. Upload attachments to Tender
- xviii. On line Technical & Commercial Evaluation
- xix. Extension of bid validity period either prior to bid opening date (in case bid opening is delayed) or during bid evaluation phase.
- xx. Provision to display the errors/gaps with clear pointers to the fields having gaps/errors in the information provided by the Bidders
- xxi. Price Bid Opening
- xxii. Awarding of contract
- xxiii. Publishing of Result ( As per CVC Guidelines)
- xxiv. Management Information System (MIS)
- xxv. Audit Trail
- xxvi. E-Auction (Reverse / Forward) including ranking of bids and ensuring confidentiality of bidders.
- xxvii. Negotiate/reverse auction
- xxviii. Provision for to record IP address of user's desktop from where bids have been uploaded.
- xxix. System should have templates to adopt bidding methodologies as may be.
- xxx. Digital Certificate Signed for e-Auction event also need to be enabled ,if required ,for activities like Bidder's authentication , acceptance of terms and conditions, uploading of documents etc.

- 8.1.6 The offer should provide an Electronic Procurement Platform (secure SSL web based) for electronic tendering, auctions (forward and reverse), with the objective of automating the entire procurement process from indenting to Award of Contract for MMTC.

## **8.2 E-Auction (Forward & Reverse) Functionality Requirements:**

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The Service Provider shall provide

- 8.2.1 The e-auction (Forward & Reverse) platform should have content management to display the necessary buying/selling details to relevant bidders for maximizing participation.
- 8.2.2 The e-auction (Forward & Reverse) platform should ensure that all information about upcoming auctions is being fully communicated to all relevant bidders.
- 8.2.3 The e-auction (Forward & Reverse) platform should allow single log in instance for a unique user ID/Password combination.
- 8.2.4 The e-auction (Forward & Reverse) platform should have provision for online training of bidders.
- 8.2.5 The e-auction (Forward & Reverse) platform should have multiple types of available auction methodologies to handle all types of auctions, including BOQ bidding with facility for unique BOQ for unique bidder and multi-currency bidding.
- 8.2.6 For Forward Auction, wherever EMD is relevant, system should be capable of end to end online EMD management from deposit to refund including ledger view to bidders.
- 8.2.7 The e-auction (Forward & Reverse) platform should have the following:
  - a) Provision for bidding up to predefined decimal places

- b) Configurable auto closing/extension of auction after predefined time
- d) Auto refresh of vendors/customer screen at pre-set interval
- e) Support single as well as multiple lot auctions

### 8.3 MIS Reports Requirement

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- 8.3.1 Provision to generate MIS reports on Tenders, evaluation, payment collection etc.
- 8.3.2 Facilitate generation of MIS reports including indent history in terms of date and time of creation, submission to the last approver, current stage in workflow, time taken to approve the indent by the approver, etc. Durations of time taken by authorities to approve an indent shall be represented using easily perceptible graphics and colors.

### 8.4 General compliance requirements of e-Procurement System

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- 8.4.1 Address the requirements of GFR: For public procurement of goods, services, works (e.g. construction) compliance with GFR rules, processes, roles (purchasing officer, local purchasing committee etc.) are mandatory requirements. The system need to have defined workflow with adequate security measures.
- 8.4.2 E-Procurement Portal should have all security features so that any virus attack or hackers and vulnerabilities as mentioned in STQC to protect and secure the databases used by the proposed system, data in transit etc. Quality certification of the e-Procurement application is mandatory.
- 8.4.3 Address & comply vigilance guidelines: The system should meet the requirements of guidelines issued from time to time by Central Vigilance Commission.
- 8.4.4 Functionality/ Security/ Transparency related Requirements of a Manual Tendering System and Conformance its Availability in the Offered e-Procurement system (functionality requirements of GFR & CVC guidelines).
- 8.4.5 The bid encryption methodology should be such that it should not be possible to decrypt the bids in connivance with any officer of the Buyer organization or the Service Provider organization
- 8.4.6 The design shall ensure the data integrity controls Atomicity, Consistency, Isolation, and Durability. The database controls for online Transaction processing systems like Access to database directly, Access to database through application, Access to log files, Access by the remote terminals, DBA Controls, Backup policy and backup procedures
- 8.4.7 Compliance with IT Act 2000
  - i. (PKI-enabled application) Using PKI-based digital signatures, all important electronic records/ documents (viz., tender notices, corrigenda, tender documents etc.) in the e-procurement application should be digitally signed for authenticity, integrity and non-repudiation by the concerned users.

- ii. The application should support use of PKI-based digital signatures (Class-2 or Class-3) issued by all Certifying Authorities (CAs) licensed by the Controller of Certifying Authorities (CCA).
  - iii. No new digital signing, or login (in case private key is used for such purpose in the offered e-tendering/ e-procurement system) should be allowed in the e-tendering/ e-procurement system with a key whose digital certificate has expired.
  - iv. However, even with a digital certificate which has expired, it should be possible to decrypt any data (which was earlier encrypted using the public key when it was still valid), and similarly it should be possible to verify a digital signature with an expired key (if the signature was affixed earlier when the key was still valid).
- 8.4.8 Integration. Provision of Payment Gateway - for collecting revenue from clients of MMTC.
- 8.4.9 On-Line availability: The complete e-procurement solution should be available online on a 24\*7 basis and accessible from anywhere.

## 8.5 ROLES AND RESPONSIBILITIES

The major roles and responsibilities are as given below :

| Sl No | Roles   | Responsibility    |
|-------|---|-------------------|
| 1     | Auction EOI / Enquiry to be published in media other than e-auction platform.   | MMTC LTD          |
| 2     | Techno-commercial Scrutiny of bidder  | MMTC LTD          |
| 3     | Publishing / Mapping of auction in portal   | Bidder            |
| 4     | Mock auction to bidders/MMTC officials  | Bidder            |
| 5     | Sending contact details of techno-commercially approved Bidders to service provider                                       | MMTC LTD          |
| 6     | Framing Business rule containing auction format and other details   | Bidder            |
| 7     | Approval of Business Rule   | MMTC LTD          |
| 8     | Sending Business rule document to all the eligible Bidders  | Bidder            |
| 9     | Collection of consent letter & compliance statement from eligible Bidders   | Bidder            |
| 8     | Commercial query handling   | MMTC LTD          |
| 9     | Auction related technical query handling & Bidder Training  | Bidder            |
| 10    | Making user id & Password available to Bidders  | Bidder            |
| 11    | Assisting Bidders participate in dummy auction  | Bidder            |
| 12    | Event Date & Time finalization  | MMTC LTD & Bidder |
| 13    | To provide Start Bid price/Estimate/minimum quantity/minimum incremental price & quantity for bidding                     | MMTC LTD          |
| 14    | Conducting Auction & Providing Helpdesk service during auction  | Bidder            |
| 15    | Auction report generation and submission (Detail and summary as required by MMTC immediately after completion of auction) | Bidder            |
| 16    | Price break up (if any) to be collected from the Winning bidder   | Bidder            |
| 17    | Non-disclosure of identity of vendors/customers to MMTC and other participating   | Bidder            |

|    |   |        |
|----|---|--------|
|    | vendors for maintaining sanctity of event   |        |
| 18 | Multiple currency bidding, provision for bidding upto predefined decimal places , auto closing/extension of auction after predefined time, auto refresh of vendors/customer screen at preset interval , support single as well as multiple lot auctions , display of ranks/price only on the dashboard of vendors/customer , auto bid facility & bid trail, | Bidder |
| 19 | In case of loss of connectivity of vendors/customer computer/laptop/mobile etc due to any reason , the bidders should support secure alternate to allow such vendors/customers to place the bid   | Bidder |
| 20 | Voice and video logging of auction event and submission to MMTC as when asked for   | Bidder |
| 21 | SMS broadcasting/E-Mailing to vendors/customers on auction notification , schedule , reschedule etc   | Bidder |
| 22 | Devise suitable auction strategy  | Bidder |

## 8.6 BIDDER'S OTHER RESPONSIBILITIES AND LIABILITIES:

### 8.6.1 TRADE SECRETS, COPYRIGHT & PATENT INDEMNITY

Bidder will defend all actions against MMTC claiming that the software infringes any trade secret, copyright or duly issued patent or any other reputes of third parties. Bidder shall compensate MMTC for any expenses, damage or loss suffered as a result of any claims or proceeding against them for infringement of any intellectual property reputes of third parties as aforesaid.

### 8.6.2 Bidder shall be responsible for all liabilities arising out of or in connection with :

- (i) Damage of data, computer database or any other software residing in their computer, computer system or computer network is caused;
- (ii) The denial of access to any person authorized by MMTC to access service provider computer, computer system or computer network by any means;
- (iii) Provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of IT Act 2000, rules or regulations made there under and subsequent amendments;
- (iv) Tampering with computer source documents.
- (v) Hacking with Computer System.
- (vi) Breach of confidentiality and privacy

## 9. PROJECT TIMELINES & DELIVERABLES

### 9.1 Project Timelines

The platform must be ready for operation by MMTC within 7 (seven working days) from the date of LoI/work order,

### 9.2 Penalty for Delay

- 9.2.1 In case of delay in project initiation, for each week of delay MMTC shall levy a penalty of 1 % (One percent) of total cost of the project up to a maximum of 20 % (Twenty percent) of the total contract value.
- 9.2.2 In case of inordinate delay by the service provider, then MMTC reserves the right to terminate the contract and also invoke the entire performance bank guarantee.

### 9.3 Deliverables

This section highlights the interim deliverables that the vendor must provide as part of the engagement.

- 9.3.1 Ready to use e-Procurement software for e-Tendering/e-Auctions software licenses.
- 9.3.2 Integration of payment gateways as required by MMTC.
- 9.3.3 Integration of SMS/Email gateways for sending alerts to MMTC, Buyers and Bidders.
- 9.3.4 For setting Help desk at CO Delhi.
- 9.3.5 Training to MMTC's officials for.
- i. For using e-Procurement Software to Application Administrator & Other users.
  - ii. Training for handling the various issues reported by end-users (MMTC, Buyer & Bidders).
- 9.3.6 Renewal of STQC Certificate every year during the contract period.

## 10. MODEL- AN OVERVIEW

- 10.1 The ready-to-use software has to be fully in-line with “Guidelines for Compliance to Quality requirements of e-Procurement dated 31.08.2011 issued by STQC Directorate Department of Information Technology, Ministry of Communication and Information Technology, New Delhi”, in letter and spirit, and should have been audited/ certified by STQC for compliance with these guidelines before the time of bidding. Over and above this, if any minor changes are required in the software, these will be within the ambit of the DeitY Guidelines, CVC Circulars, Finance Ministry Guidelines, any other Government of India regulatory requirements.
- 10.2 Complete Solution for e-Procurement (e-Tendering & e-Auction (Forward/Reverse) with end-to-end activities. It should support traditional procurement system.
- 10.3 Since the process of tendering is elaborate involves many users/ executives, it should be possible to create a tendering related hierarchy within the Supplier / Buyer organization, with the key person at the top, followed by Department Heads (or Sales team heads etc.) and a number of Users in each department whose role-authorization could vary from one tender to another, and time to time.

- 10.4 EPS would be capable of handling limited tenders, open tenders, global tenders, reverse auction for purchase & forward for sale etc. Software shall support email, SMS, payment gateway and digital certification certified by Indian Certification Authorities (CA).
- 10.5 The system should be capable of generating reports regarding down time. Bidder shall provide mechanism for logging and recording of server or system down time, which should be acceptable to MMTC.

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**ANNEXURE A1****Broadly, the following activity areas should be covered in the offered e-Procurement Software (EPS):**

Covers full life cycle of purchasing of Goods, Products, Services & works (Indent to Final Payment on Completion of the work)

1. Connects buyers and suppliers through electronic exchange of Tenders, Catalogues, contracts, POs, invoices etc.
2. Create and publish Tender documents
3. Sell Tenders
4. Receive Bids
5. Evaluate Tenders
6. Award Contract / PO
7. Using e-Tendering, the suppliers can:
  - a. Receive notification of the relevant tenders
  - b. Purchase tenders document
  - c. Submit Bids Online
  - d. Track the status of their bids
8. Indent management
9. Aggregation of demand
10. Tender Hosting
11. Tender requisition
12. Tender approval
13. Tender publishing
14. Tender document amendments- corrigendum/ addendum
15. Pre-bid meeting
16. Bid submission
17. Online receipt of payments
18. Bid opening
19. Bid evaluation
20. Supplier selection
21. Letter of award
22. Ordering items with rate contracts
23. Catalogue based procurement
24. Creation of purchase requisitions from e-catalogues
25. Workflows for e-procurement
26. Price updates
27. Auctions
28. Forward auctions
29. Reverse auctions
30. Creation of Contractor /Vendor database
31. Vendor uploading their data in the online structured forms
32. Online application for new registration of contractors
33. Renewal of registrations Workflow to process the application
34. Approval / Rejection of contractors registration
35. Black listing/ suspension of contractors/client/vendor
36. Contract Monitoring
37. Comprehensive functionality for a transparent Public Online Tender Opening Event.

Ref No. MMTC/CO/e-Proc/2017-18/10797

Dated: 3<sup>rd</sup> August 2017



## MMTC LIMITED

(A Govt. of India Enterprise)

Core-1, Scope Complex, 7 Institutional Area, Lodi Road, New Delhi-110003

### Commercial & Bidding Terms

For

**“E-tendering & E-Auction facility on Application Usage Basis by  
MMTC and its Clients”**

### PART-B



## 1.0 REQUEST FOR PROPOSAL PROCESS

The bidders are expected to examine all instructions, forms, terms, project requirements and other information in this RFP (Request for Proposal) document. Failure to furnish all information required by the RFP documents or submission of a proposal not substantially responsive to the RFP documents in every respect will be at the Bidder's risk and may result in rejection of its proposal.

### 1.1 PROJECT SITE AND LOCATION

The Project Office will be setup in MMTC CO, New Delhi as a dedicated facility for implementation of the project. Project and all the projects activities like setting up of the e-procurement portal, software configuration, customization, training, Help desk set-up etc., will be carried out in New Delhi. Bidder should confirm that all its team members and required infrastructure are made available at the Project site office in MMTC CO, New Delhi during the implementation.

### 1.2 PROPOSAL PROCESS MANAGEMENT

- a. MMTC may terminate the RFP process at any time and without assigning any reason. MMTC makes no commitments, express or implied, that this process will result in a business transaction with anyone.
- b. This RFP does not constitute an offer by MMTC. The bidder's participation in this process may result in MMTC selecting the bidder to engage in further discussions towards execution of a contract.

### 1.3 KEY ACTIVITIES AND DATES

The Schedule of Key Activities for the purpose of this RFP and bid process is planned as per Clause 2.0 "Critical Information" of Part A of this RFP, this is subject to change at the sole discretion of MMTC.

### 1.4 PROPOSAL CONTENT/PROPOSAL FORMAT

The bidder's proposal is central to the evaluation and selection process. Therefore, it is important that the respondent carefully prepares the proposal and answers the questionnaires completely. The quality of the respondent's proposal will be viewed as an indicator of its capability to provide the solution and interest in the project. **It is strongly recommended that bidders do not respond in format other than that provided in this RFP.** The format for responding to the proposal is presented in the various Annexure(s).

### 1.5 BIDDER ENQUIRIES AND MMTC RESPONSES

All enquiries / clarifications / questions from the bidders, related to this RFP must be consolidated and directed in writing (in the format specified at **Annexure B1** of part B of this RFP) exclusively to the contact person notified by MMTC. The acceptable mode of delivering written questions to the aforementioned contact person and address would be through email/ written communication only.

After issuance of the RFP, the contact person notified by MMTC will begin accepting consolidated written questions from the bidders. MMTC will endeavor to provide a full, complete, accurate, and timely response to all questions. However, MMTC makes no representation or warranty as to the completeness or accuracy of any response, nor does MMTC undertake to answer all the queries that have been posed by the bidders. No request for clarification from any bidder shall be entertained after pre-bid meeting.

## 1.6 SUPPLEMENTARY INFORMATION TO THE REQUEST FOR PROPOSALS

If MMTC deems it appropriate to revise any part of this RFP or to issue additional data to clarify an interpretation of provisions of this RFP, it may issue corrigendum to this RFP. Any such corrigendum shall be deemed to be incorporated by this reference into this RFP.

## 1.7 PROPOSAL PREPARATION COSTS

The bidder is responsible for all costs incurred in connection with participation in this bid process, including, but not limited to, costs incurred in conduct of informative and other diligence activities, participation in meetings/ discussions/presentations, proof of demonstration, preparation of proposal, in providing any additional information required by MMTC to facilitate the evaluation process, and in negotiating bidding or contract terms or all such activities related to the bid process. This RFP does not commit MMTC to award a contract. Further, no reimbursable cost may be incurred in anticipation of award.

## 1.8 BID EMD AMOUNT

- a. Bidders shall submit, along with their bid, an EMD of Rupees 50,000/- (Fifty thousand only) in the form of a demand draft, drawn on scheduled commercial bank, in favor of 'MMTC LIMITED', payable at New Delhi. Bid EMD in any other form will not be entertained.
- b. The bid EMD of all unsuccessful bidders would be returned by MMTC on being notified by MMTC as being unsuccessful. The bid EMD of successful bidder would be returned upon submission of the requisite Performance Bank Guarantee (PBG) in prescribed format (see **Annexure B10**).
- c. Bids submitted without the prescribed bid EMD will be liable for rejection without providing any opportunity to the bidder concerned.
- d. The bidder under MSME category as per Govt. Of India Guidelines is exempted from submission of EMD. The bidder must submit a valid certificate from the authorized issuing authorities duly certified by the bidder's authorized signatory.

## 1.9 VENUE & DEADLINE FOR SUBMISSION OF PROPOSALS

- a. Proposals must be received by MMTC at the address specified below:  
 Shri H.K. Bagha, Additional General Manager (Systems)  
 Core-1, SCOPE Complex,  
 Lodi Road, New Delhi-110003  
 Phone: 011 – 24362200 Extn. 1352  
 E-Mail: bagha@mmtclimited.com
- b. Last Date & Time of submission: Proposal must be submitted before the last date and time of submission of bids as given at Clause 2.0 under "CRITICAL INFORMATION" of part-A.
- c. MMTC may, under exceptional circumstances and at its sole discretion, extend the deadline for submission of proposals, in which case all rights and obligations of "E-tendering & E-Auction facility on Application Usage Basis by MMTC and its Clients" project and the bidders previously subject to the original deadline

will thereafter be subject to the deadline as extended.

### 1.10 LATE BIDS

Bids received after the last date and the specified time for any reason whatsoever, shall not be entertained.

### 1.11 BID OPENING

Proposals submitted by bidders shall be opened as given at Clause 2.0 under “CRITICAL INFORMATION” of part-A. Total transparency will be observed while opening of proposals. MMTC reserves the right at all times to postpone or cancel a scheduled tender opening or any other bid process. The venue for opening of proposals is indicated below; this is subject to change at the sole discretion of MMTC:

Conference Hall  
6<sup>th</sup> Floor, MMTC Limited,  
Core-1, Scope Complex,  
Lodi Road, 7 Institutional Area,  
New Delhi-110003

### 1.12 GENERAL GUIDELINES FOR BID OPENING

- a. Bidders are required to submit only one (1) bid. Bidders with more than one bid would be summarily rejected. Therefore, bidders are recommended to be diligent and propose the most suitable product.
- b. The bidders are not allowed to form a consortium for bidding.
- c. Bidders will submit their proposal in three parts viz. pre-qualification, technical and commercial as indicated in the RFP. The three parts of proposals shall be opened separately in the given order as per the conditions and methodology specified in this RFP.
- d. The technical proposals of only those bidders who qualify in the evaluation of pre-qualification proposals will be opened.
- e. The commercial proposals of only those bidders who qualify in the evaluation of technical proposals will be opened.
- f. The venue, date and timing for opening the technical and commercial proposals will be informed to the bidders at the appropriate time, with adequate notice.
- g. All the proposals will be opened in presence of bidders’ representatives. However, MMTC shall not take responsibility for ensuring the presence of bidders’ representatives and shall go ahead with the opening at the notified date, time and venue.

### 1.13 PROPOSAL VALIDITY

Due to the nature of evaluation process, approval and award of contract activities that may occur, proposals must be valid for a minimum of Sixty (60) days from the last date of submission of tender.

### 1.14 RFP OWNERSHIP

The RFP and all supporting documentation/templates are the sole property of MMTC and should NOT be redistributed without prior written consent of MMTC. Violation of this will be a breach of trust and may, inter-alia cause the bidder to be irrevocably disqualified.

### 1.15 PROPOSAL OWNERSHIP

The proposal and all supporting documentation submitted by the respondent shall become the property of MMTC unless it is specifically requested, in writing, that the proposal and documentation be returned or destroyed.

### 1.16 RIGHT TO TERMINATE THE PROCESS

- a. MMTC reserves the right to accept or reject any proposal, and to annul the bidding process and reject of proposals at any time prior to award of agreement, without thereby incurring any liability to the affected bidder or bidders or any obligation to inform the affected bidder or bidders of the grounds for action taken by MMTC.
- b. MMTC makes no commitments, express or implied that this process will result in a business transaction with anyone.
- c. This RFP does not constitute an offer by MMTC. The bidder's participation in this process may result in MMTC selecting the bidder to engage in further discussions and negotiations towards execution of an agreement. The commencement of such negotiations does not, however, signify a commitment by MMTC to execute an agreement or to continue negotiations. MMTC may terminate negotiations at any time without assigning any reason.

## 2.0 TERMS OF PAYMENT

- 2.1 Payment shall be released by MMTC after successful completion of all the activities of e-tender/e-auction on monthly basis and only after:-
  - (a) Submission of performance guarantee in the form of Bank Guarantee as per Annexure-B10 and its confirmation/verification from the issuing/next higher authority of bank branch which issued the same.
  - (b) Submission of Information Security Audit certificate by CERT-IN empaneled agency.
  - (c) Submission of renewed STQC certificate in case renewal of existing one has become due.
  - (d) Submission of vendor e-payment form as per Annexure – B6.
  - (e) Submission of Non-Disclosure Agreement as per Annexure- C2.
  - (f) No interest whatsoever, shall be payable by MMTC to bidder in any case.
  - (g) MMTC does not guarantee any minimum work to bidder.

### 2.2 DELAYS IN THE BIDDER'S PERFORMANCE:

- 2.2.1 Delivery of the Services and performance of the activities mentioned in the Contract shall be made by the Bidder in accordance with the time schedule specified in the Contract and Scope of Work.

2.2.2 Delay by the Bidder in the performance of its obligations shall render the Bidder liable to any or all of the following sanctions: -

- (a) Invocation of its Performance Guarantee.
- (b) Imposition of Penalty for server down time, and/or
- (c) Termination of the Contract for default.

### 2.3 EXIT MANAGEMENT

Detailed provisions shall be made in the contract agreement to manage the exit of the Bidder/Vendor from the project on maturity of the contract or due to premature termination of contract detailed in Part “C” of this RFP.

## 3.0 PROPOSAL INSTRUCTIONS AND CONDITIONS

Proposals must be direct, concise, and complete. All information not directly relevant to this RFP should be omitted. MMTC will evaluate bidder’s proposal based upon its clarity and the directness of its response to the requirements of the project as outlined in this RFP.

### 3.1 RFP FORMAT

- a. This RFP provides information regarding the application and other IT infrastructure related information, scope of work for the selected bidder, functional requirements for the services included in the scope of this RFP.
- b. As should be clear from scope of this project, MMTC seeks a specific proposal responsive to this RFP in every respect and detail, rather than a mere compilation of materials and promotional information used in other transactions. MMTC will be appreciative of the quality and responsiveness of the proposal.
- c. The bidder must submit, as separate documents in separate covers, “Pre-qualification Proposal”, “Technical Proposal” and “Commercial Proposal”, as described in these sections. **Failure to submit separate pre-qualification, technical and commercial proposals may result in disqualification of the bid.**
- d. **Bidder Submission of Proposal:**

|  |   |
|--|---|
| <b>Envelope 1 :<br/>Bid EMD</b>                    | The envelope containing the Bid EMD shall be sealed and super scribed <b>Bid EMD</b> <b><u>“E-tendering &amp; E-Auction facility on Application Usage Basis by MMTC and its Clients”</u></b>  |
| <b>Envelope 2 :<br/>Pre-qualification Proposal</b> | The pre-qualification proposal should be submitted in prescribed format. The words <b>“Pre-qualification Proposal – <u>“E-tendering &amp; E-Auction facility on Application Usage Basis by MMTC and its Clients s”</u>”</b> shall be written in indelible ink on the envelope. The Hard Copy shall be signed by the authorized signatory on all the pages before being sealed. The envelope shall be super scribed <b>“Pre-qualification Proposal – <u>“E-tendering &amp; E-Auction facility on Application Usage Basis by MMTC and its Clients”</u>”</b> on the top right hand |

|  |   |
|--|---|
|  | corner and addressed to MMTC at the address specified in this RFP.  |
| <b>Envelope 3 :<br/>Technical<br/>Proposal</b> | <p>The Technical proposal should be submitted in prescribed format. The words “<b><u>E-tendering &amp; E-Auction facility on Application Usage Basis by MMTC and its Clients</u></b>” shall be written in indelible ink on the envelope. The Hard Copy shall be signed by the authorized signatory on all the pages before being put in the envelope and sealed. The envelope shall be super scribed “Technical Proposal – “<b><u>E-tendering &amp; E-Auction facility on Application Usage Basis by MMTC and its Clients</u></b>” on the top right hand corner and addressed to MMTC (as per address specified in this RFP).</p> <p><b><u>This envelope should not contain the Commercial Proposal or any price related information, in either explicit or implicit form. Doing otherwise will make the bid invalid without any further consideration.</u></b></p> |
| <b>Envelope 4:<br/>Commercial<br/>Proposal</b> | <p>The Commercial proposal should be submitted in prescribed format. The words “<b><u>Commercial Proposal – “E-tendering &amp; E-Auction facility on Application Usage Basis by MMTC and its Clients</u></b>” at MMTC (NOT TO BE OPENED WITH THE TECHNICAL PROPOSAL)” shall be written in indelible ink on the envelope. The Hard Copy shall be signed by the authorized signatory on all the pages before being put in the envelope and sealed. The envelope shall be super scribed “Commercial Proposal – “<b><u>E-tendering &amp; E-Auction facility on Application Usage Basis by MMTC and its Clients</u></b>” on the top right hand corner and addressed to MMTC at the address specified in this RFP.</p> <p>Note: Unsigned Hard Copy of the Commercial Proposal will lead to rejection of the bid.</p>  |
| <b>Envelope 5</b>                              | All the above four (4) envelopes along with the proposal covering letter should be put in envelope 5 which shall be properly sealed. The outside of the envelope must clearly indicate the name of the project “ <b><u>E-tendering &amp; E-Auction facility on Application Usage Basis by MMTC and its Clients</u></b> ”  |
| <b>Note:</b>                                   | <p>a. The outer and inner envelopes mentioned above shall indicate the name and address of the bidder.</p> <p>b. Proposals shall be submitted in person or by speed post before/ by specified date/ time at the specified address.</p> <p>c. MMTC shall not accept proposals submitted by any other mode or in any other format than that specified in this RFP.</p>  |

**The sealed envelope shall be addressed at the following address:**

Mr. H.K Bagha, AGM(Sys)  
MMTC Limited,  
E-Procurement Division, 2<sup>nd</sup> Floor  
Core – 1, Scope Complex,  
7, Institutional Area,  
Lodi Road, New Delhi – 110 003

### 3.2 DOCUMENTS COMPRISING THE BIDDERS' PROPOSAL

Proposal submitted by the bidder shall comprise the following:

- Pre-Qualification Proposal covering letter (in the format set forth in **Annexure B2** of part B) on the bidder organization's letter head.
- Bid EMD as specified in clause 1.8 (Bid EMD Amount) of Part B.

- c) Pre-qualification proposal as specified in section 3.3 of part B.
- d) Technical proposal as specified in section 3.4 of part B.
- e) Commercial proposal as specified in section 3.5 of part B.
- f) Bidder shall submit with its Pre-qualification Proposal the following:
  - I. A board resolution authorizing the Bidder to sign/ execute the proposal as a binding document and also execute all relevant agreements forming part of RFP/ bid process. Failing which the bid is liable to be rejected.
  - II. Bidders shall furnish the required information on their technical and commercial aspects in the enclosed formats only. Any deviations in format may make the bid liable for rejection. The bid shall be submitted with the covering letter as specified and enclosed in the main envelope, which will contain the Bid EMD, Prequalification proposal, Technical proposal and Commercial proposal Envelopes. Bids not submitted with the covering letter shall be liable for rejection.

### 3.3 PREQUALIFICATION PROPOSAL

- 3.3.1 A printed covering letter, set forth in **Annexure B2**, on the bidding organization's letterhead with all required information and authorized representative's initials shall be submitted along with the proposal. Do not otherwise edit the content of the proposal cover letter.
- 3.3.2 Bidders are requested to structure their prequalification proposals enclosing following documents/annexures:
- a. Pre-qualification proposal covering letter as per annexure B2.
  - b. Bidder's profile as per annexure B3(A)
  - c. Financial Information as per annexure B3(B)
  - d. Bidder's project experience as per annexure B3(C)
  - e. Project undertaken using STQC certified software during last three financial years as per annexure B3(D)
  - f. Certificate of operation in Delhi/NCR region as per annexure B3(E).
  - g. Conflict of interest/blacklisting declaration as per annexure B3(F).
  - h. Bidder's acceptance of terms and conditions of RFP declaration as per annexure B3(G).
- 3.3.3 Prequalification proposal will be used for assessing the bidders on the basis of prequalification criteria laid down in this RFP. Therefore the bidders are required to submit this proposal in specified format furnishing all the required information and supporting documents.
- 3.3.4 A bid may be rejected at prequalification stage itself and not considered for technical proposal evaluation if it fails to satisfy the prequalification criteria specified in this RFP.
- 3.3.5 Following prequalification criteria shall be applied to assess the eligibility of bids for this bidding process:

| S.No. | Criteria                | Detail   | Supporting document(s) required  |
|-------|-------------------------|--|--|
| 1     | Registered Legal Entity | Bidder should be registered in India as a partnership/proprietorship/Company under the Companies Act (2013), with registered office in India in existence for at least five (5) years as on 31.03.2017   | 1) Copy of Certificate of Incorporation issued by Registrar of Companies/ Partnership deed/ GSTIN No. and Memorandum of Association.<br>2) PAN card of partners/proprietor/Directors of the Company as applicable. Bidders profile as per <b>Annexure B3 (A)</b>   |
| 2     | Financial Stability     | (a) Bidder should have an annual average turnover equal to or more than INR Two (2) crore of the last three financial years (2016-17, 2015-16, 2014-15), this should be from e-Procurement software business.  | 1) Audited profit & loss account and balance sheet for financial years (2016-17, 2015-16, 2014-15)<br>2) Certificate from Statutory Auditors (CA) for Annual e-Procurement software business Turnover ( <b>As per Annexure B3 (B)</b> ).   |
|       |                         | (b) Bidder should be profitable in each of the last three financial years ((2016-17, 2015-16, 2014-15)   | Certificate from Statutory Auditors (CA) declaring profitability for financial years ((2016-17, 2015-16, 2014-15)<br><b>(As per Annexure B3(B))</b>  |
|       |                         | (c) The Bidder should have a positive net worth in each of the last three financial years ending 31 <sup>st</sup> March 2017.  | Certificate from Statutory Auditors (CA) declaring positive net worth for last three financial years ((2016-17, 2015-16, 2014-15)<br><b>(As per Annexure B3(B))</b>  |
| 3     | Project Experience      | a. Bidder should have successfully completed e-procurement implementation in application usages mode in India for at least five (5) organizations (Central /State Government/ Central Public Sector Enterprises (CPSE) entities in India) during last three (3) years.<br><br>E-Procurement software/ solution implemented at the above organizations should have at least implemented the following modules: e-procurement/ e-Tendering , e-auction<br>The projects should be completed as on date of submission of tender response | Documentary evidence, along with client contact details, in the form of Work order/Purchase order and Completion certificate from client for each project. Please also furnish details of the client in order to verify the same.<br><b>(As per Annexure B3(C))</b>  |
|       |                         | b. The STQC certified software being given to MMTC should have been used for processing an average no. of at least 2000 e-Tenders and 500 e-Auction per year for the last three (3) years.   | Copies of certificate/credential details from clients (with contact details) giving e-tender/e-auction count duly certified by authorized signatory of the Bidder.<br><br>Copy of the STQC certificate(s) for last three (3) years duly signed and stamped by the authorized signatory of the Bidder<br><b>(As per Annexure B3(D))</b> |
| 4     | Certification           | a. The e-procurement software/ solution proposed should be duly certified by STQC for full compliance with Deity's e-procurement Guidelines dated 31 <sup>st</sup> August 2011. In case STQC certification is applied  | Copy of the valid & active certificate(s) signed and stamped by the authorized signatory of the Bidder   |



|   |                      |   |  |
|---|----------------------|---|--|
|   |                      | for then the same should be submitted before opening of the commercial bid.   |  |
|   |                      | b. The e-procurement software should be 'Configurable' and be readily deployable, not requiring STQC Re-Certification for the core tendering processes, in any Central Government Ministry/ Department, State, Municipality, and PSU in India.          | Documentary Proof by the authorized signatory of the Bidder  |
|   |                      | c. The bidder's (prime) development unit should have certification of CMMi Level 3 as on bid submission date.   | The bidder should submit a copy of valid certificate(s) duly signed and stamped by the authorized signatory of the Bidder  |
| 5 | Customer Support     | The bidder should have an office in Delhi/NCR region in operation for last One (1) year as on 30.06.2017.   | Certification from the authorized signatory of the Bidder<br><br>(As per Annexure B3(E))   |
| 6 | Conflict of interest | Bidder should provide an undertaking that there will be no conflict of interest situation with OEM.   | Declaration by authorized signatory of the Bidder in the provided format as per <b>Annexure-B3 (F)</b>   |
| 7 | Blacklisting         | The Bidder shall not be under a declaration of blacklisted for corrupt or breach of ethical conduct or fraudulent practices by any state or central government/ any other Government institutions in India for any reason as on tender closing date.    | Declaration by authorized signatory of the Bidder in the provided format as per <b>Annexure-B3 (F)</b>   |
| 8 | Integrity            | The Bidder shall provide an undertaking regarding "If the bidder tries to influence the officials of MMTC through unfair means, action for disqualification from tender process and banning from business will be resorted to by the MMTC's management. | Integrity Pact as approved by Company needs to be signed by the Vendor as per company's requirement.<br><b>Annexure-C3</b><br>Declaration by authorized signatory of the Bidder. |

### 3.4 TECHNICAL PROPOSAL

- a. A printed covering letter, set forth in **Annexure B4**, on the bidding organization's letter head with all required information and authorized representative's initials shall be submitted along with the proposal. Do not otherwise edit the content of the proposal cover letter.
- b. The technical proposal should contain a detailed description of how the bidder will provide the required services outlined in this RFP. The bidder is expected to propose one integrated product suite and other relevant applications, if required. It should clearly articulate in detail, as to how the bidder's Technical Solution meets the requirements specified in the RFP.
- c. **The technical proposal must not contain any pricing information.**
- d. In submitting additional information, please mark it as supplemental to the required response. If the bidder wishes to propose additional services (or enhanced levels of services) beyond the scope of this RFP, the proposal must include a description of such services as a separate attachment to the proposal.

- e. Bidders are requested to structure their technical proposals enclosing following documents/annexures:
  - i. Confirmation Checklist as per annexure B5 (A).
  - ii. Statement of deviation as per annexure B5(B)
  - iii. Training schedule plan in accordance with training requirement as specified in RFP as per annexure B5(C)
  - iv. Methodology for manpower deployment during project implementation as per annexure B5(D).
  - v. OEM certification as per annexure B9
- f. The deliverables as given in the technical proposal should be in consonance with the commercial proposal. Any deviations between technical and commercial proposals in this respect shall make the proposal as being unresponsive and may lead to disqualification of the proposal. MMTC reserves the right to take appropriate action in this regard.
- g. MMTC is also open to any suggestions that the bidder, as a result of its expertise or experience from similar assignments, may want to provide with respect to the approach adopted for the assignment. However, such suggestions would in no manner be binding on MMTC and bidder should not assume any change in the bid process terms as a result of having given such suggestion.
- h. Manpower deployment plan and resources to be dedicated to the project. Methodology for manpower deployment must be provided by the bidder as per **Annexure B5(D)**. Bidder must provide resumes of the proposed team.
- i. Certification from OEMs: Bidder shall submit statement from OEMs whose products have been proposed in the project certifying that the e-procurement software/solution alongwith services proposed by the bidder is relevant and correct with respect to their product. OEM certification must be provided by the bidder as per the format enclosed at **Annexure B5 (E)** on the letter head of the OEM.
- j. Subcontracting / Outsourcing
  - i. Subcontracting /outsourcing in any form is not permitted.
  - ii. The contract shall be terminated if the bidder is found to be deploying any subcontractor or outsourcing any of the processes and MMTC shall act as per clause 5.1 of part C of this RFP.

### 3.5 COMMERCIAL PROPOSAL

- a. A printed commercial proposal covering letter, set forth in **Annexure B7**, on the bidding organization's letter head with all required information and authorized representative's initials shall be submitted along with the proposal. Do not otherwise edit the content of the proposal cover letter.
- b. Unless expressly indicated, bidder shall not include any technical information regarding the services in the commercial proposal. Additional information may be submitted to accompany the proposal. In submitting additional information, please mark it as supplemental to the required response. The commercial bid must be submitted in the format specified in **Annexure B8**.
- c. The cost should be exclusive of GST.

- d. Prices quoted in the Commercial Bid shall be firm and not subject to variation/escalation on any account whether statutory or otherwise. The Bidder should quote for the full parts of the services as specified in this RFP. Part bid for any services will not be accepted and liable to be rejected.

### 3.6 SIGNATURE

All proposals must be signed with the bidder's name/ stamp and by a representative of the bidder, who is authorized to commit the bidder to contractual obligations. All obligations committed to by such signatories must be fulfilled. Each page of the proposal would be signed/ initialed.

### 3.7 DENOMINATION OF COMMERCIAL BIDS

Prices shall be quoted entirely in Indian Rupees (INR).

### 3.8 PERIOD OF VALIDITY OF PROPOSALS & EXTENSION OF IT, IF ANY

- a. The proposals shall be valid for a period of **sixty (60) days** from the last date of submission of tenders. A proposal valid for a shorter period may be rejected as unresponsive. On completion of the validity period, unless the bidder withdraws his proposal in writing, it will be deemed valid until the bidder formally (in writing) withdraws his proposal.
- b. In exceptional circumstances, at its discretion, MMTC may solicit the bidder's consent for an extension of the validity period. The request and the responses thereto shall be made in writing (or by email). However, the tender process shall not be vitiated if any bidder declines to extend the offer as requested for.

### 3.9 NON-CONFORMING PROPOSALS

Any proposal may be construed as a non-conforming proposal and ineligible for consideration if it does not comply with the requirements of this RFP. The failure to comply with the technical requirements, and acknowledgment of receipt of amendments, are common causes for holding proposals non-conforming. In addition, MMTC will look with disfavor upon proposals that appear to be "canned" presentations of promotional materials that do not follow the format requested in this RFP or do not appear to address the particular requirements of the E-Procurement solution, and any such bidders may also be disqualified.

### 3.10 OVERLY ELABORATE PROPOSALS

Unnecessarily elaborate brochures or other promotional materials, beyond those sufficient to present a complete and effective proposal, will be considered undesirable and may be construed as an indication of the bidder's lack of cost consciousness. MMTC's interest is in the quality and responsiveness of the proposal.

### 3.11 AMENDMENT OF REQUEST FOR PROPOSAL

At any time prior to the deadline for submission of proposals, MMTC, for any reason, may modify the RFP by amendment notifying the same on MMTC's corporate website [www.mmtclimited.com](http://www.mmtclimited.com) & NIC portal <http://eprocure.gov.in> and such amendment shall be binding on the bidder. The bidder should visit these websites on regular basis for such notifications. MMTC, at its discretion, may extend the deadline for the submission of proposals.

### 3.12 LANGUAGE OF PROPOSALS

The proposal and all correspondence and documents shall be written in English. All proposals and accompanying documentation will become the property of the MMTC and will not be returned. The hardcopy version will be considered as the official proposal.

### 3.13 PRICES

- a. The bidder shall quote the price as per specified format fixed for the entire project on a single responsibility basis. MMTC reserves the right to procure the components/services listed in this RFP in whole or in part. No adjustment of the contract price shall be made on account of any variations in costs of labor and materials or any other cost component affecting the total cost in fulfilling the obligations under the contract. The Contract price shall be the only payment, payable by MMTC to the successful bidder for completion of the contractual obligations by the successful bidder under the Contract, subject to the terms of payment specified in the contract. The price would be exclusive of all taxes, duties, charges and levies etc., as applicable.
- b. The prices, once offered, must remain fixed and must not be subject to escalation for any reason whatsoever within the period of project. A proposal submitted with an adjustable price quotation or conditional proposal may be rejected as non-responsive.
- c. Price hold against escalation: The bidder shall offer a price hold for all e-Procurement software & services etc., against future escalations, in case MMTC were to order additional quantity. If the prevalent market price is less than the quoted price, bidder shall procure it at the lower price.

### 3.14 CORRECTION OF ERRORS

- a. Bidders are advised to exercise adequate care in quoting the prices. No excuse for corrections in the quoted prices will be entertained after the quotations are opened. All corrections, if any, should be initialed by the person signing the proposal form before submission, failing which the figures for such items may not be considered.
- b. Arithmetic errors in proposals will be corrected as follows: In case of discrepancy between the amounts mentioned in figures and in words, the amount in words shall govern. The amount stated in the proposal form, adjusted in accordance with the above procedure, shall be considered as binding, unless it causes the overall proposal price to rise, in which case the proposal price shall govern.

### 3.15 DISQUALIFICATION

- a. The proposal is liable to be disqualified in the following cases:
  - i. Proposal is not submitted in accordance with this document.
  - ii. During validity of the proposal, or its extended period, if any, the bidder increases his quoted prices.
  - iii. The bidder qualifies the proposal with his own conditions and/ or deviates from the terms of the RFP.
  - iv. Proposal is received in incomplete form.
  - v. Proposal is received after due date and time.
  - vi. Proposal is not accompanied by all requisite documents
  - vii. Information submitted in technical proposal is found to be misrepresented, incorrect or false, accidentally, unwittingly or otherwise, at any time during the processing of the contract (no matter at what stage) or during the tenure of the contract including the extension period, if any.
  - viii. Commercial proposal is enclosed with the same envelope as technical proposal.
  - ix. In case any one party submits multiple proposals or if common interests are found in two or more bidders, the bidders are likely to be disqualified, unless additional proposals/bidders are withdrawn upon notice immediately.
  - x. Bidder fails to deposit the Performance Bank Guarantee (PBG) or fails to enter into a contract within Fifteen (15) working days of the date of notice of award of contract/LoI or within such extended period, as may be specified by MMTC.

- xi. Bidder or any of its representative tries to influence the proposal evaluation process by unlawful/ corrupt/ fraudulent means at any point of time during the bid process till the final contract has been awarded.
  - xii. Bidder or any of its representatives tries to influence the officials of MMTC through unfair means, action for disqualification from tender process and banning from business will be resorted to by the MMTC's management.
- b. Bidders may specifically note that while evaluating the proposals, if it comes to MMTC's knowledge expressly or implied, that some bidders may have compounded in any manner whatsoever or otherwise joined to form an alliance resulting in delaying the processing of proposal then the bidders so involved are liable to be disqualified for this contract as well as for a further period of five years from participation in any of the tenders floated by MMTC.

### 3.16 MODIFICATION AND WITHDRAWAL OF PROPOSALS

No proposal may be withdrawn in the interval between the deadline for submission of proposals and the expiration of the validity period specified by the bidder on the proposal form.

### 3.17 CONFLICT OF INTEREST

Bidder shall furnish an affirmative statement as to the existence of, absence of, or potential for conflict of interest on the part of the bidder, due to prior, current, or proposed contracts, engagements, or affiliations with MMTC. Additionally, such disclosure shall address any and all potential elements (time frame for service delivery, resource, financial or other) that would adversely impact the ability of the bidder to complete the requirements as given in the RFP.

### 3.18 ACKNOWLEDGEMENT OF UNDERSTANDING OF TERMS

- a) By submitting a proposal, each bidder shall be deemed to acknowledge that it has carefully read all sections of this RFP, including all forms, schedules and Annexure hereto, and has fully informed itself as to all existing conditions and limitations.
- b) By submitting a proposal in response to this RFP, the bidder shall be deemed to acknowledge that he is in a complete understanding with the terms and conditions of the RFP and the procedures adopted for bidding & evaluation of the responses of the bidders.

### 3.19 CONDITIONS

The following terms are applicable to this RFP and the bidder's proposal -

- a. This RFP does not commit MMTC to enter into a service agreement or similar undertaking with the bidder or any other organization and MMTC shall have the right to reject or accept any proposal or offer, or any part thereof (e.g., any component of any proposed solution) for any reason whatsoever. MMTC reserves the right to choose not to proceed with any bidder with respect to one or more categories of services/requirements outlined in this RFP; and can choose to suspend the project or to issue a new RFP for this project that would supersede and replace this one.
- b. MMTC is not restricted in its rights to use or disclose any or all of the information contained in the proposal, and can do so without compensation to the bidder. MMTC shall not be bound by any language in the proposal indicating the confidentiality of the proposal or any other restriction on its use or disclosure.
- c. Any work product, whether acceptable or unacceptable, developed under a contract awarded as a result of this RFP shall be the sole property of MMTC unless stated otherwise in the definitive service agreement.
- d. Timing and sequence of events resulting from this RFP shall ultimately be determined by MMTC.

- e. No oral conversations or agreements with any official, agent, or employee of MMTC shall affect or modify any terms of this RFP, and any alleged oral agreement or arrangement made by a bidder with any department, agency, official or employee of MMTC shall be superseded by the definitive service agreement that results from this RFP process. Oral communications by MMTC to bidders shall not be considered binding on MMTC, nor shall any written materials provided by any person other than MMTC.
- f. By responding, the bidder shall be deemed to have represented and warranted: that its proposal is not made in connection with any competing bidder submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud; that the bidder did not participate in the RFP development process and had no knowledge of the specific contents of the RFP prior to its issuance; and that no employee or official of MMTC participated directly or indirectly in the bidder's proposal preparation.
- g. Neither the bidder nor any of bidder's representatives shall have any claims whatsoever against MMTC or any of its respective officials, agents, or employees arising out of or relating to this RFP or these procedures (other than those arising under a definitive service agreement with the bidder in accordance with the terms thereof).
- h. Until contract award, bidders shall not, directly or indirectly, solicit any employee of MMTC to leave MMTC or any other officials involved in this RFP process in order to accept employment with the bidder, its affiliates, actual or prospective contractors, or any person acting in concert with the bidder, without prior written approval of MMTC.

## 4.0 PROPOSAL EVALUATION PROCESS

The objective of the evaluation is to select the bidder providing most appropriate e-procurement solutions/ implementation services / post-implementation services in a cost-effective manner. In addition, the bidder must be willing to and capable of providing ongoing support that is responsive to the needs of MMTC in sustaining normal business operations.

### 4.1 BID OPENING SESSIONS

The bids will be opened, in three sessions, one each for Prequalification, Technical and Commercial, in the presence of bidders' representatives (only one per bidder) who choose to attend the Bid opening sessions on the specified date, time and address. The bidder's representatives who are present shall sign a register evidencing their attendance. In the event of the specified date of bid opening being declared a holiday for MMTC, the Bids shall be opened at the same time and location on the next working day. During bid opening, preliminary scrutiny of the bid documents will be made to determine whether they are complete, whether required bid EMD has been furnished, whether the documents have been properly signed, and whether the bids are generally in order. Bids not conforming to such preliminary requirements will be prima facie rejected.

### 4.2 COMMITTEE

Proposals will be reviewed by the Bid Evaluation Committee ("Committee") appointed by MMTC or its designated representative(s). MMTC, or such other authority designated by MMTC, as the case may be, is also referred to herein as the "Committee". The committee may be comprised of, or receive assistance from, several teams conducting parallel evaluations.

### 4.3 OVERALL EVALUATION PROCESS

Evaluation of the bids will be done in three stages and at the end of every stage short listed bidders whose bids qualify for the next stage will be informed of the result, namely Pre-qualification criteria, Technical Criterion and Commercial evaluation.

### 4.4 OPENING OF BID EMD



The bid EMD will be opened, by representatives of the Committee on the specified date, time and address. The Bid EMD envelope of the bidders will be opened on the same day and time, on which the Pre-qualification Bid is to be opened, and bids not accompanied with the requisite Bid EMD or whose Bid EMD is not in order shall be rejected forthwith.

- 4.4.1 Bid without EMD amount will be rejected. The bidder under MSME category as per Govt. Of India Guidelines is exempted from submission of EMD must submit a valid certificate from the authorized issuing authorities duly certified by the bidder's authorized signatory.
- 4.4.2 A sum of Rs. 50,000/- (Rupees Fifty Thousand only) has to be deposited by the bidders as Earnest Money Deposit along with the technical bid in a separate envelope. The payment has to be made in form of Demand Draft/Pay Order drawn in favor of "MMTC Limited" and payable at New Delhi/Delhi.
- 4.4.3 The bid EMD will be opened, by representatives of the Committee on the specified date, time and address. The Bid EMD envelope of the bidders will be opened on the same day and time, on which the Pre-qualification Bid is to be opened, and bids not accompanied with the requisite Bid EMD or whose Bid EMD is not in order shall be rejected forthwith. In case of the bidder under MSME category as per Govt. Of India Guidelines submission of a valid certificate from the authorized issuing authorities duly certified by the authorized official is must.
- 4.4.4 EMD will be refunded to unsuccessful Bidders after award of the contract. Also the said earnest money deposit will be refunded to successful Bidder on signing of the Contract and after submission of Performance Guarantee in the form of Bank Guarantee and its confirmation from the issuing and next higher authority of the bank branch.
- 4.4.5 No interest will be paid by MMTC on EMD. The EMD may be forfeited by MMTC if a Bidder withdraws his bid during the period of bid validity or extended bid validity specified above.
- 4.4.6 Should the RFP be withdrawn or cancelled by MMTC, which MMTC has right to cancel any time, EMD will be refunded.
- 4.4.7 The bidder under MSME category as per Govt. Of India Guidelines is exempted from submission of EMD. The bidder must submit a valid certificate from the authorized issuing authorities.

#### **4.5 OPENING AND EVALUATION OF PRE-QUALIFICATION PROPOSAL**

The prequalification proposal envelopes of only those bidders, whose Bid EMD is in order, shall be opened on the specified date, time and address. The bids will then be passed on to the Committee for evaluation. The Committee shall evaluate the proposals against the RFP requirements on the basis of facts and supporting documents submitted as part of the proposal. The Committee may decide to ask for more evidence from one or more bidders with respect to whose bids the Committee deems necessary to do so prior to declaring the results.

#### **4.6 OPENING AND EVALUATION OF TECHNICAL PROPOSALS**

The evaluation of the Technical bids will be carried out in the following manner:

- a. The Technical Proposals of only those bidders whose Pre-qualification Proposal has qualified in the Committee's evaluation will be opened.
- b. The bidders' technical solutions proposed in the bid document are evaluated as per the requirements specified in the RFP and adopting the evaluation criteria spelt out in this RFP. The Bidders are required to submit along with the proposal all required documentation in support of the evaluation criteria specified at Annexure B5.

Bidders to ensure for strict adherence of formats of technical proposal submission as specified at Annexure B5.

- c. The committee may seek oral/written clarifications from the bidders. The primary function of clarifications in the evaluation process is to clarify ambiguities and uncertainties arising out of the evaluation of the bid documents. Clarifications provide the opportunity for the committee to state its requirements clearly and for the bidder to more clearly state its proposal. The committee may seek inputs from their professional and technical experts in the evaluation process.

#### 4.7 EVALUATION PARAMETERS

MMTC will be evaluating the e-procurement solutions on following evaluation criteria.

- 4.7.1 Eligibility Pre-qualification criteria and submission of supporting documents as per relevant annexure(s).
- 4.7.2 Technical proposal requirements/criteria and submission of supporting documents as per relevant annexure(s).

#### 4.8 OPENING AND FINAL EVALUATION OF COMMERCIAL BIDS

- a. The Commercial Bids of only the technically qualified bidders will be opened and evaluated as per the lowest commercial quote (L1) evaluation criteria.
- b. **Bidder having lowest total cost will be declared as L1 and will be selected as vendor / implementation agency for the project.**
- c. In the event of a tie, pricing would be resolved till tie is broken through submission of further sealed bids by the tied parties only, as per venue, date and time that would be decided by the evaluation committee.

#### 5.1 AWARD CRITERIA

The contract will be awarded to the responsible, responsive bidder whose proposal conforms to the RFP and, in the opinion of MMTC, represents the best value to the “**E-tendering & E-Auction facility on Application Usage Basis by MMTC and its Clients**” project, as per the evaluation procedure prescribed in the RFP.

#### 5.2 MMTC'S RIGHT TO ACCEPT ANY PROPOSAL AND TO REJECT ANY OR ALL PROPOSALS

MMTC reserves the right to accept or reject any proposal, and to annul the tendering process and reject all proposals at any time prior to award of contract, without thereby incurring any liability to the affected bidder or bidders or any obligation to inform the affected bidder or bidders of the grounds for MMTC's action.

#### 5.3 NOTIFICATION OF AWARD

Prior to the expiration of the validity period, MMTC will notify the successful bidder in writing or by email, to be confirmed in writing by letter, that its proposal has been accepted. The notification of award will constitute the formation of the contract.



## 5.4 SIGNING OF CONTRACT

The bidder shall sign the agreement with MMTC in the format provided in this RFP, within Fifteen (15) days of the award or as decided by MMTC. MMTC reserves its right to modify any clause of the agreement prior to signing and upon adequate notice to the bidder. Non-fulfillment of this condition of executing a contract by the successful bidder within the specified period would constitute sufficient ground for annulment of the award and forfeiture of Bid EMD.

The successful Bidder shall be required to enter into a contract by signing and accepting the work order and Non-Disclosure Agreement (**Annexure- C2**) with MMTC within fifteen (15) days of the award of the Contract or within such extended period, as may be specified by MMTC.

## 5.5 PERFORMANCE BANK GUARANTEE(S)

- a) The successful bidder is required to submit an unconditional and irrevocable Performance Bank Guarantee (PBG) as per MMTC's prescribed Performa on an appropriate value of stamp paper within a period of 15 days from the date of notice of award of the contract or prior to signing of the contract, whichever is earlier, for an amount of Rs. Five (5) Lakh only for the due performance and fulfillment of the contract by the vendor. This will be issued by a scheduled commercial bank other than Co-operative bank or Gramin bank, having net worth of at least Rs. Five Hundred (500) crore and capital adequacy ratio of 9%, valid until the termination of the warranty period. All expenses, commissions and interests related to issuance and surrendering of the Performance Guarantee, accrued to the Bank, shall be at the sole cost of the bidder. The bidder, who has caused and delivered the Performance Guarantee, shall not be entitled to put forth any accrued interests thereon. The Performance Guarantee amount shall be available, if invoked, at the counters of bank in New Delhi within banking hours on the date of presentation. The PBG will be made in the format given at **Annexure B10** of this RFP.
- b) MMTC shall also be entitled to make recoveries from the bidder's bills or performance bank guarantee, for any amount due to him, due to inadvertence, error, collusion, misconstruction or misstatement.
- c) In case the project is delayed beyond the project schedule as mentioned in this RFP, for the reasons attributable to the Bidder, the performance bank guarantee shall be accordingly extended by the Bidder for the duration equivalent to the delays caused in the project.
- d) Failure of the successful bidder to comply with the above requirements shall constitute a sufficient ground for the annulment of the award and forfeiture of the EMD.
- e) In the event of the bidder being unable to service the contract for whatever reason, MMTC would invoke the PBG. Notwithstanding and without prejudice to any rights what so ever of MMTC under the contract in the matter, the proceeds of the PBG shall be payable to MMTC as compensation for any loss resulting from the bidder's failure to perform/comply its obligations under the contract. MMTC shall notify the bidder in writing of the exercise of its right to receive such compensation indicating the contractual obligation(s) for which the bidder is in default and the bidder will have to pay it within 14 days of the notice date. MMTC's decision in this respect will be final.

## 5.6 FAILURE TO AGREE WITH THE TERMS & CONDITIONS OF THE RFP

Failure of the successful bidder to agree with the Terms & Conditions of the RFP shall constitute sufficient grounds for the annulment of the award, in which event MMTC shall cancel/annul the award given to the bidder and call the next best value bidder for negotiations or call for fresh bids.

\*\*\*\*\*

## ANNEXURE B1 – REQUEST FOR CLARIFICATIONS (RFC)

Bidders requiring specific points of clarification may communicate with MMTC during the specified period using the following format.

| MMTC LIMITED                            |   |   |  |
|---|---|---|--|
| BIDDER'S REQUEST FOR CLARIFICATION      |   |   |  |
| Name of Organization submitting request |   | Name & position of person submitting request  | Full formal address of the organization including phone, fax and email points of contact |
|   |   |   | Tel:   |
|   |   |   | Fax:   |
|   |   |   | Email:   |
| <b>S<br/>.<br/>N<br/>o</b>              | <b>Bidding Document Reference(s)<br/>(Section / page)</b> | <b>Content of RFP requiring Clarification</b> | <b>Clarification being sought by the bidder</b>  |
| 1                                       |   |   |  |
| 2                                       |   |   |  |

## ANNEXURE B2 –PRE-QUALIFICATION PROPOSAL COVERING LETTER

[Date]

AGM (Systems),  
MMTC Limited  
Core-1, Scope Complex, 7 Institutional Area, Lodi Road,  
New Delhi-110003

Dear Sir,

### Sub : **“E-tendering & E-Auction facility on Application Usage Basis by MMTC and their Clients”**

Having examined the tender document, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to provide the services as required and outlined in the RFP for e-procurement Solution for MMTC LIMITED. To meet such requirements and to provide services as set out in the tender document, we attach hereto the pre-qualification proposal as required by the Tender document, which constitutes our proposal.

We undertake, if our proposal is accepted, to adhere to the implementation plan (Project schedule) for providing e-procurement Implementation Services in Design, Development, Implementation, Change Management and Operation & Maintenance of the e-Procurement System.

If our proposal is accepted, we will obtain one Performance Bank Guarantee(s) for an amount of Rupees five lakhs only in the prescribed format and BG as per payment term, given in the tender document issued by scheduled commercial bank in India, acceptable to MMTC, as quoted in our commercial proposal for the due performance of the contract.

We agree for unconditional acceptance of all the terms and conditions set out in the tender document and also agree to abide by this tender response for a period of **sixty (60) days** from the last date of submission of tenders and it shall remain binding upon us with full force and virtue. Until within this period a formal contract is prepared and executed, the RFP, this tender response, together with your written acceptance thereof in your notification of award, shall constitute a binding contract between us and MMTC.

We confirm that the information contained in this proposal or any part thereof, including its exhibits, schedules, and other documents and instruments delivered or to be delivered to MMTC is true, accurate, and complete. This proposal includes all information necessary to ensure that the statements therein do not in whole or in part mislead the MMTC as to any material fact.

We agree that you are not bound to accept our or any tender response you may receive. We also agree that you reserve the right in absolute sense to reject all or any of the products/ service specified in the tender response without assigning any reason whatsoever.

It is hereby confirmed that I/We are entitled to act on behalf of our corporation/company and empowered to sign this document as well as such other documents, which may be required in connection with this bid process.

Dated this                      Day of                      <month><year>

(Signature)

(In the capacity of)

Duly authorized to sign the Tender Response for and on behalf of:

(Name and Address of Company)

Seal/Stamp of bidder

**CERTIFICATE AS TO AUTHORISED SIGNATORIES**

I, <name>, certify that I am the Company Secretary of...<company name>..., and that .....<signatory name>..... who signed this Bid is authorized to bind ...<company name>... to the terms of the RFP being responded through this Bid by authority of its board of directors.

(Signature of Company Secretary)

Date

(Company Seal)

## ANNEXURE B3 (A) – BIDDER’S PROFILE

*(To be submitted on the Letter head of the Bidder)*

| S.No | Item/ description   | Details to be filled by Bidder                                 | Attachments, if any   |
|------|---|--|---|
| 1    | Company Name  |  |   |
| 2    | Date of Incorporation   |  |   |
| 3    | Holding Company or Parent Company (if any)  |  |   |
| 4    | Full Address: Corporate Office  |  |   |
| 5    | Full Address: Delhi/ NCR office   |  |   |
| 6    | Name of the authorized signatory with designation<br>Telephone<br>Mobile<br>Email |  |   |
| 7    | GST IN number   |  | Pls attach Documentary proof.   |
| 8    | PAN   |  | Pls attach Documentary proof.   |
| 9    | EMD details   | DD Amount :<br>Name of Bank drawn :<br>DD Number :<br>DD Date: | In case the bidder is exempted/waived of submission of EMD, requisite documentary proof in this regard be enclosed duly self-certified. |
| 10   | Number of years in e-procurement business domain                                  |  |   |

Thanking you,

Date:

(Signature)(In the capacity of)

(Name)

Duly authorized to sign the Tender Response for and on behalf of:

(Name and Address of Company)

Seal/Stamp of bidder

## ANNEXURE B3 (B) – FINANCIAL INFORMATION

*(To be submitted on the Letter head of the Bidder)*

Bidder to provide Statutory Auditors (CA) certified Audited financial information of three last financial years.

|   |  | Rupees (in Crores) |          |          |  |
|---|--|--------------------|----------|----------|--|
|   | Description  | 2014-15            | 2015-16  | 2016-17  |  |
| 1 | Annual e-Procurement software business Turnover of the Bidder<br><br>(as defined in prequalification criteria) |                    |          |          |  |
| 2 | Profitability  |                    |          |          |  |
| 3 | Net worth  |                    |          |          |  |
| 4 | Documentary proof attached   | o                  | Yes / No | Yes / No |  |

Thanking you,

Date:

(Signature)(In the capacity of)  
(Name)

Duly authorized to sign the Tender Response for and on behalf of:

(Name and Address of  
Company)  
Seal/Stamp of bidder

## ANNEXURE B3(C) – BIDDER’S PROJECT EXPERIENCE

(To be submitted on the Letter head of the Bidder)

Note: **Bidder to provide separate sheet for each project undertaken**

| Sr. No.                    | Items   | Details  |
|----------------------------|---|----------|
| <b>General Information</b> |   |          |
| 1.                         | Customer Name   |          |
| 2.                         | Address   |          |
| 3.                         | Name of the contact person                                  |          |
| 4.                         | Contact No.   |          |
| <b>Project Details</b>     |   |          |
| 5.                         | Project Title   |          |
| 6.                         | Start Date: MM/YYYY<br>End Date: MM/YYYY                    |          |
| 7.                         | Completion date of project implementation                   |          |
| 8.                         | Number of bidder’s professionals deployed in the assignment |          |
| <b>Size of the project</b> |   |          |
| 9.                         | Total Cost of the project (in INR)                          |          |
| 10.                        | No. of e-procurement users                                  |          |
| 11.                        | Modules implemented   |          |
| 12.                        | Documentary Proof   |          |
|                            | (a) Work order/ Purchase Order                              | Yes / No |
|                            | (b) Completion Certificate                                  | Yes / No |

Thanking you,

Date:

(Signature)(In the capacity of)  
(Name)

Duly authorized to sign the Tender Response for and on behalf of:

(Name and Address of  
Company)  
Seal/Stamp of bidder



## **ANNEXURE B3 (D) – PROJECT UNDERTAKEN USING STQC CERTIFIED SOFTWARE DURING LAST THREE FINANCIAL YEARS**

*(To be submitted on the Letter head of the Bidder)*

[Date]

AGM (Systems),  
MMTC Limited  
Core-1, Scope Complex, 7 Institutional Area, Lodi Road,  
New Delhi-110003

Dear Sir,

**Sub : “Project undertaken using STQC certified software of last three financial years”**

We <Bidder's Name>, hereby declare that our STQC certified software has been used for processing an average number of at least 2000 e-tenders and 500 e-auctions per details as mentioned below:

| S.No | Name of Organization | Year (2014-15 or 2015-16 or 2016-17) | Number of E-Tendering events conducted | Number of e-auction events conducted |
|------|----------------------|--------------------------------------|--|--------------------------------------|
| 1    |                      |                                      |  |                                      |
| 2    |                      |                                      |  |                                      |
| .... |                      |                                      |  |                                      |
|      | TOTAL                |                                      |  |                                      |

- ✓ Copies of the STQC certificate(s) for last three (3) years duly signed and stamped by the authorized signatory of the bidder are enclosed.
- ✓ Copies of certificate/credential details from clients (with contact details) giving e-tender/e-auction count duly certified by authorized signatory of the bidder are enclosed.

Thanking you,

Date:

(Signature)(In the capacity of)  
(Name)

Duly authorized to sign the Tender Response for and on behalf of:

(Name and Address  
of Company)  
Seal/Stamp of  
bidder

## **ANNEXURE B3(E) – CERTIFICATE OF OPERATION IN DELHI/NCR REGION**

*(To be submitted on the Letter head of the Bidder)*

[Date]

AGM (Systems),  
MMTC Limited  
Core-1, Scope Complex, 7 Institutional Area, Lodi Road,  
New Delhi-110003

Dear Sir,

Subject: Operation of office in Delhi/NCR

It is hereby declare that

1. We <bidder's name>, have an office in Delhi/NCR region in operation since <dd/mm/yyyy>.
2. The office address is as given below:  
-----
3. The documentary proof in regard to existence of the aforementioned office is enclosed.

Thanking you,

Date:

(Signature)(In the  
capacity of)  
(Name)

Duly authorized to sign the Tender Response for and on behalf of:

(Name and Address  
of Company)  
Seal/Stamp of  
bidder

## **ANNEXURE B3 (F) – CONFLICT OF INTEREST/ BLACKLISTING DECLARATION**

*(To be submitted on the Letter head of the Bidder)*

[Date]

AGM (Systems),  
MMTC Limited  
Core-1, Scope Complex, 7 Institutional Area, Lodi Road,  
New Delhi-110003

Dear Sir,

Sub: E-tendering & E-Auction facility on Application Usage Basis by MMTC and their  
Clients – Conflict of Interest Declaration

We, the undersigned, hereby declare that

1. <Bidder name>, is not under a declaration of blacklisted for corrupt or breach of ethical conduct or fraudulent practices by any state or central government/ any other Government institutions in India for any reason as on tender closing date.
2. <Bidder name>, has no conflict of interest and there exist no potential Conflict Interest which can lead to breach of trust.
3. <Bidder name>, certifies that in the event of award of contract, that services will be carried out in an independent way with utmost care and regard to business ethics and without influence of any factors attributable or identifiable as conflict of interest.

Thanking you,

Date:

(Signature)(In the  
capacity of)  
(Name)

Duly authorized to sign the Tender Response for and on behalf of:

(Name and Address  
of Company)  
Seal/Stamp of  
bidder

## **ANNEXURE B3 (G) – ACCEPTANCE OF TERMS AND CONDITIONS OF RFP**

*(To be submitted on the Letter head of the Bidder)*

[Date]

AGM (Systems),  
MMTC Limited  
Core-1, Scope Complex, 7 Institutional Area, Lodi Road,  
New Delhi-110003

Dear Sir,

Dear Sir,

Sub: E-tendering & E-Auction facility on Application Usage Basis by MMTC and their  
Clients –  
Acceptance of terms and conditions of RFP declaration.

We <bidder's organization>, hereby accept all terms and conditions of the RFP number  
dated ..

Thanking you,

Date:

(Signature)(In the  
capacity of)  
(Name)

Duly authorized to sign the Tender Response for and on behalf of:

(Name and Address  
of Company)  
Seal/Stamp of  
bidder

## ANNEXURE B4 – TECHNICAL PROPOSAL COVERING LETTER

*(To be submitted on the Letter head of the Bidder)*

[Date]

AGM (Systems),  
MMTC Limited  
Core-1, Scope Complex, 7 Institutional Area, Lodi Road,  
New Delhi-110003

Dear Sir,

**Sub : Ref: RFP for “E-tendering & E-Auction facility on Application Usage Basis by MMTC and its Clients”**

Having examined the tender document, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to provide the services as required and outlined in the RFP for E-procurement Solution for MMTC LIMITED. To meet such requirements and to provide services as set out in the tender document, we attach hereto the technical proposal as required by the Tender document, which constitutes our proposal.

We undertake, if our proposal is accepted, to adhere to operation schedule for providing services as per scope of work of RFP for offering electronic tendering services.

If our proposal is accepted, we will obtain Performance Bank Guarantee equivalent an amount of Rupees five lakhs only, in the prescribed format, given in the tender document issued by scheduled commercial bank in India, acceptable to MMTC LIMITED, as quoted in our commercial proposal for the due performance of the contract.

We agree for unconditional acceptance of all the terms and conditions set out in the tender document and also agree to abide by this tender response for a period of **sixty (60) days** from the last date of submission of tenders from the date fixed for tender opening and it shall remain binding upon us with full force and virtue. Until within this period a formal contract is prepared and executed, the RFP, this tender response, together with your written acceptance thereof in your notification of award, shall constitute a binding contract between us and MMTC.

We confirm that the information contained in this proposal or any part thereof, including its exhibits, schedules, and other documents and instruments delivered or to be delivered to MMTC is true, accurate, and complete. This proposal includes all information necessary to ensure that the statements therein do not in whole or in part mislead MMTC as to any material fact.

We agree that you are not bound to accept our or any tender response you may receive. We also agree that you reserve the right in absolute sense to reject all or any of the products/ service specified in the tender response without assigning any reason whatsoever.

We are enclosing following annexures in our technical proposal:

- i. Confirmation Checklist as per annexure B5 (A).
- ii. Statement of deviation as per annexure B5(B)

- iii. Training schedule plan in accordance with training requirement as specified in RFP as per annexure B5(C)
- iv. Methodology for manpower deployment during project implementation as per annexure B5(D).
- v. OEM certification as per annexure B9

It is hereby confirmed that I/We are entitled to act on behalf of our corporation/company and empowered to sign this document as well as such other documents, which may be required in connection with this bid process.

Dated this                      Day of                      <month><year>

(Signature) \_\_\_\_\_ (In the capacity of) \_\_\_\_\_

Duly authorized to sign the Tender Response for and on behalf of:

(Name and Address of Company) Seal/Stamp of bidder

## CERTIFICATE AS TO AUTHORISED SIGNATORIES

I, <name>, certify that I am the Company Secretary of...<company name>..., and that .....<signatory name>..... who signed this Bid is authorized to bind ...<company name>... to the terms of the RFP being responded through this Bid by authority of its board of directors.

(Signature of Company Secretary)

Date \_\_\_\_\_

(Company Seal)

## ANNEXURE B5 (A)–CONFIRMATION CHECKLIST

*(To be submitted on the Letter head of the Bidder)*

| S.No . | Description/Item  | Confirm (Y/N) | Comments |
|--------|---|---------------|----------|
| 1      | The Bidder confirms that all information mentioned in the proposal are true and factual |               |          |
| 2      | The Bidder confirms Roles and Responsibilities as per the RFP                           |               |          |
| 3      | The Bidder confirms provision of all Deliverables as mentioned in RFP                   |               |          |
| 4      | The Bidder confirms adherence to project operation schedule proposed in the RFP         |               |          |

Dated this                      Day of                      <month><year>

(Signature)

(In the capacity of)

Duly authorized to sign the Tender Response for and on behalf of:

(Name and Address of Company)

Seal/Stamp of bidder

## ANNEXURE B5 (B) – STATEMENT OF DEVIATION

*(To be submitted on the Letter head of the Bidder)*

| Tender Clause No. & page no. of RFP | Description of Clause | Deviation in the offer | Reason for deviation |
|-------------------------------------|-----------------------|------------------------|----------------------|
|                                     |                       |                        |                      |
|                                     |                       |                        |                      |
|                                     |                       |                        |                      |
|                                     |                       |                        |                      |
|                                     |                       |                        |                      |

Signature of the Bidder

Name

Date

Place

Company



## ANNEXURE B5 (C) – TRAINING SCHEDULE PLAN

*(To be submitted on the Letter head of the Bidder)*

The Bidder must provide training (minimum) according to the following scheme.

Note: Each training day is equivalent to 7 hours training.

|   |   |                         |
|---|---|-------------------------|
| Approx. Number of officials to be imparted training | : | 20                      |
| Batch Size  | : | 10 officials            |
| Number of Batches                                   | : | 2                       |
| Number of training days                             | : | 1 working day per batch |

| Training Need                                       | Training Details   |
|---|--|
| e-Tender & e-Auction (Forward and Reverse) Training | <p>This training should be given for the E-Procurement software functionality and use of the solution.</p> <p>This should cover the following:</p> <ul style="list-style-type: none"><li>• Introduction to the application</li><li>• Brief on each of the modules and how they are integrated</li><li>• Module specific trainings</li></ul> <p>Trainees must be provided with quick reference guides.</p> <p>Each user must get hands on training of the system.</p> |
| Change Management Related Training                  | Training & Awareness campaigns as a part of Change Management Process  |

- The Bidder would be responsible for arranging adequate infrastructure for the trainings. However the space may be provided by MMTC.

Signature of the Bidder

Name

Date

Place

Company

## **ANNEXURE B5(D) – MANPOWER DEPLOYMENT FOR HELP DESK**

*(To be submitted on the Letter head of the Bidder)*

The service provider shall depute one experienced executive (having knowledge of their e-procurement system) at MMTC's Corporate Office during MMTC's working hours to support/ on the job training etc. to stakeholders during the contract period. The service provider however recognizes the fact that the executive will require to work beyond the business hours and holidays on need basis.

Following Details to be provided:

- a. The service provider shall display the contact details of helpdesk executives with mobile number and e-mail ids on front page of their e-procurement portal with escalation matrix.
- b. Bidder should also provide the profile / CVs of proposed resources as part of the bid.

Signature of the Bidder

Name

Date

Place

Company

## ANNEXURE B6 –BANKING ACCOUNT DETAIL

(To be submitted on the Letter head of the Bidder)

### **E-tendering & E-Auction facility on Application Usage Basis by MMTC and their Clients - Banking account Detail**

Vendor Code (to be filled by MMTC) \_\_\_\_\_

The banking / Account Details are as furnished below: -

We request you to give our payments by crediting our account directly by E-Payment mode as per account details given below. We hereby undertake to intimate MMTC in case of any change in particulars given below and will not hold responsible the company for any delay/default due to any technical reasons beyond company's control.

- |   |                                  |
|---|----------------------------------|
| 1. Bank Account No.                         | _____                            |
| 2. RTGS/NEFT IFSC Code                      | _____                            |
| 3. Bank Name                                | _____                            |
| 4. Bank Branch Name                         | _____<br>_____<br>_____<br>_____ |
| 5. Branch Code                              | _____                            |
| 6. Account Type<br>(Saving/Current) (SA/CA) | _____                            |
| E-mail ID (If any) of                       | _____                            |
| 7. Vendor                                   | _____                            |

A blank cancelled cheque has been enclosed herewith

Thanking You,

Certified by Bank  
regarding Banking details

(Vendor's Signature & Seal)  
Bank official)

(Bank Seal & Signature of

## **ANNEXURE B7 – COMMERCIAL PROPOSAL COVERING LETTER**

*(To be submitted on the Letter head of the Bidder)*

[Date]

AGM (Systems),  
MMTC Limited  
Core-1, Scope Complex, Lodi Road, New Delhi-110003

Dear Sir,

### **Sub: RFP for : “E-tendering & E-Auction facility on Application Usage Basis by MMTC and its Clients”**

Having examined the tender document, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to provide the Services as required and outlined in the RFP for E-Procurement Solution for MMTC Limited. To meet such requirements and to provide services as set out in the tender document, we attach hereto the Commercial proposal as required by the Tender document, which constitutes our proposal.

We undertake, if our proposal is accepted, to adhere to the implementation plan (Project schedule) for providing E-Procurement implementation Services in Design, Development, Implementation, Change Management and Operation & Maintenance of the E-Procurement System.

If our proposal is accepted, we will obtain Performance Bank Guarantee equivalent an amount of Rupees five lakhs only, in the prescribed format, given in the tender document issued by scheduled commercial bank in India, acceptable to MMTC LIMITED, as quoted in our commercial proposal for the due performance of the contract.

We agree for unconditional acceptance of all the terms and conditions set out in the tender document and also agree to abide by this tender response for a period of **sixty (60) days** from the last date of submission of tenders from the date fixed for tender opening and it shall remain binding upon us with full force and virtue. Until within this period a formal contract is prepared and executed, the RFP, this tender response, together with your written acceptance thereof in your notification of award, shall constitute a binding contract between us and MMTC.

We confirm that the information contained in this proposal or any part thereof, including its exhibits, schedules, and other documents and instruments delivered or to be delivered to MMTC is true, accurate, and complete.

This proposal includes all information necessary to ensure that the statements therein do not in whole or in part mislead MMTC as to any material fact.

We agree that you are not bound to accept our or any tender response you may receive. We also agree that you reserve the right in absolute sense to reject all or any of the products/ service specified in the tender response without assigning any reason whatsoever.

It is hereby confirmed that I/We are entitled to act on behalf of our corporation/company and empowered to sign this document as well as such other documents, which may be required in connection with this bid process.

Dated this                      Day of                      <month><year>

(Signature)    (In the capacity of)

Duly authorized to sign the Tender Response for and on behalf of:

(Name and Address of Company)                      Seal/Stamp of bidder

**CERTIFICATE AS TO AUTHORISED SIGNATORIES**

I, <name>, certify that I am the Company Secretary of...<company name>..., and that .....<signatory name>..... who signed this Bid is authorized to bind ...<company name>... to the terms of the RFP being responded through this Bid by authority of its board of directors.

(Signature of Company Secretary)

Date

(Company Seal)

## ANNEXU RE B8 – COMMERCIAL BID

*(To be submitted on the Letter head of the Bidder)*

### Commercial Bid Format

#### Sub : RFP for : **“E-tendering & E-Auction facility on Application Usage Basis by MMTC and its Clients”**

MMTC invites sealed techno-commercial bid for E-tendering & E-Auction (forward and reverse) facility on application usages. Based on the past year experience, the estimated number of e-tenders and e-Auction for MMTC during the year would be around 400 & 100 respectively.

#### 1.0 Tariff for MMTC’s e-tenders & e-auctions

| S.No. | Description      | Price/unit (in Rs.) |                   |
|-------|------------------|---------------------|-------------------|
|       |                  | (Numeric)           | (In words)        |
| 1.1   | MMTC’s e-tender  | A1 (to be quoted)   | A1 (to be quoted) |
| 1.2   | MMTC’s e-auction | A2 (to be quoted)   | A2 (to be quoted) |

#### 2.0 Additional charges for MMTC’s client for e-tenders & e-auctions

| S.No. | Description             | Additional Price/unit (in Rs.) |                   | Note   |
|-------|-------------------------|--------------------------------|-------------------|--|
|       |                         | (Numeric)                      | (In words)        |  |
| 2.1   | MMTC Client’s e-tender  | B1 (to be quoted)              | B1 (to be quoted) | <b>Total Cost of e-tender for client would be A1+B1</b>  |
| 2.2   | MMTC Client’s e-auction | B2 (to be quoted)              | B2 (to be quoted) | <b>Total Cost of e-auction for client would be A2+B2</b> |

#### 3.0 L1 Evaluation Criterion:

|   |
|---|
| $\text{Total Bid Cost} = (A1 \times 400) + (A2 \times 100) + ([A1+B1] \times 50) + ([A2+B2] \times 25)$ |
|---|

#### 4.0 Terms & Conditions for commercial bid:

- 4.1 Price/Tariff is exclusive of GST
- 4.2 Bidder having lowest total bid cost will be declared as L1
- 4.3 For purpose of calculation of L1 criterion, the number of tenders and auctions for MMTC’s clients have been estimated as 50 and 25 per year respectively.
- 4.4 The quote should be strictly in the above-mentioned price format. No additional Information/Cost should be given by bidder.
- 4.5 MMTC does not guarantee any minimum estimated work to bidder.
- 4.6 Bidder have to furnish details for all services (e-Tender / e-Auction) for MMTC and its clients.

- 4.7 The rates quoted by the bidder in commercial Bid in numeric and words shall be accurately filled in so that there is no discrepancy in rates written in numeric and words.
- 4.8 The rates quoted in words shall be taken as correct in case of any discrepancy.
- 4.9 If rates are not quoted in any column of bid it will be presumed as zero and bidder will be required to execute the work.

Thanking you,

Date:

(Signature)  
(In the capacity of)  
(Name)

Duly authorized to sign the Tender Response for and on behalf  
of:

(Name and Address of Company)  
Seal/Stamp of bidder

## ANNEXURE B9–CERTIFICATION OEM/OSM

*(To be submitted on the Letter head of the Bidder)*

[Date]

AGM (Systems),  
MMTC Limited  
Core-1, Scope Complex, Lodi Road, New Delhi-110003

Dear Sir,

**Sub : RFP: OEM/OSM Certification for Bidder's response to : “E-tendering & E-Auction facility on Application Usage Basis by MMTC and their Clients”**

We, < OEM/OSM name> having our registered office at < OEM/OSM address>, are an established and reputed manufacturer of <<E-Procurement application name>>.

Our full support is extended to them in all respects for supply, warranty and maintenance of our products. We also ensure to provide the service support for the supplied products for a period of One (1) year which is further extendable by two (2) years from date of supply/installation of the products as per RFP terms.

We also undertake that in case of default in execution of this RFP by the <Bidder Name>, <Rename> will take all necessary steps for successful execution of this project as per RFP requirements.

We wish to certify following pre-qualification conditions as stated in the RFP:

- a. That the proposed product quoted is not end of life product
- b. That the support including updates, patches for the quoted product shall be available during the entire contract period.

Thank You

Signature (In the capacity of)

(Name)

Duly authorized to sign the RFP Response for and on behalf of:

(Name and Address of  
Company)  
Seal/ Stamp of OEM

## ANNEXURE B10 – PERFORMANCE BANK GUARANTEE (PBG)



**Sub : RFP for : “E-tendering & E-Auction facility on Application Usage Basis by  
MMTC and its Clients”**

APPENDIX ‘A’

**PERFORMANCE BANK GUARANTEE**

BANK Guarantee No.      Dated\_\_\_\_\_

MMTC Limited

1. WHEREAS, MMTC Limited having its registered office at Core-1, SCOPE Complex, 7, Institutional Area, Lodi Road, New Delhi 110 003 India and one of its office at \_\_\_\_\_ (hereinafter called the MMTC) have entered into Contract No. \_\_\_\_\_ Dated \_\_\_\_\_ (hereinafter called the CONTRACT) for \_\_\_\_\_ with M/s (Name) \_\_\_\_\_ address \_\_\_\_\_ (hereinafter called the ‘XX’).
2. AND WHEREAS the ‘XX’ under the CONTRACT is required to furnish a security for the performance of the CONTRACT and MMTC has agreed to accept the Bank Guarantee in lieu of security deposit of the said sum of Rs. \_\_\_\_\_.
3. AND WHEREAS at the request of the ‘XX’, we, \_\_\_\_\_ Bank \_\_\_\_\_ (address) hereby irrevocably and unconditionally guarantee and undertake to payment to the said MMTC, immediately on demand upto and not exceeding the sum of Rs. \_\_\_\_\_ payable by the ‘CC’ in the event of failing to perform any or all their obligations under the CONTRACT6. The decision of the MMTC that the ‘XX’ has failed to perform all or any of its obligations under the CONTRACT shall be conclusive and binding on us.
4. We, \_\_\_\_\_ Bank undertake to pay the amount demanded by the MMTC not exceeding the sum of Rs. \_\_\_\_\_ only without any demur, delay, protest and without any reference or recourse to the ‘XX’ notwithstanding any dispute raised by ‘XX’ in any suit proceedings relating there to pending before any court or tribunal our liability under these presents being absolute and unequivocal. The payment shall be made to me MMTC across the Counter of the Bank on the same day of receipt of invocation of this Bank Guarantee.
5. NOTWITHSTANDING anything to the contrary contained hereinabove, liability under the Guarantee is restricted to Rs. \_\_\_\_\_. Our Guarantee shall remain in force until \_\_\_\_\_ (Date).
6. All your rights under the Guarantee shall be forfeited and we shall be relieved and discharged from all liability thereunder unless a claim under the Guarantee is made on our Bank in writing on or before \_\_\_\_\_ (expiry date).
7. Your Letter of Demand in writing may be presented to the Bank by Registered Post or in person and the same shall be binding on us.
8. The guarantee comes into force forthwith.

9. We further agree that MMTC shall have the fullest liberty without our consent and without effecting in any manner, our obligations hereunder to vary any of the terms and conditions of the delivery or extend time of performance by the said 'XX' from time to time or to postpone for any time or from time to time any of the powers exercisable by MMTC against the said 'XX' and to forbear or enforce any part of the terms and conditions relating to the said CONTRACT and we shall not be relieved from our liability by reason of any such variation or extension being granted to the said M/s 'XX'.
10. The liability of the Bank under this Guarantee shall be discharged on receipt of Rs. \_\_\_\_ only by MMTC.
11. We \_\_\_\_\_ (Bank) lastly undertake not to revoke this guarantee during its currency except with the previous consent of MMTC Limited in writing.
12. This guarantee will not be discharged due to change in the constitution of the Bank or the said 'XX'
13. We have the power to issue this Guarantee in your favour under the Charter of our Bank and the undersigned has full power to execute this Guarantee under the Power of Attorney granted to him by the Bank.

SIGNED AND DELIVERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2017.

Yours faithfully  
For and on behalf of  
\_\_\_\_\_ Bank  
(Address)

(Banker's Seal)



## **MMTC LIMITED**

(A Govt. of India Enterprise)

Core-1, Scope Complex, 7 Institutional Area, Lodi Road, New Delhi-110003

### **Contractual and Legal Specifications, Draft Master Service Agreement & Service Level Agreement**

#### **“E-tendering & E-Auction facility on Application Usage Basis by MMTC and its Clients”**

#### **PART-C**

## DRAFT MASTER SERVICE AGREEMENT

### Master Services Agreement (MSA)

THIS MASTER SERVICE AGREEMENT (“MSA”) is made at (venue...) on this day of \_\_\_\_\_ Two Thousand and \_\_\_\_\_, by and between:

(i) MMTC LIMITED, Core-1, SCOPE Complex, Lodhi Road, New Delhi-110003 (hereinafter called the “MMTC” which expression unless repugnant to the context or meaning thereof, shall mean and include its successors or nominees or assignees or legal representative), of the FIRST PART

AND

(ii) \_\_\_\_<name of the company>\_\_\_\_, a company registered under the Indian Companies Act, 1956 represented by \_\_\_\_\_ (hereinafter referred to as the “Vendor”, which expression, unless repugnant to the context or meaning thereof, shall mean and include its successors or permitted assigns) represented through its <designation of authorized person>, who is duly authorized by the Vendor to execute this agreement, of the SECOND PART.

### RECITALS

#### WHEREAS

A. The “MMTC” intends to enable and augment the implementation, management & maintenance of the “E-tendering & E-Auction (forward and reverse) facility on APPLICATION USAGE BASIS ” (as defined hereinafter in India with the ultimate objective of providing “E-tendering & E-Auction (forward and reverse) facility on APPLICATION USAGE BASIS ” related services to all “Stakeholders” (as defined hereinafter) in an efficient, convenient and transparent manner.

B. The “MMTC” undertook selection of a suitable vendor, adopting an open tender process, through competitive bidding for implementing the “E-tendering & E-Auction (forward and reverse) facility on APPLICATION USAGE BASIS” and issued a Request for Proposal (“RFP”) dated [<<Date>>] ;to the qualified bidder.

C. The Vendor is the successful bidder to undertake the “E-tendering & E-Auction (forward and reverse) facility on APPLICATION USAGE BASIS ” involving the implementation, customization of the solution, seamlessly integrating to the MMTC’s e-portal, its roll out and maintenance to achieve the defined objectives as mentioned in Vol. I Part A of this RFP and achieve desired service levels for “E-tendering & E-Auction (forward and reverse) facility on APPLICATION USAGE BASIS”.

D. The “MMTC” intends to accord to the Vendor the mandate to undertake and implement the “E-tendering & E-Auction (forward and reverse) facility on APPLICATION USAGE BASIS” on the terms and conditions set forth below.

E. The Vendor in pursuance of its proposal no. ----- dated ----- (“Proposal”) undertakes to implement the “E-tendering & E-Auction (forward and reverse) facility on APPLICATION USAGE BASIS ” stated hereinabove.

#### **NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS AND CONDITIONS HEREIN CONTAINED, IT IS HEREBY AGREED BETWEEN THE PARTIES:**

The “MMTC” and the Vendor (each individually a “Party” hereto and collectively the “Parties”) have agreed to enter into this MSA to govern the way in which the Vendor shall implement and execute the “E-tendering & E-Auction (forward and reverse) facility on APPLICATION USAGE BASIS ” under this Master Services Agreement (“MSA”) and the Service Level Agreement (“SLA”).

# 1. DEFINITIONS AND INTERPRETATION

## 1.1 DEFINITIONS

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- a. In this MSA, unless the context requires otherwise:
- i. **“Agreement”** means this Master Service Agreement together with the contents and specifications set out in the RFP;
  - ii. **“Applicable Laws”** includes all applicable statutes, enactments, acts of legislature or parliament laws, ordinances, rules, by-laws, regulations, notifications, guidelines, policies, directions, directives and orders of any Governmental authority, tribunal, board, court or other quasi-judicial authority;
  - iii. **“Software”** means the E-Procurement Application software/platform designed, developed, tested and deployed by the Vendor for the purposes of rendering the Services to the Stakeholders of the Project and includes the source code along with associated documentation, which is the work product of the development efforts involved in the Project and the improvements and enhancements effected during the term of the Project, but does not include the third party software products (except for the customization components on such products), proprietary software components and tools deployed by the Vendor, and which, i.e., the software, shall be solely owned by the “MMTC”;
  - iv. **“Confidential Information”** means all information including Project Data (whether in written, oral, electronic or other format) which relates to the technical, financial and business affairs, customers, suppliers, products, developments, operations, processes, data, trade secrets, design rights, know-how and personnel of each Party and its affiliates which is disclosed to or otherwise learned by the other Party (whether a Party to this MSA or to the SLA) in the course of or in connection with this MSA (including without limitation such information received during negotiations, location visits and meetings in connection with this MSA or to the Service Level Agreement-SLA);
  - v. **“Control”** means possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of any entity, whether through the ownership of voting securities, by contract or otherwise;
  - vi. **“Data Centre” or “DC”** means the primary center where data, software, computer systems and associated components, such as telecommunication and storage systems, redundant or backup power supplies, redundant data communications, environment controls and security devices are housed and operated from;
  - vii. **“Deliverables”** means the products, infrastructure and services agreed to be delivered by the Vendor in pursuance of the Agreement as listed in the RFP in relation to the Project Implementation Phase and the Operations & Maintenance Phase and includes all documents related to the solution, user manual, business designs, training materials, technical manual, design, process and operating manuals, service mechanisms, policies and guidelines and source code and all respective modifications;

- viii. **“Effective Date”** means the date on which the MSA is signed by both the parties subject to fulfillment of condition precedent specified herein;
- ix. **“Vendor Proprietary Information”** shall mean Proprietary Information of the Vendor and shall include all modifications, enhancements and other derivative works of such Vendor Proprietary Information;
- x. **“Implementation Sites” or “Project Locations”** shall mean any or all the locations (including DC), where project is to be implemented by Vendor pursuant to the Agreement;
- xi. **“Intellectual Property Rights”** means and includes all rights in its improvements, upgrades, enhancements, modified versions that may be made from time to time, database generated, compilations made, source code and object code of the software, the said rights including designs, copyrights, trademarks, patents, trade secrets, moral and other rights therein;
- xii. **“Listed Assets”** means entire hardware and software, network or any other information technology infrastructure components which are to be purchased by the Vendor for and on behalf of “MMTC”, in the name of the “MMTC”.
- xiii. **“Material Adverse Effect”** means material adverse effect on (a) the ability of the Vendor to perform/discharge any of its duties/obligations under and in accordance with the provisions of this MSA and/or SLA; and/or (b) the legal validity, binding nature or enforceability of this MSA and/or the SLA.
- xiv. **“Operations & Services” or “O&S”** means the services to be rendered, as per the SLA, during the period commencing from the date of contract till the expiry or termination of the Master Service Agreement;
- xv. **“Operations & Services Phase”** means the phase in which O&S is to be carried out by the Vendor.
- xvi. **“Performance Guarantee” or “Performance Bank Guarantee”** shall mean an unconditional and irrevocable bank guarantee provided by a scheduled commercial bank to “MMTC” on behalf of the Vendor amounting to Rupees five lakhs only, pursuant to the Agreement. The Performance Guarantee shall be valid for a period fifteen (15) months from date of work order, unless extended pursuant to the Agreement;
- xvii. **“Project Assets” or “Assets”** shall mean to include (i) Listed Assets and (ii) entire hardware and software, network or any other information technology infrastructure components used for the “E-tendering & E-Auction (forward and reverse) facility on APPLICATION USAGE BASIS ” and other facilities leased / owned by the Vendor to be used for the delivery of the Services pursuant to the Agreement.
- xviii. **“Project Data”** means all proprietary data of the Project generated out of the Project operations and transactions, documents and related information including but not restricted to user data which the Vendor obtains, possesses or processes in the context of providing the Services to the users pursuant to this MSA and the SLA;

- xix. **"Proprietary Information"** means processes, methodologies and technical and business information, including drawings, designs, formulae, flow charts, data and computer programs already owned by, or granted by third parties to a Party hereto prior to its being made available under this MSA, or the SLA;
- xx. **"Project Proprietary Information"** shall mean Proprietary Information of the "MMTC" provided to the Vendor for providing the Services and include all modifications, enhancements and other derivative works of such Project Proprietary Information arising as a result of services rendered by the Vendor,
- xxi. **"RFP" or "Request for Proposal"** means the documents containing the Technical, Functional, Operational, Commercial and Legal specifications for the implementation of the Project, issued in RFP and includes the clarifications, explanations and amendments issued by "MMTC" from time to time.
- xxii. **"Replacement Vendor"** means any third party that the "MMTC" may appoint to replace the Vendor upon expiry of the Term or otherwise termination of this MSA or the SLA to undertake the Services or part thereof;
- xxiii. **"Service Level"** means the level of service and other performance criteria which will apply to the Services as set out in the SLA;
- xxiv. **"Service Level Agreement" or "SLA"** means the Operation and Maintenance agreement, executed by and between Vendor and "MMTC", in terms of the Service Level requirements as per the model set out in this MSA;
- xxv. **"Services"** means the services to be rendered during the Project Implementation Phase and the Operation Phase including but not limited to the services to be delivered to the Stakeholders, using the tangible and intangible assets created, procured, installed, managed and operated by the Vendor including the tools of information and communications technology;
- xxvi. **"Stakeholders"** means the individuals, organizations, companies, government departments etc. associated with MMTC in various capacities;
- xxvii. **"Third Party Systems"** means systems (or any part thereof) in which the Intellectual Property Rights are owned by a third party and to which Vendor has been granted a license to use and which are used in the provision of Services;
- xxviii. **"Third Party Agency"** means the agency appointed by the "MMTC" for the purpose of certification by References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated and to all statutory instruments made pursuant to it.
- b. Unless otherwise expressly stated, the words "herein", "hereof", "hereunder" and similar words refer to this MSA as a whole. The words "include" and "including" shall not be construed as terms of limitation. The words "day" and "month" mean "calendar day" and "calendar month" unless otherwise stated. Where, because of a difference in time zone, the calendar day or calendar month in one Country differs from another Country, then the calendar day or calendar month shall be deemed to be the calendar day or calendar month applicable to India. The words "writing" and "written" mean "in documented form",

whether electronic or hard copy, unless otherwise stated. Any reference to attorneys' fees shall include reasonable fees of the professional assistants of such attorneys.

- c. The headings and use of bold type in this MSA are for convenience only and shall not affect the interpretation of any provision of this MSA.
- d. Ambiguity and Discrepancy: In case of ambiguities or discrepancies within the Agreement, the following shall apply:
  - (i) Between the dimension scaled from the Design and Drawings and its specific written dimension, the latter shall prevail;
  - (ii) Between any value written in numerals and that in words, the latter shall prevail; and
  - (iii) Between the provisions of this MSA and any other documents forming part of the Agreement, the former shall prevail.

## **1.2 STRUCTURE**

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- a. This MSA shall operate as a legally binding services agreement for the project “E-tendering & E-Auction (forward and reverse) facility on APPLICATION USAGE BASIS” specifying the master terms which apply to the Parties under this MSA and to the provision of the Services by the Vendor to the Stakeholders under the duly executed SLA.
- b. The SLA in respect of the implementation and maintenance is being entered into concurrently with this MSA between the Vendor and “MMTC”. In respect of any future SLAs entered into between the Parties, each of the Parties shall observe and perform the obligations set out herein

## **2.1 SCOPE OF CONTRACT**

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This MSA shall govern the provision of the services by the Vendor, listed hereunder and more fully described in the RFP, in conformance with the SLA, to all the Stakeholders. It is anticipated that new or renewal agreements may be undertaken by creating a separate SLA, with schedules, clauses and exhibits as required, under this MSA for each engagement.

Services to be provided by the Vendor under the Agreement:

- a. Subject to the requirements specified in this RFP, the Vendor will be responsible for providing:
  - i. Design and Implementation of the for the project “E-tendering & E-Auction (forward and reverse) facility on APPLICATION USAGE BASIS ” systems as per the “MMTC” requirements
  - ii. Deployment architecture & network design setup



- iii. Operation and Services of E-Procurement software/platform & related software
  - iv. Training & hand holding on the application software and general computer skills
  - v. Change management strategy & implementation
  - vi. Compliance with the SLAs
- b. A detailed description of the scope of work, the list of services, the geographical scope and the time limits within which the various activities and tasks relating to the scope of work have to be executed as per the RFP.

## **2.2 PERIOD OF CONTRACT**

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The MSA shall come into effect on the Effective date and shall continue for a period of twelve (12) months from date of start of operation period of the project “E-tendering & E-Auction (forward and reverse) facility on APPLICATION USAGE BASIS”, unless terminated earlier in accordance with terms of this MSA (“Term”). However, “MMTC” may choose to extend the term for further period, with all the terms and conditions being the same as for original term.

## **2.3 COMMENCEMENT AND DURATION OF THIS PROJECT**

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The commencement date is the date of the signing of contract between selected Vendor and “MMTC”.

The duration of the project, including the “Operation and Services phase” is expected to be twelve (12) months from date of start of contract period.

## **2.4 SCOPE AND PROVISION OF THE SERVICES**

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- a. The provision of Services to the Stakeholders with certainty and speed is the essence of the Agreement between the Parties.
- b. The Vendor represents that it is a competent and efficient provider of a variety of information technology and business process management services. The Vendor will keep abreast of the relevant technical, managerial and operational requirements applicable to the provision of the Services and best practices in this area and will share their knowledge with the “MMTC”, regarding matters which would assist the “MMTC”, in its use of the Services, provided that Vendor shall not be obligated to share other client information or Confidential Information of the Vendor not relevant to the Agreement.
- c. The Services shall be performed by the Vendor pursuant to terms under the SLA to be entered into in accordance with this MSA.

## **2.5 COMMENCEMENT AND DURATION OF THE SLA**

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- a. The SLA will commence from the date when the Project Implementation has been completed to the satisfaction of the “MMTC”, and certified in accordance with the terms of the Agreement.
- b. The SLA shall, unless terminated earlier in accordance with its terms or unless otherwise agreed by the Parties in writing, expire on the date on which this MSA expires or terminates for any reason.

## **2.6 APPROVALS AND REQUIRED CONSENTS**

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- a. The Parties will cooperate reasonably to obtain, maintain and observe all relevant and customary regulatory and governmental licenses, clearances and applicable approvals (hereinafter the “Approvals”) necessary for the Vendor to undertake implementation of the project “E-tendering & E-Auction (forward and reverse) facility on APPLICATION USAGE BASIS ” and provide the Services. The costs of such Approvals shall be borne by the Vendor.
- b. Both Parties will give each other all co-operation and information reasonably required to meet their respective obligations under the Agreement.
- c. “MMTC” shall use reasonable endeavors to assist Vendor in obtaining the approvals. In the event that any approval is not obtained, the Vendor and the “MMTC” will co-operate with each other in achieving a reasonable alternative arrangement as soon as reasonably practicable for the “MMTC”, to continue to process its work with as minimal interruption to its business operations as is commercially reasonable until such approval is obtained. The Vendor shall not be relieved of its obligations to provide the Services and to achieve the Service Levels until the approvals are obtained if and to the extent that the Vendor's obligations are dependent upon such approvals provided the delay in such approval is caused for reasons not attributable to the Vendor.

## **2.8 ACCESS TO VENDOR OR ITS NOMINATED AGENCIES TO PROJECT LOCATION**

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- a. For so long as the Vendor provides Services from any Project Location on a non-permanent basis and to the extent necessary for the Vendor to provide the Services and at no cost to the Vendor, the “MMTC”, shall, subject to compliance by the Vendor with any safety and security guidelines which may be notified by “MMTC” to the Vendor in writing, provide the Vendor with:
  - i) reasonable access, in the same manner granted to Project employees, to Project Locations during 9 AM to 8 PM on all days, seven days a week; and

- ii) access to office equipment as mutually agreed and other related support services in such location and at such other Project Location, if any, as may be reasonably necessary for the Vendor to perform its obligations hereunder and under the SLA.
- b. Locations and items shall be made available to the Vendor on an "as is, where is" basis by the "MMTC". The Vendor agrees to ensure that its employees, agents and contractors do not use the location, services and items :
  - i) for the transmission of any material which is defamatory, offensive or abusive or of an obscene or menacing character; or
  - ii) in a manner which constitutes a violation or infringement of the rights of any person, firm or company (including but not limited to rights of copyright or confidentiality)

### **3.1 GOVERNANCE**

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The review and management process of this MSA shall be carried out in accordance with the Governance clause and shall cover all the management aspects as set out in the RFP.

### **3.2 USE OF SERVICES**

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- a. The "MMTC" or its nominated agencies will undertake and use the Services in accordance with the instructions or procedures formulated by the Vendor for such usage and mutually agreed by the Parties from time to time.
- b. The "MMTC" or its nominated agencies shall be responsible for the operation and use of the deliverables resulting from the Services provided by or on behalf of the Vendor.

### **3.4 SECURITY AND SAFETY**

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- a. The Vendor will comply with the directions issued from time to time by "MMTC" and the standards related to the information security and safety so far as it applies to the project "E-tendering & E-Auction (forward and reverse) facility on APPLICATION USAGE BASIS".
- b. Each Party to the SLA shall also comply with Project's information technology security standards and policies in force from time to time at each location including directions from "MMTC" to the Vendor in writing in so far as the same apply to the project "E-tendering & E-Auction (forward and reverse) facility on APPLICATION USAGE BASIS".
- c. The Parties to the SLA shall use reasonable endeavors to report forthwith in writing to each other all identified attempts (whether successful or not) by unauthorized persons (including unauthorized persons who are employees of any Party) either to gain access to or interfere with the Project's data, facilities or Confidential Information.

- d. The Vendor shall upon reasonable request by the “MMTC” or its nominee(s) participate in regular meetings when safety and information technology security matters are reviewed.
- e. The Parties under the SLA shall promptly report in writing to each other any act or omission which they are aware that could have an adverse effect on the proper conduct of safety and information technology security at project location.
- f. Any private, proprietary or classified information of the disclosing party which has to be made available by the receiving party to a third party , shall be submitted to such a third party with the same restrictions as included in this document.
- g. Vendor undertakes to meet the laid down security requirements/stipulations. All the matters related to the Agreement will be treated as classified and highly confidential and shall not be communicated to anybody (except for the purpose of this MSA) or published/advertised without the consent of the “MMTC”.

### **3.5 CO-OPERATION**

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Except as otherwise provided elsewhere in this MSA or the SLA, each Party ("Providing Party") to this MSA or to the SLA undertakes promptly to provide the other Party ("Receiving Party") with all such information and co-operation which the Receiving Party reasonably requests, provided that such information and co-operation:

- is reasonably required by the Receiving Party in order for it to comply with its obligations under this MSA or the SLA; and
- is not Confidential Information; and
- is capable of being provided by the Providing Party

### **4.1 TERMS OF PAYMENT**

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- a. In consideration of the Services and subject to the provisions of this MSA and of the SLA, the “MMTC” shall pay the Vendor, in accordance with the Terms of Payments clause 2.0 of Part ‘B’ of this RFP or of the MSA/Work order.
- b. All payments are subject to the application of SLA penalties and liquidated damages, defined and provided for in this MSA and the SLA. It is clarified here that the “MMTC” will pay for the service credits as stated in accordance with the Terms of Payment clause of the MSA/Work order and the “MMTC” can also calculate a financial sum and debit the same against the terms of payment as defined in the Terms of Payment clause of the MSA/Work order as a result of the failure of the Vendor to meet the Service Level under the SLA, such sum being determined in accordance with the terms set out in this MSA and the SLA.

- c. Except as otherwise provided for herein or as agreed between the Parties in writing, the “MMTC” shall not be required to make any payments in respect of the Services other than those covered by the terms of payment as stated in the Terms of Payment clause of the MSA/Work order.

## **4.2 INVOICING AND SETTLEMENT**

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The provisions of the Invoicing & Settlement clause of the MSA/Work order shall apply.

## **4.3 TAX**

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- a. “MMTC” shall be entitled to deduct taxes from the amounts due and payable to the Vendor wherever applicable as per the Applicable Laws. The Vendor shall pay all applicable taxes.
- b. In the event of any increase or decrease of the rate of taxes due to any statutory notification/s during the Term the consequential effect shall be to the account of the Vendor.

## **5.1 BREACH, RECTIFICATION AND TERMINATION**

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In the event that either Party is in material breach of its obligations under this MSA or the SLA, the aggrieved Party may terminate this MSA upon notice to the other Party. Any notice served pursuant to this clause shall give reasonable details of the material breach, which could include the following events:

- a. If there is breach which translates into default in providing Services by the Vendor pursuant to the Agreement, continuously for more than three (3) days, then the “MMTC”, will serve a seven day notice to Vendor for curing such breach. In case the breach continues after the notice period, the “MMTC” will have the option to terminate the MSA at the end of the notice period.
- b. In case there is a delay of more than four (4) weeks in completion of the Project Implementation Phase by the Vendor, the “MMTC” may terminate this MSA after affording a reasonable opportunity to the Vendor to explain the circumstances leading to such a delay.
- c. The right of the “MMTC” to terminate the MSA and the SLA pursuant to this clause 5.1 shall be without prejudice to any other rights and remedies available to the “MMTC” including without limitation invoking the Performance Guarantee.

## **5.2 TERMINATION ON OTHER GROUNDS**

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Without prejudice to any other rights and remedies available to the “MMTC”, the “MMTC” may serve written notice on Vendor at any time to terminate this MSA with immediate effect in the following events:

- a. In the event of change of Management Control of the Vendor.
- b. In the event the Vendor has merged, amalgamated such that the net worth of the surviving entity is less than that of Vendor prior to such merger or amalgamation.

- c. In the event the Vendor being black listed by other PSU/Government during the pendency of the contract.
- d. In the event of a reasonable apprehension of bankruptcy of the Vendor:
  - i) Vendor shall in the event of an apprehension of bankruptcy immediately inform the “MMTC” well in advance (at least 3 months) about such a development;
  - ii) Conversely if the “MMTC” apprehends a similar event regarding the Vendor, he/ she can exercise the right of termination in the manner stated hereinabove.
- e. It is clarified that in case of events set out in clause 5.2 (a) and clause 5.2 (b), the “MMTC” may, as instead of terminating the MSA, at it’s sole discretion, require a full performance guarantee of the obligations of the Vendor by a guarantor acceptable to the “MMTC”. If such a guarantee cannot be procured within 30 days of the “MMTC”’s demand therefore, the “MMTC” shall terminate this MSA in accordance with this clause.
- f. On termination of this MSA for any reason, the SLA shall automatically terminate forthwith and the “MMTC” will decide the appropriate course of action.
- g. The termination provisions set out in clause V of this MSA shall apply to the SLA and “this MSA” used in this clause shall be deemed to refer to the SLA.

### **5.3 EFFECTS OF TERMINATION**

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- a. In the event that the “MMTC”, or the Vendor, terminates this MSA pursuant to clause 5.1 and 5.2, compensation will be decided in accordance with the Terms of Payment clause of the MSA/Work order.
- b. Upon termination of this MSA, the Parties will comply with the Exit Management clause of the MSA/Work order.

### **5.4 FRAUD BY PERSONNEL OF VENDOR**

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“MMTC” reserves its right to initiate civil as well as criminal action against the agents/ employees of the Vendor for fraud or misappropriation, besides claiming damages and indemnification. The management of the Vendor would also be made liable for action in case of fraud, under the applicable laws and “MMTC” may terminate of the MSA and SLA, if “MMTC” finds it necessary to do so.

### **5.5 FRAUD PREVENTION POLICY**

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- (a) Commitments of Bidder(s) shall be bound to take all measures necessary to prevent Fraud and Corruption while dealing with MMTC. They agree and undertake to observe the principles/provisions as laid down in “Fraud Prevention Policy” of MMTC (Full text of which is available at MMTC) during their participation in the tender process, during the execution of contract and in any other transactions with MMTC.

- (i) The bidder(s)/ shall not directly or through any other person or firms, offer, promise or give or otherwise allow any of MMTC's employees any material or 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.
  - (ii) The bidder(s) shall 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.
  - (iii) The bidder(s) shall not commit or allow any employee of MMTC to commit any offence under the relevant provisions of IPC/Prevention of Corruption Act, further the bidder(s) will not use improperly or allow any employee(s) of MMTC, for purposes of competition or personal gain or pass on the other, any information or documents provided by MMTC as part of the business relationship, including information contained or transmitted electronically.
  - (iv) The bidder(s) shall not instigate third persons to commit offences/activities outlined in fraud prevention policy or be an accessory to such offences.
  - (v) The bidder(s) if in possession of any information regarding fraud /suspected fraud, hereby agree and undertake to inform MMTC of same without any delay.
- (b) Disqualification from tender process and exclusion from future contracts : If the bidder(s) before award or during execution has committed a transgression through a violation of Clause above of "fraud prevention Policy" of MMTC in any other form such as to put their reliability or credibility in question, MMTC other than taking recourse available under law, shall be entitled to disqualify the Bidder(s) from undertaking any transaction with MMTC and/or declare the bidder(s)/contractor(s) ineligible to be awarded a contract either indefinitely or for a stated period of time.
- (c) Damages: If MMTC has disqualified the bidder(s) from the tender process prior to the award or during execution according to clause mentioned above, MMTC shall be entitled to demand and recover from the contractor liquidated damages or the contract value or the amount equivalent to Performance Bank Guarantee.

## **6.1 WARRANTIES**

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a. The Vendor warrants and represents to the “MMTC” that:

- (i) it has full capacity and authority and all necessary approvals to enter into and to perform its obligations under the Agreement;
- (ii) this MSA is executed by a duly authorized representative of Vendor;
- (iii) it shall discharge its obligations under this MSA with due skill, care and diligence so as to comply with clause 2.4.
- (iv) there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this MSA and the SLA.
- (v) it has the financial standing and capacity to undertake the project “E-tendering & E-Auction (forward and reverse) facility on APPLICATION USAGE BASIS ” in accordance with the terms of this MSA and the SLA.
- (vi) the execution, delivery and performance of this MSA and the SLA will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum of association and articles of association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected.
- (vii) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government authority which may result in any Material Adverse Effect on its ability to perform its obligations under this MSA and/or the SLA no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this MSA and/or the SLA.
- (viii) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this MSA and/or the SLA.
- (ix) no representation or warranty by it contained herein or in any other document furnished by it to the “MMTC” or its nominee including the Proposal or to any Government Authority contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.
- (x) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Agreement or entering into this MSA or for influencing or attempting to influence any officer or employee of the “MMTC” in connection therewith.

b. In the case of the SLA, the Vendor additionally warrants and represents to the “MMTC”, that:

- (i) the Vendor has full capacity and authority and all necessary approvals to enter into and perform its obligations under the SLA and to provide the Services;



- (ii) the SLA has been executed by a duly authorized representative of the Vendor;
  - (iii) the Vendor is experienced in managing and providing works similar to the Services and that it will perform the Services with all due skill, care and diligence so as to comply with Clause 2.4;
  - (iv) the Services will be provided and rendered by appropriately qualified, trained and experienced personnel;
  - (v) Vendor has and will have all necessary licenses, approvals, consents of third parties and all necessary technology, hardware and software to enable it to provide the Services;
  - (vi) the Services will be supplied in conformance with all applicable laws, enactments, orders and regulations;
  - (vii) Vendor will use its reasonable endeavors to ensure that the equipment, software and hardware supplied and/or used in the course of the provision of the Services, are updated, new, operational and functional; and
  - (viii) if Vendor uses, in the course of the provision of the Services, components, equipment, software and hardware manufactured by any third party which are embedded in the Deliverables or are essential for the successful use of the deliverables, it will pass through third party manufacturer's warranties relating to those components, equipment, software and hardware to "MMTC" to the extent possible. In the event that such warranties cannot be enforced by the "MMTC", the Vendor will enforce such warranties on behalf of the "MMTC" and pass on to the "MMTC", the benefit of any other remedy received in relation to such warranties.
- c. Representations and warranties of "MMTC" : "MMTC" represents and warrants to the Vendor that
- (i) It has full power and authority to execute, deliver and perform its obligations pursuant to the Agreement.
  - (ii) It has taken all necessary action to authorize the execution, delivery and performance of this MSA and the SLA.
- d. In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of either Party under the Agreement.
- e. Notwithstanding what has been stated elsewhere in this MSA and the various clauses herein, in the event the Vendor is unable to meet the obligations pursuant to the implementation of the Projects and/or provide the Operations and Services and any related scope of work as stated in this MSA and the various clauses herein, the "MMTC" will, inter alia, have the option to invoke the Performance Guarantee after serving a

written notice fifteen days in advance on the Vendor. Such right of the “MMTC” shall be without prejudice to any other rights or remedies available under law or contract.

## **6.2 THIRD PARTY CLAIMS**

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- a. Subject to Clause 6.2(b) below, Vendor (the "Indemnifying Party") undertakes to indemnify the “MMTC” (the "Indemnified Party") from and against all losses, claims or damages to MMTC, corporation or other entity (including the Indemnified Party) attributable to the Indemnifying Party's performance or non-performance under this MSA or the SLA.
- b. The indemnities set out in Clauses 6.2 shall be subject to the following conditions:
  - (i) the Indemnified Party, as promptly as practicable, informs the Indemnifying Party in writing of the claim or proceedings and provides all relevant evidence, documentary or otherwise;
  - (ii) the Indemnified Party may at its option (but shall not be obligated to), at the cost of the Indemnifying Party, give the Indemnifying Party all reasonable assistance in the defense of such claim including reasonable access to all relevant information, documentation and personnel provided that the Indemnified Party may, at its sole cost and expense, reasonably participate, through its attorneys or otherwise, in such defense;
  - (iii) if the Indemnifying Party does not assume full control over the defense of a claim as provided in this Clause, the Indemnified Party may at its option participate in such defense, and the Indemnified Party will have the right to defend the claim in such manner as it may deem appropriate, and the cost and expense of such defense shall be borne by indemnifying party.
  - (iv) the Indemnified Party shall not prejudice, pay or accept any proceedings or claim, or compromise any proceedings or claim, without the written consent of the Indemnifying Party;
  - (v) the Indemnified Party shall account to the Indemnifying Party for all awards, settlements, damages and costs (if any) finally awarded in favor of the Indemnified Party which are to be paid to it in connection with any such claim or proceedings;

## **6.3 LIMITATION OF LIABILITY**

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- a. Notwithstanding any other term, there shall be no limitation of liability in case of (i) any losses, claims or damages to MMTC, corporation or other entity (including the Indemnified Party) attributable to the Indemnifying Party's performance or non-performance under this MSA or the SLA and willful fraud and/or (ii) the intellectual property infringement claims as per Clause 7.
- b. In all other cases not covered by ‘a’ above, the total financial liability of the Vendor shall be limited to the entire contract value.

- c. Neither this MSA nor the SLA grants or creates any rights, benefits, claims, obligations or causes of action in, to or on behalf of any person or entity (including any third party) other than between the respective Parties to this MSA or the SLA, as the case may be.

#### **6.4 FORCE MAJEURE**

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- a. If at any time during the existence of this contract either party is unable to perform in whole or in part any obligations under this contract because of war hostility, military operations, civil commotion sabotage, quarantine, restrictions, acts of God and acts of Government (including but not restricted to prohibitions of exports and imports), fires, floods, explosions, epidemics, strikes, or any other labour trouble, embargoes, strikes, then the date of fulfillment of any obligations engagement shall be postponed during the time when such circumstances are operative. Any waiver/extension of time in respect of the delivery of any instalment or part of the goods shall not be deemed to be waiver extension of time in respect of the delivery of any instalment or part of the goods shall not be deemed to be waiver/extension of time in respect of the remaining deliveries.

If operation of such circumstances exceed three months, either party will have the right to refuse further performance of the contract in which case neither party shall have the right to claim eventual damages”

- b. The party which is unable to fulfill its obligations under the present contract must within 15 days of occurrence of any of the causes mentioned in this clause shall inform the other party of the existence or termination of the circumstances preventing the performance of the contract. Certificate issued by the Chamber of Commerce or any other competent authority connected with the case in the country of sellers or the buyers shall be sufficient proof of the existence of the above circumstances and their duration.
- c. All payments pursuant to termination due to Force Majeure event shall be in accordance with the Terms of Payment clause of the MSA/Work order.
- d. The failure on the part of the Vendor under the MSA or terms under the SLA to implement any disaster contingency planning and back-up and other data safeguards against natural disaster, fire, sabotage or other similar occurrence shall not be an event of Force Majeure.

#### **6.5 HOLIDAY LISTING POLICY CLAUSE**

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- a. Notwithstanding anything contained in this agreement, MMTC’s policy for Holiday-Listing of an agency mutatis mutandis applies to this agreement and in the event, the agency(s) while discharging its obligations under the Agreement or otherwise, come(s) within the ambit of the said policy, MMTC at its sole discretion reserves the right to suspend/discontinue dealings or take any curative measures with the agency(s) in accordance with the policy in force.

#### **6.6 DATA PROTECTION AND USE**

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- a. In the course of providing the Services, the Vendor may be compiling, processing and storing proprietary Project Data relating to the users.

- b. The Vendor and each user are responsible for complying with its respective obligations under the applicable data protection laws and regulations governing the Project Data.
- c. The Vendor is required to perform or adhere to only those security measures concerning the MMTC Data which were in place (i) as of the Effective Date, and (ii) those made available to it in writing from time to time by “MMTC”
- d. As a processor of Project Data, the Vendor will process Project Data in accordance with the terms of this MSA.
- e. The Vendor shall not transfer any Project Data unless otherwise authorized by the “MMTC”, department in this regard.
- f. Upon reasonable written request from a Party to the SLA, the other Party to the SLA will provide the requesting Party with such information that it has regarding the Project, Data and its processing which is necessary to enable the requesting party to comply with its obligations under the applicable data protection law or regulation.

## **7.1 INTELLECTUAL PROPERTY**

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- a. Except to the extent otherwise expressly provided in this MSA, the “MMTC” shall retain exclusive intellectual property rights to the all types of Software, forms and the compilations of the project “E-tendering & E-Auction (forward and reverse) facility on APPLICATION USAGE BASIS ” to which the “MMTC” has exclusive rights and nothing herein shall or will be construed or deemed to grant to the Vendor any right, title, license, sub-license, proprietary right or other claim against or interest in, to or under (whether by estoppels, by implication or otherwise) to the aforesaid rights.
- b. Without limiting the generality of Clause 7.a and except to the extent otherwise expressly agreed by the Parties to this MSA or the SLA in writing, nothing contained in this MSA or the SLA shall or will be construed or deemed to grant to the Vendor or its respective affiliates/nominees any right, title, license or other interest in, to or under (whether by estoppels, by implication or otherwise) any logo, trademark, trade name, service mark or similar designations of the Project or any confusingly similar designations of the Project.
- c. Subject to any sole or exclusive rights granted by the “MMTC” to a third party prior to the Effective Date, the “MMTC” grants to the Vendor or its nominated agencies, solely in their performance of Services for Project non-exclusive, paid-up, royalty-free right and license during the Term of this MSA (but not the right to sub-license) to use the Project Data including the right to copy, perform, display, execute, reproduce, modify, enhance and improve the Project Data to the extent reasonably necessary or useful for the provision of Services hereunder.
- d. The Vendor shall not use the Project Data for any other purpose other than for the purpose of providing the Services.

- e. The Vendor shall indemnify, defend and hold harmless “MMTC” and their respective officers, employees, successors and assigns, from and against any and all losses, claims or liabilities arising from claims by third parties that any Deliverable (or the access, use or other rights thereto) created by Vendor pursuant to the Agreement, and/or the SLA, information, methods of operation or other intellectual property (or the access, use or other rights thereto) provided by Vendor or sub-contractors to the Vendor pursuant to the Agreement or the SLA (i) infringes a copyright enforceable in India, (ii) infringes any intellectual property rights including without limitation industrial right and/or patent issued in India, or (iii) constitutes misappropriation or unlawful disclosure or use of another Party's trade secret under the laws of India (collectively, "Infringement Claims"); provided, however, that this will not apply to any Deliverable (or the access, use or other rights thereto) created by (A) “MMTC” ; (B) third parties (i.e., other than Vendor or Vendor's sub-contractors) at the direction of “MMTC”.
- f. If, as a result of Infringement Claims, “MMTC” or its nominees or its employees or intended users are enjoined from using such Project Deliverables or any part thereof or is likely to be enjoined, Vendor, at its expense, shall (i) modify such Project Asset Deliverables (provided its functionality is not impaired) so that it is no longer infringing and obtains a certificate to the said effect from the party claiming infringement, (ii) replace such Project Deliverables with a functionally equivalent the same, or (iii) obtain the right for the “MMTC” to continue using the such Project Assets Deliverables. Such remedies shall not be deemed to be the exclusive remedies for this Clause, but shall be in addition to all other remedies available at law or contract to the “MMTC”.
- g. If Vendor uses in the course of the provision of the Services any Third Party System it will use all commercially reasonable endeavors to pass to the “MMTC” such third party's warranties relating to such Third Party Systems. In the event that such warranties cannot be passed through to or enforced by the “MMTC”, the Vendor will enforce such warranties on “MMTC”'s behalf and account to “MMTC” for doing so. For a third party product supplied under this MSA, the Vendor shall pass on to the “MMTC” all the indemnities offered by such third party.
- h. All rights, title and interest in and to, and ownership in, Project Proprietary Information shall remain solely with the “MMTC”. Vendor shall be entitled to use such Project Proprietary Information only during the Term and only for the purposes of providing the Services or to the extent necessary for Vendor's normal operational, repair and maintenance purposes related to the Services. The “MMTC” shall retain ownership of all intellectual property rights related to Project Proprietary Information.
- i. All rights, title and interest in and to, and ownership in, Vendor Proprietary Information ("Project Proprietary Information"), shall remain solely with Vendor. The Vendor will upon the award of the contract for “E-tendering & E-Auction (forward and reverse) facility on APPLICATION USAGE BASIS ” in its favor, declare the status of all the Vendor Proprietary Information along with documentary support sufficient to establish its sole legal rights in the aforesaid Proprietary Information to the “MMTC”. This Proprietary Information shall refer to that which has been owned by the Vendor prior to commencement of the Agreement. Additionally,

any software that may be acquired from third parties during the term of the MSA and that which may be developed by the Vendor during the course of the Agreement specifically for “E-tendering & E-Auction (forward and reverse) facility on APPLICATION USAGE BASIS” shall not be considered as Vendor Proprietary Information.

- j. With respect to ownership of the Deliverables and intellectual property rights in them, the Parties agree that the following shall apply:
  - i) All the rights, title, interest and ownership of the Deliverables and their intellectual property rights provided to “MMTC” by Vendor during the course of its performance under this MSA, and/or the SLA which includes but is not limited to Software shall vest in “MMTC” immediately on creation. To the extent that the Vendor Proprietary Information is incorporated within the Deliverables, Vendor and its employees engaged hereby grant to “MMTC” a worldwide, perpetual, irrevocable, non-exclusive, transferable, paid-up right and license to use, copy, modify (or have modified), transport to “MMTC” at facilities and locations provided by “MMTC”, and prepare from them, use and copy derivative works for the benefit of and internal use of project, of such Vendor Proprietary Information. The “MMTC”’s rights pursuant to the preceding sentence include the right to disclose such Vendor Proprietary Information to third party contractors solely for use on the Project provided that all such third party contractors execute, deliver and comply with any customary confidentiality and nondisclosure agreements reasonably required by the “MMTC”.
  - ii) If Vendor proceeds to apply for, or assign to any third party, any patent rights relating to the Vendor Proprietary Information referred to in the above clause, the Vendor will ensure that the “MMTC”’s rights as provided herein are preserved.
- k. The “MMTC” hereby grants to Vendor a non-exclusive right and license to access and use the Project Proprietary Information solely for the purpose of providing Services to “MMTC” pursuant to this MSA and the SLA. Such right and license shall terminate upon the expiration or termination of this MSA.
- l. Upon the expiry or termination of this MSA, Vendor shall undertake the actions set forth below in this Clause to assist the “MMTC” to procure replacement services equivalent to Services provided hereunder.
  - i) The Vendor undertakes to negotiate in good faith with the “MMTC” and any relevant Replacement Vendor in respect of commercial terms applying to grant of rights in respect of intellectual property rights relating to the Vendor Proprietary Information and which the “MMTC” and any relevant Replacement Vendor require to enable them to provide or receive services substantially equivalent to the Services hereunder.
  - ii) In respect of Vendor’s usage of third party Intellectual Property Rights, the Vendor undertakes to assist the “MMTC” to secure such consents or licenses from such third parties as are necessary to enable the “MMTC” to receive services substantially equivalent to the Services hereunder. The

obligations of the Vendor under this Clause shall be considered part of the services performed by the Vendor under the Exit Management Services.

## **8.1 CONFIDENTIALITY**

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- a. The Vendor recognizes that during the term of this MSA and the SLA, sensitive data will be procured and made available to it, its agents and others working for or under the Vendor. Further Vendor also recognizes that any improper and unauthorized disclosure or usage of the data by any such recipient may constitute a breach of applicable laws causing harm not only to the "MMTC" but also to the concerned citizens. The Vendor, its subcontractors and agents shall demonstrate utmost care, sensitivity and strict confidentiality in respect of all such information.

Each Party agrees as to any Confidential Information disclosed by a Party to this MSA or the SLA (the "Discloser") to the other Party to this MSA or the SLA (the "Recipient"):

- to take such steps necessary to protect the Discloser's Confidential Information from unauthorized use, reproduction and disclosure as the Recipient takes in relation to its own Confidential Information of the same type, but in no event less than reasonable care; and
  - to use such Confidential Information only for the purposes of this MSA or the SLA or as otherwise expressly permitted or expressly required by this MSA or the SLA or as otherwise permitted by the Discloser in writing; and
  - not, without the Discloser's prior written consent, to copy the Confidential Information or cause or allow it to be copied, directly or indirectly, in whole or in part, except as otherwise expressly provided in this MSA or the SLA, or as required in connection with Recipient's use as permitted under this Clause, or as needed for the purposes of this MSA or the SLA, provided that any proprietary legends and notices (whether of the Discloser or of a Third Party) are not removed or obscured; and
  - not, without the Discloser's prior written consent, to disclose, transfer, publish or communicate the Confidential Information in any manner to any person except as permitted under this MSA or the SLA.
  - limit access to such Confidential Information and materials to those of its directors, partners, advisers, agents or employees who are directly involved in the consideration/evaluation of the Confidential Information and bind each of its directors, partners, advisers, agents or employees so involved to protect the Confidential Information and materials in the manner prescribed in this MSA; and
  - Upon discovery of any unauthorized disclosure or suspected unauthorized disclosure of Confidential Information, promptly inform the Discloser of such disclosure in writing and immediately return to the Discloser all such Information and materials, in whatsoever form, including any and all copies thereof.
- b. The restrictions of this Clause shall not apply to Confidential Information that:
- is or becomes generally available to the public through no breach of this Clause by the Recipient; and

- was in the Recipient's possession free of any obligation of confidence prior to the time of receipt of it by the Recipient hereunder; and
  - is obtained by the Recipient independently of any of Discloser's Confidential Information; and
  - is rightfully obtained by the Recipient from third parties authorized at that time to make such disclosure without restriction; and
  - is identified in writing by the Discloser as no longer proprietary or confidential; or
  - is required to be disclosed by law, regulation or Court Order or under the Right to Information Act, or to be furnished to the Parliament and/or its Committees, provided that the Recipient gives prompt written notice to the Discloser of such legal and regulatory requirement to disclose so as to allow the Discloser reasonable opportunity to contest such disclosure.
- c. To the extent that such disclosure is required for the purposes of this MSA or the SLA, Recipient may disclose Confidential Information to:
- its employees, agents and independent contractors and to any of its affiliates and their respective independent contractors or employees but all of them should in turn be bound to maintain the confidentiality referred to herein on their part ; and
  - its professional advisors and auditors, who require access for the purposes of this MSA or the SLA, whom the Recipient has informed of its obligations under this Clause and in respect of whom the Recipient has used commercially reasonable efforts to ensure that they are contractually obliged to keep such Confidential Information confidential on terms substantially the same as set forth in this Clause. The Recipient may also disclose Confidential Information to any entity with the Discloser's prior written consent.
- d. The provisions of this Clause shall survive the expiration or any earlier termination of this MSA.
- e. Confidential Information shall be and remain the property of the Discloser and nothing in this Clause or Agreement shall be construed to grant either Party any right or license with respect to the other Party's Confidential Information otherwise than as is expressly set out in this MSA.
- f. Subject as otherwise expressly provided in this MSA all Confidential Information in tangible or electronic form under the control of the Recipient shall either be destroyed, erased or returned to the Discloser promptly upon the earlier of: (i) the written request of the Discloser, or, (ii) termination or expiry of this MSA or, in respect of the SLA, the termination or expiry of the SLA. Notwithstanding the forgoing, both Parties may retain, subject to the terms of this Clause, a reasonable number of copies of the other Party's Confidential Information solely for confirmation of compliance with the confidentiality obligations of the Agreement.



- g. Both Parties agree that monetary damages would not be a sufficient remedy for any breach of this Clause by the other Party and that the “MMTC” and Vendor, as appropriate, shall be entitled to equitable relief, including injunction and specific performance as a remedy for any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach by a Party of this Clause, but shall be in addition to all other remedies available at law or equity to the damaged Party including the right to terminate the MSA and the SLA.
- h. In connection with the Services, Vendor may from time to time undertake one or more quality assessment reviews for the purpose of improving project deliverables for MMTC. In order for such reviews to be frank and candid, for the greatest benefit to “MMTC” and Vendor, they shall be kept confidential to the greatest extent possible. The Parties agree that any documentation created in connection with such quality assessment reviews shall be Confidential Information of Vendor which is licensed to “MMTC” for any internal use except that in no event shall such documentation or the results of such reviews be discoverable or admissible (or used for any purpose) in any arbitration or legal proceedings against Vendor related to the Agreement or the Services.
- i. The “MMTC”, department may permit the Vendor to come into possession of confidential public records as per the needs of the project and the Vendor shall maintain the highest level of secrecy, confidentiality and privacy with regard thereto.
- j. Additionally, the Vendor shall keep confidential all the details and information with regard to the Project, including systems, facilities, operations, management and Services of the systems/ facilities.
- k. Vendor shall be prohibited from using the MMTC e-Procurement portal system related data in whatever manner, for purposes other than handling transactions through this system. Vendor shall undertake, on behalf of its agents and employees, that no related data shall be copied in any manner (paper, electronic, or human memory) and transferred to any entity (human or machine) other than that being, through the system, for delivering job responsibilities defined for each individual.
- l. The “MMTC”, department shall retain all rights to prevent, stop and if required take the necessary punitive action against the Vendor regarding any forbidden disclosure.
- m. All documents, information and reports relating to the assignment would be handled and kept strictly confidential and not shared/published/supplied or disseminated in any manner whatsoever to any third party, except with MMTC’s written permission. In this regard vendor has to enter into Non Disclosure Agreement (NDA) with MMTC as per **Annexure C2**.
- n. The aforesaid provisions shall not apply to the information:
  - i) already in the public domain; and
  - ii) Disclosed to the public due to a court order or under the Right to Information Act; and
  - iii) Information required to be furnished to the Parliament and/or its Committees

## **8.2 PERSONNEL**

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- a. The Vendor shall have the sole responsibility for supervision and control of its personnel and for payment of such personnel's entire compensation, including salary, withholding of income taxes and social security taxes, worker's compensation, employee and disability benefits and the like and shall be responsible for all employer obligations under all applicable laws and the "MMTC" shall not have any direct or indirect liability or obligation, to pay any charges, claims or wages of any of employee, agents, contractors, and subcontractors of Vendor

## **8.3 INDEPENDENT CONTRACTOR**

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Nothing in this MSA or the SLA shall be construed as establishing or implying any agency, partnership or joint venture between the Parties to this MSA or the SLA and, except as expressly stated in this MSA or the SLA, nothing in this MSA or the SLA shall be deemed to constitute any of the Parties as the agent of any other Party or authorizes either Party (i) to incur any expenses on behalf of the other Party, (ii) to enter into any engagement or make any representation or warranty on behalf of the other Party, (iii) to pledge the credit of or otherwise bind or oblige the other Party, or (iv) to commit the other Party in any way whatsoever without in each case obtaining the other Party's prior written consent.

## **8.4 SUB-CONTRACTORS**

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Subcontracting /outsourcing in any form is not permitted except in the following conditions.

- ✓ As permitted under the contract in the form of 3rd party audits, if required.

However, sub-contractors may be hired by the Vendor only with explicit approval from MMTC to undertake the job. The primary responsibility of the completion of the assigned portion of the contractual job lies with the Vendor. It is clarified that the Vendor shall be the principal employer for all claims arising from the liabilities statutory or otherwise, concerning the sub-contractors. The Vendor irrevocably undertakes and agrees to indemnify the "MMTC" or its nominated agencies from any claims on the grounds stated hereinabove.

## **8.5 TRADEMARKS, PUBLICITY**

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- a. Neither Party may use the trademarks of the other Party without the prior written consent of the other Party. Except as required by law or the rules and regulations of each stock exchange upon which the securities of one of the Parties is listed, neither Party shall publish or permit to be published either alone or in conjunction with any other person any press release, information, clause, photograph, illustration or any

other material of whatever kind relating to the Agreement, the SLA or the business of the Parties without prior reference to and approval in writing from the other Party, such approval not to be unreasonably withheld or delayed.

## 8.6 NOTICES

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- a. Any notice or other document, which may be given by either Party under this MSA, shall be given in writing in person or by pre-paid recorded delivery post or by facsimile transmission.
- b. In relation to a notice given under this MSA, any such notice or other document shall be addressed to the other Party's principal or registered office address as set out below:

**“MMTC” (Name of official and designation)**

Address: .....

Tel: .....

Fax: .....

.....

**Vendor: (Name of official and designation)**

Address: .....

Tel: .....

Fax: .....

- c. Any notice or other document shall be deemed to have been given to the other Party (or, if relevant, its relevant associated company) when delivered (if delivered in person) if delivered between the hours of 10.00 am and 5.00 pm on a working day at the address of the other Party set forth above or if sent by fax, provided the copy fax is accompanied by a confirmation of transmission, or on the next working day thereafter if delivered outside such hours, and 7 days from the date of posting (if by post).
- d. Either Party to this MSA may change its address, telephone number, and facsimile number for notification purposes by giving the other reasonable prior written notice of the new information and its effective date.

## 8.7 VARIATIONS AND FURTHER ASSURANCE

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- a. No amendment, variation or other change to this MSA or the SLA shall be valid unless authorized in accordance with the change control procedure and made in writing and signed by the duly authorized representatives of the Parties.
- b. Each Party agrees to enter into or execute, without limitation, whatever other agreement, document, consent and waiver and to do all other things which shall or may be reasonably required to complete and deliver the obligations set out in this MSA or the SLA.

## 8.8 SEVERABILITY AND WAIVER

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- a. If any provision of this MSA or the SLA, or any part thereof, shall be found by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable the illegality, invalidity or unenforceability of such provision or part provision shall not affect the other provisions of this MSA or the

SLA or the remainder of the provisions in question which shall remain in full force and effect. The relevant Parties shall negotiate in good faith in order to agree to substitute for any illegal, invalid or unenforceable provision a valid and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the illegal, invalid or unenforceable provision or part provision.

- b. No failure to exercise or enforce and no delay in exercising or enforcing on the part of either Party to this MSA or the SLA of any right, remedy or provision of this MSA or the SLA shall operate as a waiver of such right, remedy or provision in any future application nor shall any single or partial exercise or enforcement of any right, remedy or provision preclude any other or further exercise or enforcement of such right, remedy or provision or the exercise or enforcement of any other right, remedy or provision. Without limiting the foregoing, no waiver by a Party of any breach by the other Party of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof.

## **8.9 COMPLIANCE WITH LAWS AND REGULATIONS**

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- a. Each Party to this MSA accepts that its individual conduct shall (to the extent applicable to it) at all times comply with all Applicable Laws, rules and regulations. For the avoidance of doubt, the obligations of the Parties are subject to their respective compliance with all applicable laws and regulations.

## **8.10 ETHICS**

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- a. The Vendor represents, warrants and covenants that it has given no commitments, payments, gifts, kickbacks, lavish or expensive entertainment, or other things of value to any employee or agent of “MMTC”, or its nominated agencies in connection with the Agreement and acknowledges that the giving of any such payment, gifts, entertainment, or other things of value is strictly in violation of “MMTC”’s standard policies and may result in cancellation of this MSA and the SLA

## **8.11 ENTIRE AGREEMENT**

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- a. This MSA the SLA, all annexures, clauses/schedules appended thereto and the contents and specifications of the RFP constitute the entire agreement between the Parties with respect to their subject matter. All previous correspondence entered into by the company before entering into agreement shall be null and void, and supersedes all prior or contemporaneous negotiations, previous advice/acceptance, written or oral understandings and agreements, between the Parties regarding such subject matter. If there is any aspect of the Project not covered by any of the provisions of the Agreement, then and only in that event, reference may be made by the Parties to the Proposal. If there is any aspect of the Project not covered by any of the provisions of the Agreement and the Proposal, reference shall be made by the Parties to the other bid documents, issued by the “MMTC” and also including addendums, clarifications given in writing in the pre-bid meetings and the written submissions made by the Vendor but not otherwise.

## **8.12 SURVIVABILITY**

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- a. The termination or expiry of this MSA or SLA shall in no event terminate or prejudice (a) any right or obligation arising out of or accruing under this MSA or SLA attributable to events or circumstances occurring prior to such termination or expiry; (b) the provisions of this MSA that by their nature are intended to survive the its termination or expiry.

## 9.1 ARBITRATION

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In case, a dispute is referred to arbitration, the arbitration proceedings shall be carried under the Indian Arbitration and Conciliation Act, 1996 and any statutory modification or re-enactment thereof.

Any dispute or difference whatsoever arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this contract or the validity or the breach thereof shall be settled by arbitration by a Sole arbitrator to be nominated by Chairman and Managing Director(CMD) of MMTC. The provisions of Arbitration & Conciliation Act-1996 shall apply to such arbitration proceedings.

The venue of arbitration shall be Delhi.

Arbitration proceedings shall be held in Delhi and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English.

Pending the submission of and/or decision on a dispute, difference or claim or until the arbitral award is made; the Parties shall continue to perform all of their obligations under the Agreement without prejudice to a final adjustment in accordance with such award.

## 9.2 JURISDICTION

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The parties hereto agree that any matter or issues arising hereunder or any dispute hereunder shall be subject to the exclusive jurisdiction of the courts of Delhi only.

IN WITNESS WHEREOF the Parties have by duly authorized representatives set their respective hands and seal on the date first above written in the presence of:

WITNESSES:

1. (Name, Designation, Organization, and Signature)
2. (Name, Designation, Organization, and Signature)

Signed

**[IMPLEMENTING AGENCY]**  
Signed

For and on behalf of the  
**CMD, MMTC**

For and on behalf of the  
\_\_\_\_\_ (Company name) \_\_\_\_\_

By: \_\_\_\_\_ (signature) \_\_\_\_\_  
\_\_\_\_ (Name and Designation) \_\_\_\_\_

By: \_\_\_\_\_ (signature) \_\_\_\_\_  
\_\_\_\_ (Name and designation) \_\_\_\_\_

An authorized signatory duly nominated pursuant to  
Board Resolution No. \_\_\_\_\_ dated \_\_\_\_\_ of  
the [Vendor]

**Operations & Services  
SERVICE LEVEL AGREEMENT**

**BETWEEN**

**MMTC**

**AND**

**Vendor of "E-tendering & E-Auction (forward and reverse) facility on APPLICATION USAGE BASIS"**

**THIS AGREEMENT** is made on this \_\_\_\_\_ day of \_\_\_\_\_ 2017.

**BETWEEN:**

1. MMTC LIMITED having its registered office at ----- "MMTC", which term or expression unless excluded by or repugnant to the subject or context shall mean and include its successors-in-office and assigns of the FIRST PART;

**AND**

2. \_\_\_\_<name of the company>\_\_\_\_, a company registered under the Indian Companies Act, 1956 having its registered office at \_\_\_\_<address>\_\_\_\_ and place of business at \_\_\_\_<address>\_\_ (hereinafter referred to as "**Vendor**", which expression, unless excluded or the context otherwise required hereof includes its successors, administrators and assigns) represented through its \_\_\_\_<designation of authorized person>\_\_\_\_, who is duly authorized by the Vendor to execute this agreement of the SECOND PART.

**WHEREAS:**

A. "MMTC" and [\_\_\_\_\_] have entered into a Master Services Agreement dated [\_\_\_\_\_] (the "MSA").

B. In accordance with Clause 1.2 (b) of the MSA, "MMTC" and Vendor wish to enter into this Service-Level Agreement ("Agreement/SLA") on the following terms.

**1 – DEFINITIONS AND GENERAL PURPOSE**

**DEFINITIONS**

**1.1.1 In this SLA, unless the context requires otherwise:**

- a. "Agreement" or "Service Level Agreement "or "SLA" or "Operations and Management SLA" means this Agreement, together with its Appendices;
- b. "'MMTC" Data" means all proprietary data of "MMTC" which the Vendor obtains, possesses or processes in the context of providing the Services to the users pursuant to this SLA;

- c. "Parties" means "MMTC" and Vendor for the purposes of this SLA, AND "Party" shall be interpreted accordingly;
  - d. "Service Level" means the level of service and other performance criteria which will apply to the Services as set out in **Annexure C1**, in the form of SLA Metrics, effective during the Term of this SLA;
  - e. "Term" means the duration of this SLA as defined in Clause 2.2 of this MSA;
  - f. "Terms of Payment" means charges for the Services in accordance with the Terms of Payment as stated in the MSA/agreement/Work order.
- 1.1.2** All Appendices and other attachments to this SLA are hereby incorporated as a part of this SLA by this reference.
- 1.1.3** References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated and to all statutory instruments made pursuant to it.
- 1.1.4** Words denoting the singular shall include the plural and vice versa and words denoting persons shall include firms and corporations and vice versa.
- 1.1.5** Unless otherwise expressly stated, the words "herein", "hereof", "hereunder" and similar words refer to this SLA as a whole and not to any particular Clause, Annexure or other subdivision. The words "include" and "including" shall not be construed as terms of limitation. The words "day" and "month" mean "calendar day" and "calendar month" unless otherwise stated. Where, because of a difference in time zone, the calendar day or calendar month in one Country differs from another Country, then the calendar day or calendar month shall be deemed to be the calendar day or calendar month applicable to India. The words "writing" and "written" mean "in documented form", whether electronic or hard copy, unless otherwise stated.
- 1.1.6** The headings and use of bold type in this SLA are for convenience only and shall not affect the interpretation of any provision of this SLA.
- 1.2. STRUCTURE**
- 1.2.1** This SLA shall operate as a legally binding services agreement specifying terms which apply to the Parties and to the person of the Services by the Vendor to "MMTC" under this SLA and the MSA.

## **II – INITIALISATION PHASE**

### **2.1 OBJECTIVES AND SCOPE OF SLA**

**2.1.1** The Vendor hereby agrees to provide Services to "MMTC", conforming to the specified Service Levels, which will ensure:

- (a) Delivery of speedy and efficient services to the stakeholder, in relation to all the services for the "E-tendering & E-Auction (forward and reverse) facility on APPLICATION USAGE BASIS".



- (b) Train the “MMTC” employees to assist them discharge their duties effectively and efficiently
- (c) Encourage and help to improve the adoption rate for the usage of the “E-Procurement Application for MMTC” system, by employing traditional as well as innovative techniques.

To meet the aforesaid objectives the Implementation agency will provide the Service Levels in accordance with the service level metrics as more particularly described in **Annexure C1** of this SLA.

## **2.2 COMMENCEMENT AND DURATION OF THIS SLA**

- 2.2.1** This SLA shall commence on the date on which it is executed by MMTC and the Implementation Agency and shall become operational on the date of award of contract as defined in the MSA (hereinafter the “Effective Date”) and shall, unless terminated earlier in accordance with its terms or unless otherwise agreed by the Parties, expire on the date on which this SLA or the MSA expires or terminates for any reason, which shall be two years from the Effective Date of this SLA. The SLA shall run co-terminus with the MSA.

## ***III – FINANCIAL ISSUES***

### **3. Terms of Payment & Service Credits**

- 3.1** In consideration of the Services and subject to the provisions of the MSA and this SLA, MMTC shall pay the charges to the Implementation Agency in accordance with the Terms of Payment clause of the MSA/Agreement/Work Order.

## ***IV – INTERPRETATION***

### **4. APPLICABILITY OF THE MSA**

- 4.1** Apart from the provisions as set out hereinabove, the terms and conditions stated in the MSA shall apply mutatis mutandis to this SLA. In the event of a conflict in interpretation of any Clause in the MSA and the SLA, the provisions of the MSA shall prevail.

IN WITNESS WHEREOF the Parties have by duly authorized representatives set their respective hands and seal on the date first above written in the presence of:

WITNESSES:

- 1.
- 2.

Signed by:

(Name and designation)

For and on behalf of CMD, MMTC

(FIRST PARTY)

Signed by:

(Name and designation)

(IMPLEMENTING AGENCY)

## ANNEXURE C1 – SERVICE LEVEL METRICS

1.0 The SLAs would be monitored using some of the reports (decided by MMTC Program Management Team in consultation with the Vendor) would be on real time basis while others may be weekly or fortnightly or monthly as the need may be.

### 2.0 PRODUCT SUPPORT SERVICES

Vendor will render the following product support services.

#### 2.1 Standard Helpdesk support:

- a) Vendor provides Standard Helpdesk support services, during the Vendor working hours on all days in the year. The details of the local/ Help Desk to be registered/ contacted for support, its phone numbers, fax numbers, e-mail, etc. will be as shown in the Annexure C1(A).
- b) One (1) experienced persons shall be deputed in the On-site support team. The educational & experience profile of the on-site officials be submitted for incorporation as part of the agreement. Any change in the team posted in MMTC will not be done until beyond the control of Vendor like resignation etc. to ensure continuity. Vendor would provide the complete support delivery from its support centre in Delhi.
- c) The Standard Helpdesk support includes logging of customer call, registration and providing a defect fix patch. It also includes providing information to resolve the call.
- d) MMTC will be lodging their complaints to the Vendor personnel deputed in MMTC office through e-mail specifying the category/classification of the problem as provided in Clause 2.1 (e) of the said agreement, with a copy to central help desk of Vendor at their head office location. The problem should be addressed accordingly. Vendor should estimate the time involved in addressing the said problem and communicate to MMTC immediately the requisite time required for resolving the issue.
- e) If the support call is identified as a failure, Vendor internally follows the following criticality classification to handle them and to provide defect fixes.
  - I. Showstopper: The presence of a Showstopper implies that the Product cannot be used at all or disrupts the functionality of the Product to the extent that the Product cannot be used per e-procurement application/platform product specifications. For a Showstopper, Vendor will put in its best efforts to register the failure within 4 (four) working hours and rectify the defects within 1 (one) working day.
  - II. Critical Defects: The presence of a critical defect means that the functionality of the Product is affected, but can be used with the intervention of e-procurement application/platform customer support personnel or implies that a program or feature in the Product cannot be used although other programs or features remain unaffected or implies that the Product as a whole functions but a certain feature is somewhat disabled. For a critical defect, Vendor will put in its best efforts to resolve the failure within 1 (one) working day after registration.
  - III. Non critical defects: The presence of a non-critical defect means that the functionality of the Product is affected in a non-critical area and can be rectified temporarily by a workaround done by the customer personnel themselves, with or without the assistance of e-procurement application/platform customer support personnel so that the programs can be used or implies that a program or feature in the Product cannot be used but does not critically affect the overall operation of the customer or implies that the Product as a whole functions but a certain feature, which is non critical is somewhat disabled. For a non-critical defect Vendor will put in its best efforts to resolve the failure within 2 (two) working days after registration.
  - IV. Trivial Defects: A trivial defect has no significant effect on the functionality of the Product or the usability of the support materials but has a lot of nuisance value. For a trivial defect, Vendor will put its best efforts to resolve the failure within 5 (five) working days after registration
- f) Vendor would provide all support services pertaining to E-Procurement/Server installation & configuration required during the tenure of AMC period including migration to the higher platform at the time of Disaster Recovery Site Preparation.

### 3.0 System Availability

3.1 System availability is defined as:

$$\{( \text{Scheduled operation time} - \text{system downtime} ) / ( \text{scheduled operation time} )\} * 100\%$$

Where:

- a) “Scheduled operation time” means the scheduled operating hours of the System for the month. All planned downtime on the system would be deducted from the total operation time for the month to give the scheduled operation time.
- b) “System downtime” subject to the SLA, means accumulated time during which the System is not available to the MMTC’s users or customers due to in-scope application failure, and measured from the time MMTC and/or its customers/ vendors log a call with the Bidder help desk of the failure or the failure is known to the Bidder from the availability measurement tools to the time when the System is returned to proper operation.
- c) The business hours are 10 AM to 6 PM on *any calendar day* the MMTC is operational. The bidder however recognizes the fact that the offices will require to work beyond the business hours and holidays on need basis.
- d) Critical and Key infrastructure of Data Center will be supported on 24x7 basis by MMTC.
- e) Uptime will be computed based on availability of the applications to the MMTC’s users irrespective of availability of servers either individual servers/clusters.
- f) Response may be telephonic or onsite. In case the issue cannot be resolved telephonically, the Bidder will need to provide onsite assistance within response resolution window.
- g) The integrated e-procurement application & database should be sized for individual active cluster solutions at DC. However, if any additional hardware, software etc is required for maintaining the SLA's & uptimes, then the same will be the responsibility of the Bidder.
- h) Service Levels should be complied with irrespective of the customizations that the applications would undergo during the tenor of the Contract.

### 4.0 Update Policy

- a) As a part of this agreement, the customer will be notified by Vendor of all updates available for the Product. Because many customers do not desire to install Product Updates immediately upon release by Vendor, Vendor shall notify the customer of availability and will ship Product Updates free to the customer only upon request.
- b) Vendor will also integrate the customization, data integration etc. undertaken within or by virtue of the Purchase Order no: \_\_\_\_\_ and related agreement(s) thereto with the upgraded version of core product without any cost, charges etc to MMTC.

### 5.0 Retirement of Versions in Support

- a) Vendor will announce retirement of support of Versions periodically, but will give one year’s notice before actually implementing the retirement. Usually, the one prior version will be supported for a period of one year after release of the subsequent version. If the customer continues with a version, which has been, retired from Vendor after due notice, the customer and Vendor shall discuss and decide.

### 6.0 Excluded Services

- a) Any visit to customer site, requested by customer, but not deemed to be necessary.
- b) Maintenance required as a result of accident, relocation or other movement of any product or component thereof, improper operation, neglect or misuse of any product or component thereof, failure to maintain proper site environmental conditions, or any fault of the customer or its agents or employees or any other cause external to the product or component thereof, excepting the ordinary use thereof.
- b) Maintenance for the product or component thereof which has been modified or otherwise altered by the customer, without permission or maintenance required, in whole or in part, because of any repair, maintenance, modification

to or other service performed on the product or component thereof by other than Vendor/MMTC authorized personnel with the concurrence of Vendor site team, wherever it is found to be extremely necessary.

- c) Restoration or repair of any damage to the product or component thereof arising from or caused by any casualty, act of God, riot, war or the unauthorized acts of third parties, failure or interruption or improper functioning of any electrical power, air conditioning, humidity control, computer hardware, third party software or telephone or communication line or any other like cause.

## 7.0 Responsibility of the Customer

- a) To enable Vendor to diagnose and fix defects, it is the customers' responsibility to protect its installation - hardware, software and data from environmental hazards like electrical fluctuation, fire, etc. The customer is also responsible for archival of regular back-ups so that restoration of the system and operating software can be done in case of a failure.
- b) The customer shall provide the following:
  - i. Full information that would be required to reproduce the defect at Vendor including any data that is relevant
  - ii. Full information on any other software being run concurrently with e-Procurement application product, which may have a bearing on the defect.
  - iii. Full information on any modifications or changes made by their personnel in the product.
  - iv. Full information on sequence of operations performed before encountering the defect.
  - v. Full access to e-procurement application/platform support personnel to the installation, product extensions and any other software running concurrently with e-procurement application/platform.

## 8.0 Performance Measurements

| Type of Infrastructure  | Measurement  | Minimum Service Level |
|-------------------------|--|-----------------------|
| System Response Time    | End to end response time should be < <define agreed parameter> (end user to core application and back)   | 99%                   |
| System Response Time    | Support <define agreed parameter> concurrent users for access to internet portal and core application  | 99%                   |
| Down time for servicing | Each planned down - time for application, database and operating system servicing (up gradation, bug fixing, patch uploads, regular maintenance etc.) will not be more than <define agreed time parameter>. This activity will not be carried out during business hours. However, such activities which require more than 4 hours or required to be carried out during business hours will be scheduled in consultation with the MMTC. In case the downtime exceeds the planned hours the additional time taken for servicing will be considered for system downtime as per availability measurements table. | 98%                   |
| Incident Management     | Percentage of incidents escalated resolved   | 99%                   |

## 9.0 SLA Penalties

### **Penalties for Availability and Performance measurements (indicative- as per agreed terms between vendor & MMTC)**

Bidder would publish report for quarterly reporting and calculations of measurements listed above.

Penalties would be imposed for not meeting minimum service level of SLA as per the table below:

| <b>Minimum Service Level</b> | <b>Penalty as a percentage of Half-yearly payment</b>                                 |
|------------------------------|---|
| Between 99.5% to 99%         | 2% of the Half-yearly payment   |
| Between 99% to 98%           | 5% of the Half-yearly payment   |
| Between 98% to 90%           | 10% of the Half-yearly payment  |
| Below 90%                    | Escalation to MMTC which may lead to partial payment of only 50% Half-yearly payment. |

## 10.0 Duration of Service level agreement

The service level agreement would be valid for the entire period of contract. SLA's will be applicable after signing the contract.

## 11.0 Sub- Letting Of Work

No part of the annual operation and maintenance work nor any share or interest therein shall in any manner or degree be transferred, assigned or sublet by the contractor/bidder directly or indirectly to any person, firm or corporation whatsoever.

**Subcontracting of the annual operation & Services work is not permitted.**

## ANNEXURE C1(A)

### LOCAL – First Level:

**Supporting Office** : << Name and address of the e-procurement application/platform developer>>

GLOBAL Help Desk: << Name of the e-procurement application/platform developer>>

**Phone No:**

**Fax No** :

**E Mail:**

**Internet:**

## ANNEXURE C2 – NON DISCLOSURE AGREEMENT

This Non-Disclosure Agreement ("The Agreement") is signed at venue \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2017, by and between..... having its offices at \_\_\_\_\_ (hereinafter referred to as "....." which expression shall include its successors, and assigns which expression unless it be repugnant to the context or meaning thereof includes its successors, representatives and permitted assigns) on one part and **MMTC LTD.** having its office at \_\_\_\_\_ ("MMTC" which expression unless repugnant to the context or meaning thereof includes its successors, representatives and assigns) on the other part.

### WHEREAS:

- A. [INSERT NAME] is engaged in the business of, inter-alia, providing IT services.
- B. MMTC, the premier trade promotion agency of the Ministry of Commerce & Industry, Government of India is committed to showcase excellence achieved by the country in diverse fields especially trade and commerce.
- C. MMTC, pursuant to its tender dated \_\_\_\_\_, declared [INSERT NAME] as successful Bidder for its appointment as e-Procurement Service provider. Pursuant to appointment of [INSERT NAME] as e-Procurement Service provider, certain Confidential Information relating to MMTC's business may be disclosed by MMTC to [INSERT NAME] which shall be subject to the terms and conditions contained in this Agreement.
- D. Both Parties agrees that the security of IT infrastructure of MMTC is critical and the IT architecture/environment/reports needs to be analyzed and reviewed to ensure that MMTC's IT infrastructure remains secured to the best possible extent. Therefore [INSERT THE NAME] has agreed to observe and be bound by the restrictions and obligations relating to its use of such Confidential Information.

**THEREFORE IN CONSIDERATION OF THE PREMISES AND OBLIGATIONS SET FORTH HEREIN, IT IS AGREED AS FOLLOWS:**

### 1. DEFINITIONS:

In this Agreement, unless the context otherwise requires,

(a) The term "**Confidential Information**" includes data, reports, drawings, records, correspondence, notes, compilations, studies, in the form of samples, models and other information/documentation given or disclosed by MMTC to [please insert the name] or any of their Representative(s) relating to or in any way connected and relating to any of MMTC's business activities actual or proposed, IT Infrastructure, systems, marketing plans, agreements, methods, techniques, processes, theories, formulas, know-how, techniques, applications, systems, components, improvements, technology, market projections, sales records, software programs, test data, customers, customer lists, or any other information relating to MMTC that [PLEASE INSERT THE NAME] becomes aware of whether or not disclosed by MMTC and whether such information is in tangible, writing, oral, electronic, printed, human or in machine readable form, regardless of the media or form transmitted or stored in, or any information ascertainable by inspection, or any other information designated as Confidential Information at the time of disclosure.

(b) "Contract" means the Contract for providing e-Procurement Service provider to be entered into between MMTC and [INSERT NAME] pursuant to the award letter dated \_\_\_\_\_ declaring [INSERT NAME] as successful Bidder for its appointment as e-Procurement Service provider.

(c) "**Representatives**" mean directors/partners, officers, agents, advisors, consultants or employees or respective shareholders or ultimate parent company, as the case may be of [Please Insert The Name].

### 2. Confidential Information and Protection:

2.1 MMTC may, from time to time, disclose Confidential Information to [PLEASE INSERT THE NAME] and/or their Representatives for performance by [PLEASE INSERT THE NAME] of the Contract entered into between MMTC and [PLEASE INSERT THE NAME].

2.2 The [INSERT NAME] understands and acknowledges that the Confidential Information is proprietary and confidential information of MMTC which has been created, developed or obtained by MMTC by investment of significant time, substantial effort and expense. The Confidential Information is a valuable, special and unique asset of MMTC which gives significant competitive advantage to MMTC and that protection of Confidential Information is of the highest importance to MMTC. Therefore [INSERT NAME] acknowledges and undertakes:

(a) To keep the Confidential Information in strict confidence for the entire duration of the Contract and for a period of five years thereafter;

- (b) Without the prior written consent of MMTC, [INSERT NAME] shall not disclose Confidential Information furnished to it to anyone other than its Representatives expressly approved by MMTC;
- (c) [INSERT NAME] shall procure that its approved Representatives shall not communicate with any third party, copy, publish, disclose or otherwise deal with any Confidential Information, otherwise than for the performance of their obligations under the Contract.
- (d) In case the Confidential Information is disclosed to any of [INSERT NAME] approved Representatives, [INSERT NAME] shall further enter into agreements with its Representatives binding them to the same obligations to which [INSERT NAME] is bound under this Agreement, and ensure compliance of this Agreement by its approved Representatives and make them liable for any breach by them of such obligations.
- (e) To inform its approved Representatives to whom any Confidential Information may be disclosed of their obligations of confidentiality pursuant to this Agreement, to ensure compliance with its terms and to be liable for any breach by them of such obligations; and
- (f) To keep separate all Confidential Information from all documents and other records of the Parties and shall mark all such Confidential Information received from MMTC as "Confidential".
- (g) The Confidential Information which may be disclosed to [INSERT NAME] will contain proprietary assets, designs and other intellectual property rights with respect to the MMTC's Products which are the exclusive property of MMTC and are critical for the business of the MMTC and its profitability, [INSERT NAME] agrees not to do anything which may, in any manner, whether directly or indirectly, affect the above proprietary rights, interest, business and profitability of MMTC.
- (h) The [INSERT NAME] shall not copy or modify any Confidential Information without the prior written consent of MMTC. Any permitted reproduction of Confidential Information must contain all confidential or proprietary legends which appear on the original. [INSERT NAME] shall immediately notify the disclosing party in the event of any loss or unauthorised disclosure or use of the Confidential Information.
- (i) [INSERT NAME] shall notify MMTC promptly of any material unauthorised possession, use or knowledge, or attempt thereof, of the MMTC's Confidential Information by any person or entity other than MMTC and its Authorised Representatives
- (j) Promptly furnish to MMTC full details of the unauthorised possession, use or knowledge, or attempt thereof;
- (k) Use reasonable efforts to assist MMTC in investigating or preventing the recurrence of any unauthorised possession, use or knowledge, or attempt thereof, of Confidential Information;
- (l) Use reasonable efforts to cooperate with MMTC in any litigation and investigation against third parties deemed necessary by MMTC to protect its proprietary rights; and
- (m) Promptly use all reasonable efforts to prevent a recurrence of any unauthorized possession, use or knowledge of Confidential Information

**3. The Undertakings in Clause 2 shall not apply to any Confidential Information which:**

- (a) At the time of its disclosure to [INSERT NAME] is in the public domain;
- (b) In the event that [INSERT NAME] is required or requested by any court, legislative or administrative body to disclose any Confidential Information, then it shall prior to disclosure promptly notify MMTC or its any of its Representative so that an appropriate protective order and/or any other action can be taken if possible.

In the event that such protective order is not, or cannot be, obtained, then [INSERT NAME] may disclose to the appropriate body that portion of the Confidential Information that it is legally required to disclose and shall use reasonable efforts to obtain assurances that confidential treatment will be accorded to the Confidential Information; and

**4. NO COMMITMENTS, WARRANTIES OR SOLICITATION**

- (a) The Confidential Information disclosed by MMTC to [INSERT NAME] shall be used by [INSERT NAME] strictly for the purposes expressly authorized by MMTC.
- (b) No representations or warranties, express or implied, are made by MMTC concerning the accuracy or completeness of the Confidential Information supplied under this Agreement and neither MMTC nor any of its Representatives shall be liable in any way to [INSERT NAME] for receipt or use of such Confidential Information and MMTC expressly disclaims any such liability whether in negligence or otherwise.
- (c) MMTC shall not be under any obligation or commitment to enter into discussions or any further agreement merely by reason of the execution of this Agreement or the disclosure, evaluation or inspection of Confidential Information, and this Confidentiality Agreement shall not constitute nor should it be construed to constitute an offer or commitment by MMTC with regard to the tender.



(d) MMTC shall not be precluded from entering into any agreement or obligation with any other party relating to the Agreement or the Confidential Information merely by reason of the execution of this Agreement or the disclosure, evaluation or inspection of Confidential Information.

(e) Without prejudice to the generality of the above, nothing herein shall grant to [INSERT NAME] the right to make representations and/or commitments of any kind on behalf of MMTC without the prior written consent of MMTC.

#### **5 Return of Confidential Information**

(a) Upon the written request of MMTC, the [INSERT NAME] shall return to MMTC all Confidential Information that is in tangible form (including, without limitation, Confidential Information contained on computer disks) furnished, together with any copies or extracts thereof;. [INSERT NAME] shall also deliver to MMTC written statements signed by the receiving party certifying that all materials have been returned within fifteen (15) days of receipt of the request.

(b) Upon specific request by MMTC, [INSERT NAME] shall destroy all analyses, compilations, drawings, or other documents which have been prepared and which reflect any Confidential Information.

#### **6 Indemnity; No Waiver; Specific Performance**

(a) [INSERT NAME] shall indemnify, defend and hold harmless MMTC against any losses, liabilities, claims, damages, costs, and expenses including reasonable legal fees and other expenses and disbursements in connection therewith and interest charges thereon suffered or incurred by MMTC which arise out of, result from, or may be payable by virtue of any breach of any representation, warranty, covenant or agreement made or obligation required to be performed under this Agreement by [INSERT NAME].

(b) [INSERT NAME] acknowledge that damages alone would not be an adequate remedy for any breach of the terms and conditions of this Agreement and MMTC shall be entitled to the remedies of injunction, specific performance or other equitable relief. Such remedy shall be in addition to and not in lieu or limitation of other remedies available to MMTC at law or in equity.

(c) Failure by MMTC in exercising any right, power or privilege hereunder shall not act as a waiver, nor shall any single or partial exercise thereof preclude any further exercise of any right, power or privilege.

#### **7. Relationship of Parties**

MMTC has no obligation under this Agreement to purchase any service or item from [PLEASE INSERT THE NAME], or commercially offer any products using or incorporating the Confidential Information. This Agreement is intended to facilitate only the exchange of Confidential Information and is not intended to be, and shall not be construed to create a teaming agreement, joint venture association, partnership, or other business organization or agency arrangement and [PLEASE INSERT THE NAME] shall have the authority to bind MMTC without the separate prior written agreement thereof.

#### **8 No Grant of Property Rights**

[INSERT THE NAME] recognizes and agrees that, except as expressly and specifically set forth in this Agreement, nothing herein shall be construed as granting any property right, by license, implication, estoppels or otherwise, to any of MMTC's Confidential Information, or to any invention or any patent right that has issued or that may issue based on such Confidential Information. All Information disclosed is provided "as is" without any warranties of any kind.

### **9 General Provisions**

(a) MMTC has no obligation to supply Confidential Information hereunder and has no obligation to enter into any Contract with [PLEASE INSERT THE NAME] and it has no right to offer for sale products or services using or incorporating the Confidential Information.

(b) This Agreement shall not be assigned by [PLEASE INSERT THE NAME], and it shall not delegate its duties under this Agreement, without prior written consent of the other.

#### **10. TERM AND TERMINATION**

(a) This Agreement shall enter into force on the date first above mentioned and shall remain in force till the validity of the Contract and for a further period of five years thereafter.

(b) Notwithstanding clause 10 (a) above, MMTC may terminate this Agreement by giving a 30 days prior written notice to the other Party.

#### **11. CONSEQUENCES OF TERMINATION**

(a) Upon termination of this Agreement, [INSERT NAME] shall return all Confidential Information that is in tangible form (including, without limitation, Confidential Information contained on computer disks) furnished, together with any copies or extracts thereof; and

(b) Termination will not affect MMTC's right to claim damages, in case of breach of any of the terms and conditions of this Agreement by [INSERT NAME] or its Representatives.

(c) [INSERT NAME] shall cease use of any Confidential Information after the termination of this Agreement. This clause shall survive termination of this Agreement.

#### **12. GOVERNING LAW**

The Courts having territorial jurisdiction over New Delhi shall have exclusive jurisdiction, to the exclusion of any other court, to entertain, try and determine all and any question, issue, dispute, claim, actions, suits and proceedings between the Parties arising out of this Agreement including any matter connected therewith and any application to be made under the Arbitration and Conciliation Act, 1996 as amended and re-enacted from time to time

### **13. ARBITRATION**

Any dispute or difference whatsoever arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this contract or the validity or the breach thereof shall be settled by arbitration by a Sole arbitrator to be nominated by Chairman and Managing Director(CMD) of MMTC. The provisions of Arbitration & Conciliation Act-1996 shall apply to such arbitration proceedings.

The venue of arbitration shall be Delhi.

### **14. JURISDICTION**

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The parties hereto agree that any matter or issues arising hereunder or any dispute hereunder shall be subject to the exclusive jurisdiction of the courts of Delhi only.

### **15.0 ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement of the parties with respect to the subject matter thereof and supersedes any and all prior communications understandings and agreements between the parties, whether written, oral, express or implied relating thereto. No amendment or modification to this Agreement shall be valid unless in writing and signed by a duly authorised Representative of each of the parties.

### **16.0 DISPUTE RESOLUTION**

In case, a dispute is referred to arbitration, the arbitration proceedings shall be carried under the Indian Arbitration and Conciliation Act, 1996 and any statutory modification or re-enactment thereof.

Any dispute or difference whatsoever arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this contract or the validity or the breach thereof shall be settled by arbitration by a Sole arbitrator to be nominated by Chairman and Managing Director(CMD) of MMTC. The provisions of Arbitration & Conciliation Act-1996 shall apply to such arbitration proceedings.

The venue of arbitration shall be Delhi.

Arbitration proceedings shall be held in Delhi and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English.

Pending the submission of and/or decision on a dispute, difference or claim or until the arbitral award is made; the Parties shall continue to perform all of their obligations under the Agreement without prejudice to a final adjustment in accordance with such award.

### **17.0 SEVERABILITY**

If any term or provision of this Agreement is found by a court of competent jurisdiction or by a duly appointed Arbitrator under clause 13 of this Agreement, to be invalid, illegal or otherwise unenforceable, such term or provision shall not affect the other terms or provisions of this Agreement or this Agreement as a whole, (which shall continue to remain valid, binding and enforceable by and against the parties notwithstanding any such finding) but such term or provision shall be deemed modified or deleted to the extent necessary, to render such term or provision enforceable. Upon such modification, the rights and obligations of the parties shall be construed and enforced in accordance with such modification, preserving to the fullest permissible extent the intent and agreements of the parties set forth in this Agreement.

## 18. NOTICES

Any notice to be given hereunder by either party to the other shall be in English and sent by registered letter, courier or facsimile to the other party at the addresses stated below:

(a) MMTC LIMITED (Name and Designation of official)

Address \_\_\_\_\_  
\_\_\_\_\_

(b) [INSERT NAME]  
\_\_\_\_\_  
\_\_\_\_\_

Any notice shall be effective only upon actual receipt at the above mentioned address unless change in the address is notified by a party by giving 10 days advance notice.

**IN WITNESS WHEREOF** this Agreement has been executed by the duly authorised Representatives of the parties the day and year first above written.

1. Signed and delivered by:  
MMTC LIMITED

\_\_\_\_\_  
\_\_\_\_\_

2. Signed and delivered by:

[INSERT NAME]

In the presence of the following witnesses:

1. Signature:  
Name:  
Address:

2. Signature:  
Name:  
Address:

# ANNEXURE C3 – INTEGRITY PACT AGREEMENT

## INTEGRITY PACT

Between

MMTC Limited hereinafter, referred to as “MMTC”,

And

..... hereinafter referred to as “The Buyer/Vendor/Bidder”

### Preamble

WHEREAS, MMTC is an international trading company dealing in export/import/sale/purchase of various commodities; WHEREAS, MMTC values full compliance with all relevant laws of the land, rules, regulations and the principles of economic use of resources and of fairness / transparency in its relation with its Buyer/Vendor/Bidder. IN PURSUANCE, thereto, the following clauses of the Integrity Pact will be applicable and this document shall deem to be an integral part of the Agreement/ Contract between us.

In order to achieve the goals, MMTC may appoint an Independent External Monitor (IEM), who will monitor the tender/auction/e-auction/e-sale/sale/purchase process and the execution of the contract for compliance with the principles mentioned above.

### Section 1 – Commitments of MMTC

1. MMTC commits itself to take all necessary measures to prevent corruption and to observe the following principles:
  - a) No employee of MMTC, 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 himself/herself or third person, any material or non-material benefit which he/she is not legally entitled to.
  - b) MMTC will, during the tender/auction/e-auction/e-sale/sale/purchase process, provide to all Buyer(s)/Vendor(s)/Bidder(s) the same information and will not provide to any Buyer/Vendor/Bidder any confidential/additional information through which the Buyer/Vendor/Bidder could obtain an advantage in relation to the tender/auction/e-auction/e-sale/sale/purchase process or the contract execution.
  - c) MMTC will exclude from the process all known prejudiced persons.
2. If MMTC obtains information on the conduct of any of its employees which is a criminal offence under the relevant Anti-Corruption Laws of India, or if there be a substantive suspicion in this regard, MMTC will inform its Chief Vigilance Officer and in addition can initiate disciplinary action.

### Section 2 – Commitments of the Buyer(s)/Vendor(s)/Bidder(s)

1. The Buyer(s)/Vendor(s)/Bidder(s) commits himself to take all measured necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender/auction/e-auction/e-sale/sale/purchase process and during the contract execution.
  - a) The Buyer(s)/Vendor(s)/Bidder(s) will not, directly or through any other person or firm, offer, promise or give to any of MMTC’s employees involved in the tender/auction/e-auction/e-sale/sale/purchase process or the execution of the contract or to any third person any material or non-material 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.
  - b) The Buyer(s)/Vendor(s)/Bidder(s) will not enter with other Buyer(s) into any illegal 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 Buyer(s)/Vendor(s)/Bidder(s) shall not commit any criminal offence under the relevant Anti-Corruption Laws of India; further the Buyer(s) /Vendor(s)/Bidder(s) will not use improperly, for purposes of competition or

personal gain, or pass on to others, any information or document provided by MMTC as part of the business relationship regarding proposals, plans, business details including information contained or transmitted electronically.

- d) The Buyer(s)/Vendor(s)/Bidder(s) of foreign origin shall disclose the name and address of the Agents/representatives in India, if any. Similarly the Buyer(s)/Vendor(s)/Bidder(s) of Indian Nationality shall furnish the name and address of the foreign principals, if any. Further, all the payments made to the Indian agents/representative have to be in Indian Rupees only.
- e) The Buyer(s)/Vendor(s)/Bidder(s) 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.

2. The Buyer(s)/Vendor(s)/Bidder(s) shall not instigate third persons to commit offences outlined above or be necessary to such offences.

### **Section 3 – Disqualification from tender process and exclusion from future contracts.**

If the Buyer(s)/Vendor(s)/Bidder(s), before award of contract, has committed a serious transgression through a violation of Section 2 above or in any other form such as to put his reliability or credibility as buyer/vendor/bidder into question, MMTC is entitled to disqualify the Buyer(s)/Vendor(s)/Bidder(s) from the tender/auction/e-auction/e-sale/sale/purchase process or to terminate the contract, if already signed, for such reason.

- a) If the Buyer(s)/Vendor(s)/Bidder(s) has committed a serious transgression through a violation of Section 2 above or in any other form such as to put his reliability or credibility as buyer/vendor/bidder into question, MMTC is entitled to also exclude the Buyer(s)/Vendor(s)/Bidder(s) from the 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 transgression, the position of the transgressors within the company, hierarchy of the buyer and the amount of the damage. The exclusion will be imposed for a minimum of 6 months and maximum of 3 years.
- b) If the Buyer(s) /Vendor(s)/Bidder(s) can prove that he has restored/recouped the damage caused by him and has installed a suitable corruption prevention system, MMTC may at its sole discretion revoke the exclusion prematurely.
- c) A transgression is considered to have occurred if in light of available evidence no reasonable doubt is possible.

### **Section 4 – Compensation for Damages**

1. If MMTC has disqualified the Buyer(s) from the tender/auction/e-auction/e-sale/sale/purchase process prior to the award according to Section 3, MMTC is entitled to demand and recover the damages equivalent to Earnest Money Deposit/Bid Security.
2. If MMTC has terminated the contract according to Section 3, or if MMTC is entitled to terminate the contract according to Section 3, MMTC shall be entitled to demand and recover from the Vendor liquidated damages equivalent to 5% of the Contract value or the amount equivalent to Performance Bank Guarantee whichever is higher.
3. If the Buyer(s) /Vendor(s)/Bidder(s) can prove that the exclusion of the Buyer(s) /Vendor(s)/Bidder(s) from the tender/auction/e-auction/e-sale/sale/purchase process or the termination of the contract after the contract award has caused no damage or less damage than the amount of liquidated damages, the Buyer(s) /Vendor(s)/Bidder(s) may compensate only the damage in the amount proved. If MMTC can prove that the amount of the damage caused by the disqualification of the Buyer(s)/Vendor(s)/Bidder(s) before Contract Award or the termination of the Contract after the Contract Award is higher than the amount of the liquidated damages, it is entitled to claim compensation for the higher amount of the damages.

### **Section 5 – Previous transgression**

1. The Buyer(s)/Vendor(s)/Bidder(s) to declare 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.
2. If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or the contract, if already awarded and can be terminated for such reason.

**Section 6 – Equal treatment of all Buyer(s) /Vendor(s)/Bidder(s)**

1. MMTC will enter into agreements with identical conditions as this one with all Buyer(s) /Vendor(s)/Bidder(s) without any exception.
2. MMTC will disqualify from the tender process all Buyer(s)/Vendor(s)/Bidder(s) who do not sign this Pact or violate its provisions.

**Section 7 – Criminal charges against violating Buyer(s)/Vendor(s)/Bidder(s)**

If MMTC obtains knowledge of conduct of Buyer(s)/Vendor(s)/Bidder(s) or of an employee or a representative or an associate of Buyer(s)/Vendor(s)/Bidder(s), which constitutes corruption, or if MMTC has substantive suspicion in this regard, MMTC will inform the same to its Chief Vigilance Officer and/or appropriate Govt. authorities such as CBI.

**Section 8 – Independent External Monitor(s)**

1. MMTC appoints competent and credible Independent External Monitor (IEM) for this Pact. The task of the IEM is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
2. The IEM is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He reports to the CMD, MMTC.
3. The IEM has the right to access without restriction to all trade/project related documentation of MMTC. The Buyer(s)/Vendor(s)/Bidder(s) will also grant the IEM, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his trade/project documentation. The IEM is under contractual obligation to treat the information and documents of the Buyer(s)/Vendor(s)/Bidder(s) with confidentiality.
4. MMTC will provide the IEM sufficient information about all meetings among the parties related to the project/contract provided as meetings could have an impact on the contractual relations between MMTC and the vendor. The parties offer to the IEM the option to participate in such meetings.
5. As soon as the IEM notices, or believes to notice, a violation of this agreement, he will so inform the Management of MMTC and request the Management to discontinue or take corrective action, or to take other relevant action. The IEM can in this regard submit NON-BINDING RECOMMENDATIONS. Beyond this, the IEM has not right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.
6. The IEM will submit a written report to the CMD, MMTC within 4 to 6 weeks from the date of reference or intimation to him by MMTC and, should the occasion arise, submit proposals for correcting problematic situations.
7. If the IEM has reported to the CMD, MMTC, a substantiated suspicion of an offence under relevant Anti-Corruption Laws of India, and the CMD, MMTC, has not, within the reasonable time taken visible action to proceed against such offence or reported it to its Chief Vigilance Officer, the IEM may also transmit this information directly to the Central Vigilance Commissioner, Govt. of India.
8. The word “**IEM**” would include both singular and plural.

**Section 9 – Pact Duration**

1. This Pact begins when both parties have legally signed it. It expires for the Vendor 12 months after the last payment under the contract, and for all other Bidders, 6 months after the Contract has been awarded.
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 pact as specified above, unless it is discharged/determined by CMD, MMTC.

**Section 10 – Other provisions**

1. This agreement is subject to Indian Law, Place of performance and jurisdiction is the Registered Office of MMTC, i.e. New Delhi.
2. Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.

3. If the Vendor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.
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 & on behalf of MMTC)  
(Office Seal)

.....  
(For & on behalf of Bidder)  
(Office Seal)

Place : .....

Date : .....

Witness 1 : .....

Name :

Address :

Witness 2 : .....

Name :

Address :

**Note:** The bidder are advised to communicate with the Independent External Monitors (IEMs) only in case of complaints relating to integrity pact. The details are as follows:-

Shri. Bijoy Chatterjee

[bijoychat@gmail.com](mailto:bijoychat@gmail.com)

Shri. D.R.S. Chaudhary

[dilip.chaudhary@icloud.com](mailto:dilip.chaudhary@icloud.com)

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END OF RFP DOCUMENT

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