

## THE HIGH COURT OF KERALA

J1(F)-92740/2015

Kochi:682031  
Dated :26.09.2016

### GENERAL CONDITIONS

Sealed tenders are invited for the Annual Maintenance Contract of 3 Nos of X-ray Baggage Scanners (Model No. 6545 of M/s Astrophysics Inc., USA) installed in the High Court.

Tender Number	J1(F)-92740/2015
Due date and time for receipt of tenders	18.10. 2016 up to 2.00 p.m
Date and time for opening of tenders	18.10.2016 at 3.00 p.m
Designation and address of officer to whom the tenders are to be addressed	The Registrar (Administration), High Court of Kerala, Ernakulam - 31.
<u>Superscription:</u> "No.J1(F)-92740/2015 -Tender for the Annual Maintenance Contract of 3 Nos of X-ray Baggage Scanners (Model No. 6545 of M/s Astrophysics Inc., USA) installed in the High Court".	

1. The tenders should be addressed to the officer mentioned below in a sealed cover with the tender number and name shown below duly superscribed on the cover.
2. Intending tenderers should send their tenders so as to reach the Registrar (Administration) on due date and time (noted below). No tender received after the specified date and time will be accepted on any account. Tenderers can submit the tenders in their own commercial papers.
3. (a) Every tenderer who has not registered his name with the state Government (Stores Purchase Department), should send along with his tender, an earnest money of one per cent of the total cost of the articles tendered for (rounded to the nearest rupee) subject to a minimum of ₹ 1500, if the amount calculated at one per cent of the value of the articles tendered for falls below ₹ 1500. The amount may be paid either by remittance into any Government Treasury in chalans in duplicate, duly countersigned by the officer mentioned below or by Demand Drafts (crossed) on the local branch of State Bank of Travancore/State Bank of India drawn in favour of the officer mentioned below. In the case of remittance into the treasury, chalan receipt should be forwarded along with the tender. Cheques will not be accepted. The earnest money of the unsuccessful tenderers will be returned as

early as possible after the tenders are settled; but that of the successful tenderers will be adjusted towards the security that will have to be deposited for the satisfactory fulfillment of the contract.

(b) Tenderers whose names are registered with Government (Stores Purchase Department) are generally exempted from furnishing earnest money for such articles for which they have registered their names. If they tender for stores other than those for which they have registered their names, they will have to furnish earnest money as in the case of unregistered firms. Registered firms will have to quote invariably in every tender they submit the registration number assigned to them by the Stores Purchase Department.

(c) (i) Micro, Small & Medium Enterprises and Cottage Industries and Industrial co-operatives within the State which are certified as such by the Director of Industries and commerce or by the Regional Joint Directors of Industries and Commerce will be exempted from furnishing earnest money deposits in support of tenders submitted by them to Government Departments. The Khadi and village Industries Co-operative Societies and the institutions registered under the Literary, Scientific and Charitable Societies Act and financed by the Kerala Khadi and Village Industries Board within that State which are certified as such by the Secretary, Kerala Khadi Village Industries Board will be exempted from furnishing earnest money deposits in support of tenders submitted by them to Government Departments. Government Institutions/State Public Sector Industries which manufacture and supply stores will also be exempted from furnishing earnest money for tenders submitted by them.

(ii) Micro and Small Enterprises and Industrial Co-operatives within the State which have been registered as such with the Industries Department (Department under the control of the Director of Industries and Commerce) on furnishing proof of such registration will be exempted from furnishing security deposit against contracts for supply of stores manufactured by them provided that an officer of and above the rank of Deputy Director of Industries and commerce having jurisdiction over the area also certifies to the soundness and reliability of the concerns to undertake the contracts. The Khadi and Village Industries Co-operative Societies within the State which have been registered as such with the Kerala Khadi and Village Industries Board and the institutions registered under the Literary, Scientific and Charitable Societies Act and which are financed by the Board within the State on furnishing proof of such registration will be exempted from furnishing security deposits against contracts for supply of stores manufactured by them provided that the Secretary, Kerala Khadi and Village Industries Board also certifies to the soundness and reliability of the concerns to undertake the contracts.

Government Institutions or any Institutions listed in Annexure 16 which supplies stores, and Government of India Undertaking will also be exempted from furnishing security in respect of contracts for supply of stores.

(d) In the matter of purchase of stores by the State Government Departments, Small Scale Industrial Units sponsored by the National Small Scale Industries Corporation Limited, New Delhi and in respect of which competency certificates are issued by the Corporation will be exempted from payment of Earnest Money Deposits and Security Deposits.

4. The tenders will be opened on the appointed day and time in the office of the undersigned, in the presence of such of those tenderers or their nominees who may be present at that time.

5. If any tenderer withdraws from his tender before the expiry of the period fixed for keeping the rates firm for acceptance, the earnest money if, any, deposited by him will be forfeited to Government or such action taken against him as High Court think fit.

6. Tenderers shall invariably specify in their tenders the maintenance conditions.

7. The final acceptance of the tenders rests entirely with the High Court who do not bind themselves to accept the lowest or any tender. But the tenderers on their part should be prepared to carry out such portion of the maintenance included in their tenders as may be allotted to them.

8. Communication of acceptance of the tender normally constitutes a concluded contract. Nevertheless, the successful tenderer shall also execute an agreement for the due fulfillment of the contract within the period to be specified in the letter of acceptance. The contractor shall have to pay all stamp duty, lawyer's charges and other expenses incidental to the execution of the agreement. Failure to execute the agreement within the period specified will entail the penalties set out in para 11 below.

9. (a) The successful tenderer shall, before signing the agreement and within the period specified in the letter of acceptance of his tender deposit a sum equivalent to 2.5 per cent of the contract price as performance security for the satisfactory fulfillment of the contract. The amount of security may be deposited in the manner prescribed in clause 3 supra or in Government Treasury Savings Bank and the Pass Book pledged to Purchasing Officer or in Fixed Deposit Receipts of State Bank of Travancore/State Bank of India endorsed in favour of the above officer. Letters of guarantee in the prescribed form for the amount of security from an approved Bank will also be considered enough at the discretion of

government. If the successful tenderer fails to deposit the security and execute the agreement as stated above, the earnest money deposited by him will be forfeited to Government and contract arranged elsewhere at the defaulter's risk and any loss incurred by Government on account of the purchase will be recovered from the defaulter who will, however, not be entitled to any gain accruing thereby. If the defaulting firm is a registered firm their registration is liable to be cancelled.

(b) In cases where a successful tenderer, after having made partial supports fails to fulfil the contracts in full, all or any of the maintenance not provided may, at the discretion of the Purchasing Officer, be got served by means of another tender/quotation or by negotiation or from the next higher tenderer who had offered to supply already and the loss, if any, caused to the Government shall thereby together with such sums as may be fixed by the Government towards damages be recovered from the defaulting tenderer.

(c) Even in cases where no alternate maintenances are arranged for the maintenances not provided, the proportionate portion of the security deposit based on the cost of the maintenance not provided at the rate shown in the tender of the defaulter shall be forfeited and balance alone shall be refunded.

(d) If the contractor fails to perform the service within the time/period(s) specified in the contract (within 72 hours in this contract), the High Court shall without prejudice to its other remedies under the contract, deduct from the contract price as downtime payment, a sum equivalent to 0.5% or 1% of the contract price for each week of delay until actual performance, upto a maximum deduction of 10% of the contract price. Once the maximum is reached, the purchaser may consider termination of the contract at the risk and cost of the contractor.

10. The security deposit shall, subject to the conditions specified herein, be returned to the contractor after the expiration of the contract as early as possible, but in the event of any dispute arising between the High Court and the contractor, the High Court shall be entitled to deduct out of the deposits or the balance thereof, until such dispute is determined the amount of such damages, costs, charges and expenses as may be claimed. The same may also be deducted from any other sum which may be due at any time from High Court to the contractor.

11. (a) All payments to the contractors will be made by the Purchasing Officer in due course:-

(i) either by Departmental cheques payable at the Kerala Government Treasuries;  
or

(ii) by cheques or drafts on the Reserve Bank of India, State Bank of India and State Bank of Travancore (at any of their Principal Branches in India).

(b) All incidental expenses incurred by the High Court for making payments outside the district in which the claim arises shall be borne by the contractor.

12. Payments will be made only after the satisfactory completion of the maintenance contract.

13. The contractor shall not assign or make over the contract on the benefits or burdens thereof to any other person or body corporate. The contractor shall not underlet or sublet to any person or persons or body corporate the execution of the contract or any part thereof without the consent in writing of the purchasing officer who shall have absolute power to refuse such consent or to rescind such consent (if given) at any time if he is not satisfied with the manner in which the contract is being executed and no allowance or compensation shall be made to the contractor or the sub-contractor upon such rescission. Provided always that if such consent be given at any time, the contractor shall not be relieved from any obligation, duty or responsibility under this contract.

14. (a) In case the contractor becomes insolvent or goes into liquidation, or makes or proposes to make any assignment for the benefit of his creditors or proposes any composition with his creditors for the settlement of his debts, carries on his business or the contract under inspection on behalf of or his creditors, or in case any receiving order or orders, for the administration of his estate are made against him or in case the contractor shall commit any act of insolvency or case in which under any clause or clauses of this contract the contractor shall have rendered himself liable to damages amounting to the whole of his security deposits, the contract shall, thereupon, after notice given by the purchasing Officer to the contractor, be determined and the Department/ Government may complete the contract in such time and manner and by such persons as the Department/Government shall think fit. But such determination of the contract shall be without any prejudice to any right or remedy of the Government against the contractor or his sureties in respect of any breach of contract therefore committed by the contractor. All expenses and damages caused to Government by any breach of contract by the contractor shall be paid by the contractor to Government, and may be recovered from him under the provisions of the Revenue Recovery Act in force in the State.

15. (a) In case the contractor fails to supply and deliver any of the said articles and things within the time provided for delivery of the same, or in case the contractor commits any breach of any of the covenants, stipulations and agreements herein contained, and on his part to be observed and performed, then and in any

such case, it shall be lawful for High Court (if they shall think fit to do so) to arrange service from elsewhere or on behalf of the High Court by an order in writing under the hand of the Purchasing Officer put an end to this contract and in case the High Court shall have incurred, sustained or been put to any costs, damages or expenses by reason of such purchase or by reason of this contract having been so put an end to or in case any difference in price, compensation, loss, costs, damages, expenses or other money shall then or any time during the continuance of this contract be payable by the contractor to the High Court under and by virtue of this contract, it shall be lawful for the Government from and out of any moneys for the time being payable or owing to the contractor from the High Court under or by virtue of this contract or otherwise to pay and reimburse to the High Court all such costs, damages and expenses they may have sustained, incurred or been put to by reason of the purchase made elsewhere or by reason of this contract having been so put an end to as aforesaid and also all such difference in price, compensation, loss, costs, damages, expenses and other moneys as shall for the time being be payable by the contractor aforesaid.

(b) In case any difference or dispute arises in connection with the contract, all legal proceeding relating to the matter shall be instituted at Ernakulam.

16. Any sum of money due and payable to the contractor (including security deposit returnable to him) under this contract may be appropriated by the Purchasing Officer or Government or any other person authorized by High Court and set off against any claim of the Purchasing Officer or High Court for the payment of a sum of money arising out of or under any other contract made by the contractor with the Purchasing Officer or High Court or any other person authorized by High Court. Any sum of money due and payable to the successful tenderer or contractor from High Court shall be adjusted against any sum of money due to High Court from him under any other contracts.

17. The tenderer shall undertake to provide maintenance according to the specifications. The tenderer shall undertake that while replacing the unservicable parts, the parts replaced will have to be either new parts or equivalent in performance to new parts of the same brand or other brands on par or superior to it.

18. Any attempt on the part of the tenderers or their agents to influence the Officers concerned will disqualify the tenderers.

19. Tenderers should be prepared to accept orders subject to the penalty clause for forfeiture of security in the event of default in maintenance.

20. (a) The prices quoted should be inclusive of all taxes, duties, cesses, etc., which are or may become payable by the contractor under existing or future laws or rules of the country of origin/supply or delivery during the course of execution of the contract.

(b) In case payment of customs/excise duty is to be made by the Purchasing Officer, the Purchasing Officer will pay the duty on the "unloaded invoice price" only in the first instance, any difference being paid when the tenderer produces, the final assessment orders later.


21. The tenderer will invariably furnish the following certificate with their bills for payment:-

"Certified that the goods on which sales tax has been charged have not been exempted under the Central Sales Tax Act or States Sales Tax Act or the Rules made thereunder and the charges on account of sales tax on these goods are correct under the provisions of the relevant Act or the rules made thereunder, Certified further that we (or our Branch or agent) (Address) ..... are registered as dealers in the State of ..... under Registration No. .... for purposes of sales tax."

22. (This applies only to the case of supply contracts where works such as erection and construction have also to be done. This may be scored out when not applicable). In the event of any question or dispute arising under these conditions or any special conditions of this contract or in connection with this contract the same shall be referred to the award of an arbitrator to be nominated by the purchasing officer and an arbitrator to be nominated by the contractor or in case of the said arbitrators not agreeing then to the award of an umpire to be appointed by the arbitrators in writing before proceeding on the reference and the decision of the arbitration or in the event of their not agreeing of the umpire appointed by them shall be final and conclusive and the provision of the Indian Arbitration Act, 1940 and of the rules thereunder and any statutory modifications thereof shall be deemed to apply to and be incorporated in this contract. Upon every and any such reference the assessment of the costs incidental to their reference and award respectively shall be in the discretion of the arbitrators or in the event of their not agreeing of the umpire appointed by them. The venue of arbitration shall be the place from which the acceptance of tender is issued or such other place as the purchaser at his entire discretion may determine.

23. The tenderer should send along with his tender an agreement executed and signed in Kerala Stamp Paper of value ₹ 100/- purchased in the Kerala State. A specimen form of agreement is attached herewith. Tenders without the agreement in stamped paper will be rejected outright. But in deserving cases where agreement has not been received, the purchasing officer may exercise his discretion and call upon such tenderer to execute the agreement within a period of ten days from the date of issue of such intimation, if the Purchasing Officer is satisfied that the

omission to forward the agreement along with the tender was due to causes beyond the control of the tenderer and was not due to any negligence on his part. Agreement received from a tenderer after the above time limit will not be considered.



**K.R. JAYAPRAKASH NARAYANAN**  
**REGISTRAR (ADMINISTRATION)**

Station : Ernakulam

Date : 26.09.2016





## AGREEMENT

Articles of agreement executed on this the ..... day of ..... between the Registrar (Administration) (hereinafter referred to as "High Court of Kerala") of the one part and Shri. .... (H.E. name and address of the tenderer) (hereinafter referred to as "the bounden") of the other part.

WHEREAS in response to the Notification No:J1(F)- 92740/2015 dated the bounden has submitted to the High Court a tender for the Annual Maintenance Contract of 3 Nos of X-ray Baggage Scanners installed in the High Court, specification therein subject to the terms and conditions contained in the said tender;

WHEREAS the bounden has also deposited with the High Court a sum of ₹..... as earnest money for execution of an agreement undertaking the due fulfillment of the contract in case his tender is accepted by the High Court .

NOW THESE PRESENTS WITNESS and it is hereby mutually agreed as follows:

1. In case the tender submitted by the bounden is accepted by the High Court and the contract for Annual Maintenance Contract of 3 Nos of X-ray Baggage Scanners installed in the High Court is awarded to the bounden, the bounden shall within one month of acceptance of his tender execute an agreement with the High Court incorporating all the terms and conditions under which the High Court accepts his tender.
  
2. In case the bounden fails to execute the agreement as aforesaid incorporating the terms and conditions governing the contract, the High Court shall have power and authority to recover from the bounden any loss or damage caused to the High Court by such breach as may be determined by the High Court by

appropriating the earnest money deposited by the bounden and if the earnest money is found to be inadequate the deficit amount may be recovered from the bounden and his properties movable and immovable in the manner hereinafter contained.

3. All sums found due to the High Court under or by virtue of this agreement shall be recoverable from the bounden and his properties movable and immovable under the provisions of the Revenue Recovery Act for the time being in force as though such sums are arrears of land revenue and in such other manner as the High Court may deem fit.

In witness whereof Shri..... (H.E. name and designation) for and on behalf of the Registrar (Administration)

..... Bounden have hereunto set their hands the day and year shown against their respective signatures.

Signed by Shri. .... (date)  
.....

In the presence of witnesses:

1. ....
2. ....

Signed by Shri. .... (date)  
.....

In the presence of witnesses:

1. ....
2. ....