

ANNEXURE A

(to be submitted On Rs. 200/- Non-judicial stamp paper)

PRE CONTRACT INTEGRITY PACT

General

This pre-bid pre-contract Agreement (hereinafter called the Integrity Pact) is made on _____ day of the month of _____ between, on one hand, National Bank for Agriculture and Rural Development (NABARD), represented by Shri Kishan Singh, CGM, NABARD, Himachal Pradesh, R.O. Shimla (hereinafter called the "Employer", which expression shall mean and include, unless the context otherwise requires, his successors in office and assigns) of the First Part and M/s _____ represented by Shri _____, Chief Executive Officer (hereinafter called "Tenderer" which expression shall mean and include, unless the context otherwise requires, his successors and permitted assigns) of the Second Part.

WHEREAS the Employer proposes to carry out the work of "Internal renovation including installation of modular kitchen in 14 flats at Block 2, 14 & 16, Phase-III, Near to BCS, New Shimla, Shimla" and the Tenderer is willing to offer/ has offered the quotes and

WHEREAS THE Tenderer is a private company/ public company/ Government undertaking/ partnership/ registered export agency, constituted in accordance with the relevant law in the matter and the Employer is a body corporate established under NABARD Act, 1981 having its Head Office at Plot No. C-24, Block 'G', Bandra-Kurla Complex, Bandra(East), Mumbai.

NOW, THEREFORE,

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

Enabling the Employer to obtain the desired said stores/ equipment at a competitive price in conformity with the defined specifications by avoiding the high cost and the distortionary impact of corruption on public procurement and

Enabling Tenderers to abstain from bribing or indulging in any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also abstain

from bribing and other corrupt practices and the EMPLOYER will commit to prevent corruption, in any form, by its officials by following transparent procedures.

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

Commitments of the Employer

- 1.1 The Employer undertakes that no official of the Employer, connected directly or indirectly with the contract, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit of any other advantage form the TENDERER, either for themselves or for any person, organization or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to the contract.
- 1.2 The Employer will, during the pre-contract stage, treat all TENDERERS alike and will provide to all TENDERERS the same information and will not provide any such information to any particular TENDERER which could afford an advantage to that particular TENDERER in comparison to other TENDERERS.
- 1.3 All the officials of the EMPLOYER will report to the appropriate Government office any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.
- 2 In case any such preceding misconduct on the part of such official(s) is reported by the TENDERER to the EMPLOYER with full and verifiable facts and the same is prima facie found to the correct by the EMPLOYER, necessary disciplinary proceedings, or any other action as deemed fit including criminal proceedings may be initiated by the EMPLOYER and such a person shall be debarred from further dealings related to the contract process. In such a case while an enquiry in being conducted by the EMPLOYER the proceedings under the contract would not be stalled.

Commitments of TENDERERS

- 3 The TENDERER commits itself to take all measures to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during an pre-contract or post-contract stage in order to secure the contract or in furtherance to secure it and in particular commit itself to the following :-
 - 3.1 The TENDERER will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the EMPLOYER, connected directly or indirectly with the bidding process, or to any person, organization or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.
 - 3.2 The TENDERER further undertakes that it has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or

immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the EMPLOYER or otherwise in procuring the Contract or forbearing to do or having done any act in relation to the obtaining or execution of the contract or any other contract with the Bank for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Bank.

- 3.3 TENDERERS shall disclose the name and address of agents and representatives and Indian TENDERERS shall disclose their foreign principles or associates.
- 3.4 TENDERERS shall disclose the payments to be made by them to agents/ brokers or any other intermediary, in connection with this bid/ contract.
- 3.5 The TENDERER further confirms and declares to the EMPLOYER that the TENDERER is the original manufacturer/ integrator/ authorized government sponsored export entity of the defence stores and has not engaged any individual or firm or company whether Indian or foreign to intercede, facilitate or in any way to recommend to the EMPLOYER or any of its functionaries, whether officially or unofficially to the award of the contract to the TENDERER, nor has any amount been paid, promised or intended to be paid to any such individual, firm or company in respect of any such intercession, facilitation or recommendation.
- 3.6 The TENDERER, either while presenting the bid or during pre-contract negotiations or before signing the contract, shall disclose any payments he has made, is committed to or intends to make to officials of the EMPLOYER or their family members, agents, brokers or any other intermediaries in connection with the contract and the details of services agreed upon for such payments.
- 3.7 The TENDERER will not collude with other parties interested in the contract to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract.
- 3.8 The TENDERER will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.
- 3.9 The TENDERER shall not use improperly for purposes of competition or personal gain or pass on to others, any information provided by the EMPLOYER as part of the business relationship regarding plans, technical proposals and business details, including information contained in any electronic data carrier. The TENDERER also undertakes to exercise due and adequate care lest any such information is divulged.
- 3.10 The TENDERER commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.
- 3.11 The TENDERER shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.
- 3.12 If the TENDERER or any employee of the TENDERER or any person acting on behalf of the TENDERER either directly or indirectly is a relative of any of the officers of the

EMPLOYER, or alternatively if any relative of an officer of the EMPLOYER has financial interest/ stake in the TENDERER's firm, the same shall be disclosed by the TENDERER at the time of filling of tender.

The term 'relative' for this purpose would be as defined in Section 6 of the Companies Act 1986.

3.13 The TENDERER shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the EMPLOYER.

4. **Previous Transgression**

4.1 The TENDERER declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprises in India or any Government Department in India that could justify TENDERER's exclusion from the tender process.

4.2 The TENDERER agrees that if it makes incorrect statement on this subject, TENDERER can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

5. **Earnest Money (Security Deposit)**

5.1 While submitting commercial bid, the TENDERER shall deposit an amount Rs.3,30,00/- as Earnest Money/ Security Deposit, with the EMPLOYER through Bank Draft or a Pay Order in favour of NABARD

5.2 The Earnest Money/ Security Deposit shall be valid upto a period of one year or the complete conclusion of the contractual obligations to the complete satisfaction of both the TENDERER and the EMPLOYER, including defect liability period, whichever is later.

5.3 In case of the successful TENDERER a clause would also be incorporated in the Article pertaining to Performance Bond in the Purchase Contract that the provisions of Sanctions for Violation shall be applicable for forfeiture of Performance Bond in case of a decision by the EMPLOYER to forfeit the same without assigning any reason for imposing sanction for violation of this Pact.

5.4 No interest shall be payable by the EMPLOYER to the TENDERER on Earnest Money/ Security Deposit for the period of its currency.

6. **Sanctions for Violations**

6.1 Any breach of the aforesaid provisions by the TENDERER or any one employed by it or acting on its behalf (whether with or without the knowledge of the TENDERER) shall entitle the EMPLOYER to take all or any one of the following actions, wherever required :-

- i. To immediately call off the pre-contract negotiations without assigning any reason or giving any compensation to the TENDERER. However, the proceedings with the other TENDERER(s) would continue.
- ii. The Earnest Money Deposit (in pre-contract stage) and/ or Security Deposit/ Performance Bond (after the contract is signed) shall stand forfeited either fully or partially as decided by the EMPLOYER and the EMPLOYER shall not be required to assign any reason therefore.
- iii. To immediately cancel the contract, if already signed, without giving any compensation to the TENDERER.
- iv. To recover all sums already paid by the EMPLOYER, and in case of an Indian TENDERER with interest thereon at 2% higher than the prevailing Prime Lending Rate of State Bank of India, while in case of a TENDERER from a country other than India with interest thereon at 2%, higher than the LIBOR. If any outstanding payment is due to the TENDERER from the EMPLOYER in connection with another contract for any other stores, such outstanding payment could also be utilized to recover the aforesaid sum and interest.
- v. To encash the advance bank guarantee and performance bond/ warranty bond, if furnished by the TENDERER, in order to recover the payments, already made by the EMPLOYER, along with interest.
- vi. To cancel all or any other contracts with TENDERER. The TENDERER shall be liable to pay compensation for any loss or damage to the EMPLOYER resulting from such cancellation/ rescission and the EMPLOYER shall be entitled to deduct the amount so payable from the money(s) due to the TENDERER.
- vii. To debar the TENDERER from participating in future bidding processes of the Government of India for a minimum period of five years, which may be further extended at the discretion of the EMPLOYER.
- viii. To recover all sums paid in violation of this Pact by TENDERER(S) to any middleman or agent or broker with a view to securing the contract.
- ix. In cases where irrevocable Letters of Credit have been received in respect of any contract signed by the EMPLOYER with the TENDERER, the same shall not be opened.
- x. Forfeiture of Performance Bond in case of a decision by the EMPLOYER to forfeit the same without assigning any reason for imposing sanction for violation of this Pact.

6.2 The EMPLOYER will be entitled to take all or any of the actions mentioned at para 6.1(i) to (x) of this Pact also on the Commission by the TENDERER or any one employed by it or acting on its behalf (whether with or without the knowledge of the TENDERER), of an offence as defined in Chapter IX of the Indian Penal code, 1860 or Prevention of Corruption Act, 1988 or any other statute enacted for prevention of corruption.

6.3 The decision of the EMPLOYER to the effect that a breach of the provisions of the Pact has been committed by the TENDERER shall be final and conclusive on the TENDERER. However, the TENDERER can approach the Independent Monitor(s) appointed for the purposes of this Pact.

7 Fall Clause

7.1 The TENDERER undertakes that it has not supplied/s not supplying similar product/ systems or subsystems at a price lower than that offered in the present bid in respect of any

other Ministry/ Department of the Government of India or PSU and it is found at any stage that similar product/ systems or sub systems was supplied by the TENDERER to any other Ministry/ Department of the Government of India or a PSU at a lower price, then that very price, with due allowance for elapsed time, will be applicable to the present case and the difference in the cost would be refunded by the TENDERER to the EMPLOYER, if the contract has already been concluded.

8. Independent Monitors

8.1 The EMPLOYER has appointed Independent Monitor Shri Debabrata Sarkar(hereinafter referred to as Monitor) for this Pact in consultation with the Central Vigilance Commission.

8.2 The task of the Monitor shall be to review independently and objectively, whether and to what extent the parties comply with the obligations under this Pact.

8.3 The Monitor shall not be subject to instructions by the representatives of the parties and perform their functions neutrally and independently.

8.4 Both the parties accept that the Monitors have the right to access all the documents relating to the project/ procurement, including minutes of meetings.

8.5 As soon as the Monitor notices or has reason to believe, a violation of this Pact, he will so inform the Authority designated by the EMPLOYER.

8.6 The TENDERER(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the EMPLOYER including that provided by the TENDERER. The TENDERER will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors. The Monitor shall be under contractual obligation to treat the information and documents of the TENDERER/ Subcontractor(s) with confidentiality.

8.7 The EMPLOYER will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the parties. The parties will offer to the Monitor the option to participate in such meetings.

8.8 The Monitor will submit a written report to the designated Authority of EMPLOYER within 8 to 10 weeks from the date of reference or intimation to him by the EMPLOYER/ TENDERER and should the occasion arise submit proposals for correcting problematic situations.

9. Facilitation of Investigation

In case of any allegation of violation of any provisions of this Pact or payment of commission, the EMPLOYER or its agencies shall be entitled to examine all the documents including the Books of Accounts of the TENDERER and the TENDERER shall provide necessary information

and documents in English and shall extend all possible help for the purpose of such examination.

10 Law and Place of Jurisdiction

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

11. Other Legal Actions

The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.

12. Validity

12.1 The validity of this Integrity Pact shall be from date of its signing and extend up to 5 years or the complete execution of the contract to the satisfaction of both the EMPLOYER and the TENDERER/ Seller, including warranty period, whichever is later in case TENDERER is unsuccessful, this Integrity Pact shall expire after six months from the date of the signing of the contract.

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

13 The parties hereby sign this Integrity Pact at _____ on - _____.

EMPLOYER

TENDERER

Name of the Officer

Chief Executive Officer

Designation

NABARD

Witness

Witness

1. _____

1. _____

2. _____

2. _____

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