

File No. C-13011/25/2019-Vig.

**MINISTRY OF FOOD PROCESSING INDUSTRIES
(Vigilance Wing)**

Dated: 07.01.2020

INTEGRITY PACT

Ministry of Food Processing Industries (MoFPI) has decided that from now onwards, a pre-contract Integrity Pact (IP) would be signed between the Ministry and the prospective bidders / sellers/ Applicants for all procurement / projects with financial commitment of MoFPI above 5(five) crore. The proposal would also be applicable to all autonomous bodies of the Ministry i.e. National Institute of Food Technology Entrepreneurship and Management (NIFTEM) and Indian Institute of Food Processing Technology (IIFPT).

2. The IP essentially envisages an agreement between prospective vendors / bidders/applicants, and MoFPI, committing the persons / officials of both sides not to resort to any corrupt practice in any aspect of the contract at any stage. Only those vendors / bidders/applicants, who commit themselves to IP with MoFPI, would be considered competent to participate in the bid process. Any violation would entail disqualification of the bidders/applicants and exclusion from future business dealings. IP, in respect of a particular contract should cover all phases of the contract, from the stage of Notice inviting Tender (NIT) / pre-bid stage, till the conclusion of the contract i.e. final payment or the warranty / guarantee period.

3. The Integrity Pacts would be implemented through a panel of three Independent External Monitors (IEMs), being appointed by the Ministry, as per guidelines of Central Vigilance Commission (CVC). The names of the IEMs who will be engaged with the approval of CVC will be mentioned in the NIT. The IEM would review independently and objectively assess, as to whether and to what extent parties have complied with their obligations under the IP. IEM would have access to all contract documents, whenever required. The bidders/applicants may raise disputes / complaints if any, with the IEM. The IEMs would examine complaints received by them and give their recommendations / views to the Chief Vigilance Officer of the Ministry of Food Processing Industries. Recommendations of IEMs would be in the nature of advice and would not be legally binding. Their role is independent in nature and the advice once tendered would not be subject to review at the request of the organization. Ministry of Food Processing will place the names of IEMs in the public domain.

4. This issues with the approval of the Hon'ble Minister, FPI.


(Tual Za Kaam)

Under Secretary to Govt. of India

Encls: Integrity Pact of MoFPI

To,

All Concerned

TUAL ZA KAM
Under Secretary
Ministry of Food Processing Industries
Govt. of India
Panchsheel Bhawan August Kranti Marg
New Delhi-110049

TEXT OF THE PRE-CONTRACT INTEGRITY PACT

PRE-CONTRACT INTEGRITY PACT
BETWEEN
MINISTRY OF FOOD PROCESSING INDUSTRIES
AND

(Name of Applicant/company)

General

This pre-bid pre-contract Agreement (hereinafter called the Integrity Pact) is made on ____ day of the ____ (month and year) between, on one hand, the President of India, acting through Shri _____, (Additional Secretary/Joint Secretary of concerned Division), Ministry of Food Processing Industries, Government of India (hereinafter called the "MoFPI", 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 _____, CEO/MD/ED/Director/Partner/Proprietor (hereinafter called the "BIDDER/SELLER/APPLICANT" which expression shall mean and include, unless the context otherwise requires, his successors and permitted assigns) of the Second Part.

WHEREAS the MoFPI proposes to procure (name of the Stores/ Equipment/ Item/Service) and the BIDDER/Seller/Applicant is willing to offer/has offered the stores/Equipment/Item/Service/and

WHEREAS the BIDDER/ APPLICANT is a private company/public company/Government undertaking/partnership/registered export agency, constituted in accordance with the relevant law in the matter and the MoFPI is a Ministry of the Government of India performing its functions on behalf of the President of India.

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 entered into with a view to:

Enabling the MoFPI 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 BIDDERS/APPLICANTS 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 MoFPI will commit to prevent corruption, in any form, by its officials by following transparent procedures.

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


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Under Secretary
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Govt. of India
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Commitments of the MoFPI

1.1. The MoFPI undertakes that no official of the MoFPI, connected directly or indirectly with the contract, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the BIDDER/APPLICANT, 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 MoFPI will, during the pre-contract stage, treat all BIDDERS/APPLICANTS alike, and will provide to all BIDDERS/ APPLICANTS the same information and will not provide any such information to any particular BIDDER/ APPLICANT which could afford an advantage to that particular BIDDER/APPLICANT in comparison to other BIDDERS/APPLICANTS.

1.3. All the officials of the MoFPI 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 BIDDER/ APPLICANT to the MoFPI with full and verifiable facts and the same is prima facie found to be correct by the MoFPI, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the MoFPI and such a person shall be debarred from further dealings related to the contract process. In such a case while an enquiry is being conducted by the MoFPI the proceedings under the contract would not be stalled.

Commitments of BIDDERS/ APPLICANTS


3. The BIDDER/ APPLICANT commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any pre-contract or post-contract stage in order to secure the contract or in furtherance to secure it and in particular commit itself to the following:

3.1. The BIDDER/ APPLICANT will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the MoFPI, 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 BIDDER/ APPLICANT 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 MoFPI 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 Government for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Government.

3.3. BIDDERS/ APPLICANTS shall disclose the name and address of agents and representatives and Indian BIDDERS shall disclose their foreign principals or associates.

3.4. BIDDERS/APPLICANTS shall disclose the payments to be made by them to agents/ brokers or any other intermediary, in connection with this bid/contract.


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3.5. The BIDDER/ APPLICANT further confirms and declares to the MoFPI that the BIDDER/ APPLICANT is the original manufacturer / integrator/ authorized government sponsored export entity of the stores and has not engaged any individual or firm or company whether Indian or foreign to intercede, facilitate or in any way to recommend to the MoFPI or any of its functionaries, whether officially or unofficially to the award of the contract to the BIDDER/ APPLICANT, 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 BIDDER/ APPLICANT, 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 MoFPI 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 BIDDER/ APPLICANT 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 BIDDER/ APPLICANT will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.

3.9. The BIDDER/ APPLICANT shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information provided by the MoFPI as part of the business relationship, regarding plans, technical proposals and business details, including information contained in any electronic data carrier. The BIDDER/ APPLICANT also undertakes to exercise due and adequate care lest any such information is divulged.

3.10. The BIDDER/ APPLICANT commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.

3.11. The BIDDER/ APPLICANT shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.

3.12. If the BIDDER/ APPLICANT or any employee of the BIDDER/ APPLICANT or any person acting on behalf of the BIDDER/ APPLICANT, either directly or indirectly, is a relative of any of the officers of the MoFPI, or alternatively, if any relative of an officer of the MoFPI has financial interest/stake in the BIDDER's/ APPLICANT's firm, the same shall be disclosed by the BIDDER/ APPLICANT at the time of filing of tender.


The term 'relative' for this purpose would be as defined in Section 6 of the Companies Act, 1956.

3.13. The BIDDER/ APPLICANT 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 MoFPI.

4. Previous Transgression

4.1. The BIDDER/ APPLICANT 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 Enterprise in India or any Government Department in India that could justify BIDDER's/APPLICANT's exclusion from the tender process.

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


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5. Earnest Money (Security Deposit)

5.1. While submitting commercial bid, the BIDDER/ APPLICANT shall deposit an amount _____ as specified in the RFP/Bid documents/ RFP as Earnest Money/Security Deposit, with the MoFPI through any of the following instruments:

(i) Any mode of payment or through any other instrument, as stated in RFP/EOI/Bid Documents.

5.2. The Earnest Money / Security Deposit shall be valid upto a period of ---- (as specified in RFP/EOI/Bid Documents) years or the complete conclusion of the contractual obligations to the complete satisfaction of both the BIDDER/ APPLICANT and the MoFPI, including warranty period, whichever is later.

5.3. In case of the successful BIDDER/ APPLICANT 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 MoFPI 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 MoFPI to the BIDDER/ APPLICANT 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 BIDDER/ APPLICANT or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER/ APPLICANT) shall entitle the MoFPI 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 BIDDER/ APPLICANT. However, the proceedings with the other BIDDER(s)/ APPLICANT (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 MoFPI and the MoFPI shall not be required to assign any reason therefor.

(iii) To immediately cancel the contract, if already signed, without giving any compensation to the BIDDER/ APPLICANT.

(iv) To recover all sums already paid by the MoFPI, and in case of an Indian BIDDER/ APPLICANT with interest thereon at 2% higher than the prevailing Prime Lending Rate of State Bank of India, while in case of a BIDDER/ APPLICANT from a country other than India with interest thereon at 2% higher than the LIBOR. If any outstanding payment is due to the BIDDER/ APPLICANT from the MoFPI in connection with any other contract for any other stores, such outstanding payment could also be utilized to recover the aforesaid sum and interest.

(v) To encash the advance bank guarantee and performance bond/warranty bond, if furnished by the BIDDER/ APPLICANT, in order to recover the payments, already made by the MoFPI, along with interest.

(vi) To cancel all or any other Contracts with the BIDDER/ APPLICANT. The BIDDER/ APPLICANT shall be liable to pay compensation for any loss or damage to the MoFPI resulting


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from such cancellation/rescission and the MoFPI shall be entitled to deduct the amount so payable from the money(s) due to the BIDDER/ APPLICANT.

(vii) To debar the BIDDER/ APPLICANT 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 MoFPI.

(viii) To recover all sums paid in violation of this Pact by BIDDER(s)/ APPLICANT(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 MoFPI with the BIDDER/ APPLICANT, the same shall not be opened.

(x) Forfeiture of Performance Bond in case of a decision by the MoFPI to forfeit the same without assigning any reason for imposing sanction for violation of this Pact.

6.2. The MoFPI 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 BIDDER/ APPLICANT or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER/ APPLICANT), 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 MoFPI to the effect that a breach of the provisions of this Pact has been committed by the BIDDER/ APPLICANT shall be final and conclusive on the BIDDER/ APPLICANT. However, the BIDDER/ APPLICANT can approach the Independent Monitor(s) appointed for the purposes of this Pact.

7. Fall Clause

7.1. The BIDDER/ APPLICANT undertakes that it has not supplied/is 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 if it is found at any stage that similar product/systems or sub system was supplied by the BIDDER/ APPLICANT 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 BIDDER/ APPLICANT to the MoFPI, if the contract has already been concluded.

8. Independent Monitors


8.1. There shall be Independent Monitors (hereinafter referred to as Monitors) appointed by the MoFPI for this Pact in consultation with the Central Vigilance Commission.

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

8.3. The Monitors 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 MoFPI.


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8.6. The BIDDER(s)/ APPLICANT(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the MoFPI including that provided by the BIDDER/ APPLICANT. The BIDDER/ APPLICANT 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 BIDDER/APPLICANT/Subcontractor(s) with confidentiality.

8.7. The MoFPI 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 Monitors will submit a written report to the Chief Vigilance Officer (CVO), Ministry of Food Processing Industries, within 8 to 10 weeks from the date of reference or intimation to him by the MoFPI / BIDDER/ APPLICANT 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 MoFPI or its agencies shall be entitled to examine all the documents including the Books of Accounts of the BIDDER/ APPLICANT and the BIDDER/ APPLICANT 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 MoFPI at New Delhi.

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 the date of its signing and extend upto 2 years or the complete execution of the contract to the satisfaction of both the MoFPI and the BIDDER/Seller/APPLICANT, including warranty period, whichever is later. In case BIDDER/ APPLICANT 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 New Delhi on _____


TUAL ZA KAM
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MoFPI
Name of the Officer-
Designation-

Ministry of Food Processing Industries

Witness

1. _____

2. _____

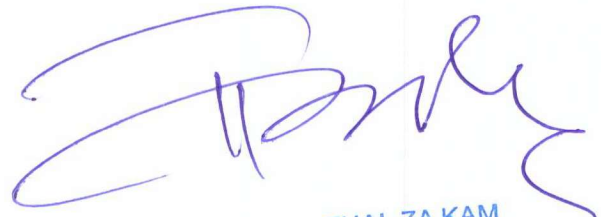
BIDDER/APPLICANT
Name of the Officer-
Designation-

M/s --

Witness

1. _____

2. _____



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