

PRE CONTRACT INTEGRITY PACT FOR CONTRACTS

This pre-bid pre-contract Agreement (hereinafter called the Integrity Pact) is made on ____ day of the month of _____ 2014, between M/s Rashtriya Chemicals and Fertilizers Limited, registered under Companies Act , 1956, having its registered office at “Priyadarshini” Eastern Express Highway, Sion , Mumbai 400 022 (hereinafter referred to as RCF, which expression shall mean and include, unless the context otherwise requires, its successors and assigns) of the First Part and M/s _____ a Company, firm incorporated under ----- Laws to which it is subject to (hereinafter called the “Bidder/Seller”, which expression shall mean and include, unless the context otherwise requires, its successors, heirs/legal representatives/administrator in office and assigns) of the Second Part.

Whereas

RCF has issued NIT----- dated----- inviting bids from Parties for undertaking-the Project /Work of----- at its unit located at----- (hereinafter referred to as the Project /Work).

The BIDDER is a private Company/Public Company/Government Undertaking / Partnership / registered export agency, constituted in accordance with the relevant law in the matter and RCF is PSU.

The Bidder is willing to offer/ has offered to carry out the Project/ Work and understands that this Integrity Pact has to be executed between the parties before RCF can consider the offer.

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 RCF to undertake the Project/Work at a competitive price in conformity with the defined specifications by avoiding the high costs and the distortinary impact of corruption on public procurement, and

Enabling BIDDER to abstain from bribing or indulging in any corrupt practices in order to secure the contract by providing assurance to them that their competitors will also abstain from bribing and other corrupt practices and RCF will commit to prevent corruption, in any form, by its officials by following transparent procedures.

In respect of the Project/Work an Independent Monitor shall be appointed by RCF to verify facts and to take necessary action, legal or otherwise as may be deemed appropriate including criminal proceedings, against the persons and /or Organizations indulging in the corrupt practice.

NOW, THEREFORE IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, THE PARTIES AGREE AS UNDER:

1. Commitments of RCF:

- 1.1 RCF undertakes that no official of RCF, connected directly or indirectly with the Project/Work, 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, either for themselves or for any other 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 RCF will, during the pre-contract stage, treat all BIDDERS alike, and will provide to all BIDDERS the same information and will not provide any such information to any particular BIDDER which could afford an advantage to that particular Bidder in comparison to other BIDDERS.
- 1.3. RCF will report to the Independent Monitor of any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach. RCF will also report to appropriate Government Office wherever necessary”.

2.0 Preceding misconduct:

- 2.1 In case any preceding misconduct on the part of any official(s) is reported by the BIDDER to the Independent Monitor with full and verifiable facts and the same is prima facie found to be correct by the Independent Monitor, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by RCF or the Independent Monitor and such a person shall be debarred from further dealings related to contract process. In such a case while an enquiry is being conducted by RCF the proceedings under the contract would not be stalled.

3. Commitments of BIDDER:

- 3.1 The BIDDER 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:
- 3.2 The BIDDER 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 RCF, 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.
- 3.3 The BIDDER 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 RCF 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

RCF for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with RCF.

- 3.4 BIDDER shall disclose the name(s) and address(es) of foreign principals, associates, agents and distributors, advisors, representatives and sub-contractors.
- 3.5 BIDDER shall disclose the payments to be made by them to agents/ brokers or any other intermediary, in connection with this bid/ contract.
- 3.6 The BIDDER further confirms and declares to RCF that he has not engaged any individual or firm or company, whether Indian or foreign, to intercede, facilitate or in any way to recommend to RCF or any of its functionaries, whether officially or unofficially to the award of the contract to the BIDDER, 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.
- 3.7 The BIDDER, either while presenting the bid or during pre-contract negotiations or before signing the contract, shall disclose complete details of any payments made, is committed to or intends to make to any officials of RCF 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.
- 3.8 The BIDDER 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.
- 3.9 The BIDDER will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.
- 3.10 The BIDDER shall not use improperly, for purposes of completion or personal gain, or pass on to others, any information provided by RCF as part of the business relationship, such as plans, technical proposals and business details including information contained in any electronic data carrier. The BIDDER also undertakes to exercise due and adequate care to ensure that no information is divulged to others.
- 3.11 The BIDDER commits to refrain from giving any complaint in connection with the Project, directly or through any other manner, without supporting it with full and verifiable facts.
- 3.12 The BIDDER shall not instigate or cause to instigate any third party to commit any of the actions aforestated.
- 3.13 If the BIDDER or any employee of the BIDDER or any person acting on behalf of the BIDDER, either directly or indirectly, is a relative of any of the employees of RCF, or, if any relative of an employee of RCF has financial interest/stake in the BIDDER, the same shall be disclosed by the BIDDER at the time of filing the tender.

The term `relative' for this purpose would be as defined in Companies Act, 1956 or any modifications thereof.

- 3.14 The BIDDER shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of RCF.

4. Previous Transgression

- 4.1 The BIDDER declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact with RCF, in respect of any corrupt practices envisaged hereunder, and/or with any Public Sector Enterprises/ Government department that could justify BIDDERS exclusion from the tender process.
- 4.2 The BIDDER agrees that if it makes incorrect statement on this subject, BIDDER can be disqualified from the tender process of the contract, and if already awarded, the Contract can be terminated for such reason.

5. Earnest Money / Security Deposit:

- 5.1 While submitting commercial bid, the BIDDER shall deposit an amount ____ [to be specified in NIT] as Earnest Money/Security Deposit, with RCF through any of the following instruments:
- [i] Bank draft or pay order in favour of
 - [ii] a confirmed guarantee by an Indian Nationalized Bank, promising payment of the guaranteed sum to the Buyer on demand within three working days without any demur whatsoever and without seeking any reasons whatsoever. The demand for payment by the Buyer shall be treated as conclusive proof of payment
 - [iii] any other mode or through any other instrument [to be specified in the NIT]
- 5.2 The amount and validity of the earnest Money/ Security Deposit shall be as mentioned in the NIT.
- 5.3 In case of the successful BIDDER 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 the decision by the BUYER 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 RCF to the BIDDER 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 or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER) shall entitle RCF 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. However, the proceedings with the other BIDDER(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 RCF, without assigning any reason therefor.
 - iii. To immediately cancel the contract, if already signed, without giving any compensation to the BIDDER.
 - iv. To recover all sums already paid by RCF, together with interest thereon at 2% higher than the prevailing Lending Rate of State Bank of India or at 2% higher than LIBOR as may be applicable based on whether the bidder is an Indian party or a foreign party. If any outstanding payment is due to the BIDDER from RCF in connection with any other contract for any other Project/Work/ Supply, 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, in order to recover the payments, already made by RCF, along with interest.
 - vi. To terminate all or any other Contracts with the BIDDER. The BIDDER shall be liable to pay compensation for any loss or damage to RCF resulting from such termination and RCF shall be entitled to deduct the amount so payable from the money(s) due to the BIDDER.
 - vii. To debar/blacklist the BIDDER from participating in future bidding processes of RCF for a minimum period of five years, which may be further extended at the discretion of RCF.
 - viii. To recover all sums paid, in violation of this Pact by BIDDER to any middleman or agent or broker, with a view to securing the contract.
 - ix. In case where irrevocable Letters of Credit have been opened in respect of any contract signed by RCF with the BIDDER, the same shall not be operated.
 - x. Forfeiture of Performance Bond in case of a decision by RCF to forfeit the same without assigning any reason for imposing sanction for violation of this Pact.
- 6.2 RCF 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 or any one employed by it or acting on its behalf (Whether with or without the knowledge of the BIDDER) 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 RCF to the effect that a breach of the provisions of this Pact has been committed by the BIDDER shall be final and conclusive on the BIDDER. However, the Bidder can approach the Independent Monitor appointed for the purposes of this Pact.
- 7. Independent Monitor:**
- 7.1 RCF has appointed Mr.-----, having his office at-----as Independent Monitor for this Pact in consultation with the Central Vigilance Commission.

- 7.2 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.
- 7.3 The Monitor shall not be subject to instructions by the representatives of the parties and perform his functions neutrally and independently.
- 7.4 Both the parties accept that the Monitor has the right to access all the documents relating to the project/ procurement, including minutes of meetings.
- 7.5 As soon as the Monitor notices, or has reason to believe a violation of this Pact, he will so inform the Authority designated by RCF.
- 7.6 Notwithstanding any Confidentiality Agreement/ clause agreed between RCF and Bidder, the BIDDER accepts that the Monitor has the right to access, without restriction, to all Project documentation of RCF including that provided by the BIDDER. The BIDDER will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to this project documentation. The same is applicable to Subcontractors. The Monitor shall be under contractual obligation to treat the information and documents of the BIDDER/ Subcontractor (s) with confidentiality.
- 7.7 RCF will provide to the Monitor sufficient information about all meetings among the parties related to the supply 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.
- 7.8 The Monitor will submit a written report to the designated Authority of RCF within 8 to 10 weeks from the date of reference or intimation to him by RCF/ BIDDER and should the occasion arise, submit proposals for correcting problematic situations.

8. Facilitation of Investigation

In case of any allegation of violation of any provisions of these terms or payment of commission, RCF shall be entitled to examine all the project documents of the BIDDER and the BIDDER shall provide necessary information and documents in English and shall extend all possible help for the purpose of such examination.

9. Law and Place of Jurisdiction

This Pact is subject to Indian Law. The place of performance and jurisdiction is the registered office of RCF.

10. 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.

11. Validity

- 11.1 The validity of this Integrity Pact shall be from date of the NIT is issued and extend upto two years from the date of last payment under the contract. In case BIDDER is not awarded Contract/Purchase Order, this Integrity Pact shall expire after twelve months from the date of issue of the NIT.

11.2 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.

12. The parties hereby sign this Integrity Pact, through their authorized representative, for having accepted the conditions contained hereinabove.

RCF

(_____)

Date:

Place:

Witness

1. _____

2. _____

BIDDER

(_____)

Date:

Place:

Witness

1. _____

2. _____