

Addendum: RFP for Appointment of Firm for Assisting and Providing Advisory Services in Tax Matters (Both Direct and Indirect Tax) :

The Bidders are required to submit Integrity Pact duly signed on Rs. 100/- stamp paper, along with their Bid documents.

Addendum

Pre Contract Integrity Pact

This pre-bid/pre-contract Agreement (hereinafter called “**this Integrity Pact**”) is made on _____ day of _____ 201____, between, the National Housing Bank, a bank established under the provisions of the National Housing Bank Act, 1987 having its Head Office at Core 5A, India Habitat Centre, Lodhi Road, New Delhi-110003 represented through Shri/Ms _____, (Designation) (hereinafter called “the **Bank**”, 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 the “bidder” which expression shall mean and include, unless the context otherwise requires, his successors and permitted assigns) of the Second Part.

(The party of the First Part and the party of the Second Part are hereinafter collectively referred to as the “Parties” and individually as the “Party”)

WHEREAS the Bank proposes to procure _____ (name of the items/services) as mentioned in the RFP No. _____ (“RFP”) and the bidder is willing to offer/has offered _____ (name of the items/services) as desired by the Bank in terms of the RFP;

WHEREAS 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 the Bank is a statutory body established under the Act of Parliament;

WHEREAS 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:-

- (i) enabling the Bank 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
- (ii) enabling bidders 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 Bank will commit to prevent corruption, in any form, by its officials by following transparent procedures.

AND WHEREAS the Parties hereto hereby agree to enter into this Integrity Pact on the terms and conditions mentioned hereinafter.

NOW IT IS THEREFORE AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. Commitments of the Bank:

- 1.1** The Bank undertakes that no official of the Bank, 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, 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 Bank 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** All the officials of the Bank 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 to the Bank with full and verifiable facts and the same is prima facie found to be correct by the Bank, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the Bank 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 Bank the proceeding under the contract would not be stalled.

3. Commitments of Bidders

- 3.1** Compliance of the Instructions of GOI/Guidelines of CVC/Others: The bidder undertakes that in case of its selection as the successful bidder, it shall perform its duties under the Contract in strict compliance of the relevant and extant instructions of Government of India, GFR issued by Ministry of Finance, Guidelines of CVC and provisions of the Procurement Manual/relevant instructions of the Bank, as applicable to the subject matter.

- 3.2** The bidder represents that it has the expertise to undertake the assignment/contract and also has the capability to deliver efficient and effective advice/services to the Bank under the contract in terms of the RFP.
- 3.3** 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:-
- (a) 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 Bank, 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.
 - (b) The bidder 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 Bank 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 disfavor to any person in relation to the contract or any other contract with the Government.
 - (c)* The bidder shall disclose the name and address of its agents and representatives including its foreign principals or associates.
 - (d)* The bidder shall disclose the payments to be made by it to agents/brokers or any other intermediary, in connection with this bid/contract.
 - (e)* The bidder has not engaged any individual or firm or company whether Indian or foreign to intercede, facilitate or in any way to recommend to the Bank 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 or any such intercession, facilitation or recommendation.
 - (f) The bidder, 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 Bank 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.

- (g) 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.
- (h) The bidder will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.
- (i) The bidder shall not use improperly, for purposes of competition or personal gain or pass on to others, any information provided by the Bank as part of the business relationship, regarding plans, technical proposals and business details, including information contained in any electronic data carrier. The Bidder also undertakes to exercise due and adequate care lest any such information is divulged.
- (j) The bidder commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.
- (k) The bidder shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.
- (l) 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 officers of the Bank or alternatively, if any relative of an officer of the Bank has financial interest/stake in the Bidders firm, the same shall be disclosed by the Bidder 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.

- (m) 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 the Bank.
- (n) The bidders shall disclose any transgressions with any other company that may impinge on the anti-corruption principle.
- (o) The bidder has not entered into any undisclosed agreement or understanding with other bidders with respect of prices, specifications, certifications, subsidiary contracts, etc.

3.4 The bidder undertakes and affirms that it shall take all measures necessary to prevent any possible conflict of interest and in particular commit itself to the following:

- (a) The bidder shall avoid any conflict of interest while discharging contractual obligations and bring, beforehand, any possible instance of conflict of interest to the knowledge of the Bank, while rendering any advice or service.
- (b) The bidder shall act/perform, at all times, in the interest of the Bank and render any advice/service with highest standard of professional integrity.

- (c) The bidder undertakes that in case of its selection as the successful bidder, it shall provide professional, objective, and impartial advice and at all times and shall hold the Bank's interests paramount, without any consideration for future work, and that in providing advice it shall avoid conflicts with other assignments and its own interests.
- (d) The bidder declares/affirms that it has not been hired by the Bank for any assignment that would be in conflict with its prior or current obligations to other employers/buyers, or that may place it in a position of being unable to carry out the assignment/contract in the best interest of the Bank. Without limitation on the generality of the foregoing, the bidder further declares/affirms as set forth below:

- (i) **Conflict between consulting activities and procurement of goods, works or non-consulting services (i.e. services other than consulting services)** - The bidder has not been engaged by the Bank to provide goods, works, or non-consulting services for a project, or any affiliate that directly or indirectly controls, is controlled by, or is under common control with the bidder. The bidder is fully aware that it shall be disqualified from providing consulting services resulting from or directly related to those goods, works, or non-consulting services. Further, the bidder is also aware of the fact that in case it has been hired to provide consulting services for the preparation or implementation of a project, or any affiliate that directly or indirectly controls, is controlled by, or is under common control with the firm, shall be disqualified from subsequently providing goods, works, or services (other than consulting services) resulting from or directly related to the consulting services for such preparation or implementation.

This provision does not apply to the various firms (consultants, contractors, or suppliers) which together are performing the Bidder's obligations under a turnkey or design and build contract.

- (ii) **Conflict among consulting assignments** – The bidder understands that neither bidder (including their personnel and sub-consultants), nor any affiliate that directly or indirectly controls, is controlled by, or is under common control with the firm, shall be hired for the assignment that, by its nature, may be in conflict with another assignment of the bidder. As an example, bidders assisting the Bank in the privatization of public assets shall neither purchase, nor advise purchasers of, such assets. Similarly, bidders hired to prepare Terms of Reference (TOR) for an assignment shall not be hired for the assignment in question.
- (iii) **Relationship with the Bank's staff** – The bidder is aware that the contract may not be awarded to the bidder in case it is observed that it, including its experts and other personnel, and sub-consultants, has/have a close business or family relationship with a professional staff of the Bank (or of the project implementing agency) who are directly or indirectly involved in any part of: (i) the preparation of the TOR for the assignment, (ii) the selection process for the contract; or (iii) the

supervision of such contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the Bank throughout the selection process and the execution of the contract.

- (iv) **A Bidder shall submit only one proposal either individually or as a joint venture partner in another proposal:** If the bidder, including a joint venture partner, submits or participates in more than one proposal, all such proposals shall be disqualified. This does not, however, preclude a consulting firm to participate as a sub-consultant, or an individual to participate as a team member, in more than one proposal when circumstances justify and if permitted by the RFP.

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 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 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 or the contract, if already awarded 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 RFP*) as Earnest Money/ Security Deposit, with the Bank through any of the following instruments:
- (i) Bank Draft or a pay Order in favour of _____.
 - (ii) A confirmed guarantee from any nationalized bank in India, promising payment of the guaranteed sum to the Bank on the demand within three working days without any demur whatsoever and without seeking any reasons whatsoever. The demand for payment by the Bank shall be treated as conclusive proof of payment.
 - (iii) Any other mode or through any other instrument (*to be specified in the RFP*)
- 5.2** The Earnest Money/Security Deposit shall be valid up to a period of _____ years or the complete conclusion of the contractual obligations to the complete satisfaction of both the Bidder and the Bank including warranty whichever is later.
- 5.3** The bidder agrees that in case of its selection as the successful bidder, any breach/violation in this Integrity Pact shall also entail forfeiture of performance Bonds/Performance Bank Guarantee (PBG) and the decision of the Bank imposing the sanction to forfeit the performance bonds/ PBG without assigning any reason shall be final and binding.

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

6. Accountability:

6.1 The bidder undertakes that in case of its selection as the successful bidder and assignment of the contract to the Bidder, it shall be accountable for the advice/supply made/to be made and/or for any service rendered/to be rendered by it to the Bank, keeping in view norms of ethical business, professionalism and the fact that such advice / services to be rendered by it for a consideration.

6.2 The bidder shall be accountable in case of improper discharge of contractual obligations and/or any deviant conduct by the bidder.

7. Personal Liability:

The bidder understands that in case of its selection as the successful bidder, the bidder is expected to carry out its assignment with due diligence and in accordance with prevailing standards of the profession. The bidder shall be liable to the Bank for any violation of this Integrity Pact as per the applicable law, besides being liable to the Bank as may be provided under the service level agreement/contract to be executed.

8. Transparency and Competitiveness:

The bidder undertakes that in case of its selection as the successful bidder, it shall keep in view transparency, competitiveness, economy, efficiency and equal opportunity to all prospective tenderers/bidders, while rendering any advice/service to the Bank, in regard with matters related to selection of technology and determination of design and specifications of the subject matter, bid eligibility criteria and bid evaluation criteria, mode of tendering, tender notification, etc.

9. Co-operation in the Processes:

The bidder shall cooperate fully with any legitimately provided/constituted investigative body, conducting inquiry into processing or execution of the consultancy contract/any other matter related with discharge of contractual obligations by the bidder.

10. Sanctions for Violations:

10.1 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) shall entitle the Bank to take all or any one of the following actions, whenever 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 per-contract stage) and / or Security Deposit /Performance Bond/PBG (after the contract is signed) shall stand forfeited either fully or partially, as decided by the Bank and the Bank 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.
- (iv) To recover all sums already paid by the Bank, and in case of an Indian bidder with interest thereon at 2% higher than the prevailing Prime Lending Rate of State Bank of India, while in case of a bidder from a country other than India with interest thereon at 2% higher than the LIBOR. If any outstanding payment is due to the bidder from the Bank in connection with any other contract, such outstanding payment could also be utilized and appropriated by the Bank 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 the Bank, along with interest.
- (vi) To cancel all or any other contracts with the bidder. The bidder shall be liable to pay compensation for any loss or damage to the Bank resulting from such cancellation /rescission and the Bank shall be entitled to deduct the amount so payable from the money(s) due to the bidder.
- (vii) To debar the bidder from participating in future bidding process of the Bank for a minimum period of five year which may be further extended at the discretion of the Bank.
- (viii) To recover all sums paid in violation of this Integrity Pact by bidder(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 Bank with the bidder, the same shall not be opened.
- (x) Forfeiture of Performance Bond/PBG in case of a decision by the Bank to forfeit the same without assigning any reason for imposing sanction for violation of this Integrity Pact.

10.2 The Bank will be entitled to take all or any the actions mentioned at para 10.1(i) to (x) of this Integrity 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 or Corruption Act, 1988 or any other statute enacted for prevention of corruption.

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

11. Fall Clause:

The bidder 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/Public Sector Bank and if it is found at any stage that similar product/systems was supplied by the bidder 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 to the Bank, if the contract has already been concluded.

12. Independent Monitors:

12.1 The Bank has appointed independent external monitor (hereinafter referred to as “the Monitors”) for this Integrity Pact in conciliation with the Central Vigilance Commission (Name and Addresses of the Monitors to be given).

12.2 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 Integrity Pact.

12.3 The Monitors shall not be subject to instructions by the representatives of the Parties and perform their functions neutrally and independently.

12.4 Both the Parties accept that the Monitors have the right to access all the documents relating to the project procurement including minutes of meeting.

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

12.6 The bidder accepts that the Monitor has the right to access without restriction to all project documentation of the Bank 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 his project documentation. The same is applicable to sub-contractors. The Monitor shall be under contractual obligation to treat the information and documents (s) of the bidder/sub-contractor with confidentiality.

12.7 The Bank will provide to the Monitor sufficient information about all meetings among the Parties related to the project provided such meeting could have an impact on the contractual relations between the Parties. The Parties will offer to the Monitor the option to participate in such meeting.

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

13. Facilitation of Investigation:

In case of any allegation of violation of any provision to this Integrity Pact or payment of commission, the Bank or its agencies shall be entitled to examine all the documents including the Books of Accounting 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.

14. Law and Place of Jurisdiction:

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

15. Other Legal Action:

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

16. Validity:

16.1 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 Bank and the bidder, including warranty period, whichever is later. In case bidder is unsuccessful, this Integrity Pact shall expire after six month from the date of the signing of this Integrity Pact.

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

The Parties hereto sign this Integrity Pact at _____ on the day, month and year mentioned herein above.

For National Housing Bank

BIDDER

Name of the officer

CHIEF EXECUTIVE OFFICER

Designation

Witness

Witness

1. _____

1. _____

(Name & Address)

(Name & Address)

2. _____

(Name & Address)

2. _____

(Name & Address)

(* provisions of these clauses would need to be amended /deleted in line with the policy of the Bank in regard to involvement of Indian agents of foreign suppliers.)