

**(To be executed on plain paper)**

**Integrity Pact.**

Between

NLC Tamilnadu Power Limited (NTPL), a subsidiary of NLC INDIA LTD (NLCIL) hereinafter referred to as "The Principal" and ..... hereinafter referred to as "The Bidder/ Contractor"

**Preamble:**

The Principal intends to award, under laid down organizational procedures, contract/s for ..... The Principal values full compliance with all relevant laws and regulations, and the principles of economic use of resources, and of fairness and transparency in its relations with its Bidder/s and Contractor/s.

In order to achieve these goals, the Principal cooperates with the renowned international Non-Governmental Organization "Transparency International" (TI). Following TI's national and international experience, the Principal will appoint an Independent External Monitor who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

**Definitions:**

In pursuance of the above Pact, for the purposes of this provision, the Principal defines the relevant terms set forth therein as under:

- 1) "Contract" means the contract entered into between the Principal and Bidder (or Tenderer) / Contractor for the execution of work mentioned in the preamble above.
- 2) "Contractor" means the bidder or tenderer whose tender (bid) has been accepted by the principal or Company whose tender (bid) has been accepted and shall be deemed to include his/its/their successors, representatives, heirs, executors and administrators unless excluded by the Contract.
- 3) "Coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or affect the execution of a contract; In order to achieve these goals, the Principal proposes to appoint one or more Independent External Monitor/s who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.
- 4) "Collusive practice" means a scheme or arrangement between two or more bidders, with or without the knowledge of the Principal designed to establish bid prices at artificial, noncompetitive levels; and
- 5) "Corrupt practice" means the offering, giving, receiving or soliciting of anything of

value to influence the action of a public official in the procurement process or in contract execution;

6) “Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Principal and includes collusive practices among Bidders (Prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the Principal of the benefits of free and open competition;

7) “Independent External Monitor” means a person, hereinafter referred to as IEM appointed, in accordance with Section 8 below, to verify compliance with this agreement.

8) “Party” means a signatory to this agreement.

9) “Purchaser” means NLC Tamilnadu Power Ltd., Tuticorin, incorporated under the Companies Act 1956, having their registered Office at Chennai-600 010 and includes their successors.

10) “Bidder or Tenderer” means the person, firm or company submitting a tender (bid) against the invitation to Tender (bid) and includes his/its/their staff, consultants, parent and associate and subsidiary companies, agents, consortium and joint venture partners, sub-contractors and suppliers, heirs, executors, administrators, representatives, successors.

### **Section 1 - Commitments of the Principal**

(1) The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles:

1 No employee of the Principal, personally or through family members, will in connection with the tender for, or the execution of a contract, demand, take a promise for or accept, for him/herself or third person, any material or immaterial benefit which he/she is not legally entitled to.

2 The Principal will, during the tender process treat all Bidders with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidders the same information and will not provide to any Bidder confidential/additional information through which the Bidder could obtain an advantage in relation to the tender process or the contract execution.

3 The Principal will exclude from the process all known prejudiced persons.

(2) If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the relevant Anti-Corruption Laws of India, or if there be a substantive suspicion in this regard, the Principal will inform its Vigilance Office and in addition can initiate disciplinary actions.

## **Section 2 - Commitments of the Bidder/Contractor**

(1) The Bidder / Contractor commits itself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.

1. The Bidder / Contractor will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or immaterial benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.

2. The Bidder / Contractor will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non- submission of bids or any other actions to restrict competitiveness or to form cartels in the bidding process.

3. The Bidder /Contractor will not commit any offence under the relevant Anticorruption Laws of India: further the Bidder /Contractor will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

4. The Bidder / Contractor will, when presenting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.

5. The Bidder / Contractor of foreign origin shall disclose the name and address of the Agents / representatives in India, if any. Similarly the Bidder / Contractor of Indian Nationality shall furnish the name and address of the foreign principals, if any.

6. In Case of subcontracting, the principal contractor shall take the responsibility of the adoption of IP by the sub-contractor.

(2) The Bidder / Contractor will not instigate third persons to commit offences outlined above or be an accessory to such offences.

## **Section 3 - Disqualification from tender process and exclusion from future contracts**

If the Bidder, before contract award has committed a transgression through a violation of Section 2 or in any other form such as to put his reliability or credibility as Bidder into question, the Principal is entitled to disqualify the Bidder from the tender process or to terminate the contract, if already signed, for such reason.

(1) If the Bidder / Contractor has committed a transgression through a violation of

Section 2 such as to put his reliability or credibility into question, the Principal is entitled also to exclude the Bidder /Contractor from future contract award processes. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the circumstances of the case, in particular the number of transgressions, the position of the transgressors within the company hierarchy of the Bidder and the amount of the damage. The exclusion will be imposed for a minimum of 6 months and maximum of 3 years.

(2) A transgression is considered to have occurred if the Principal after due consideration of the available evidence, concludes that no reasonable doubt is possible.

(3) The Bidder accepts and undertakes to respect and uphold the Principal's absolute right to resort to and impose such exclusion and further accepts and undertakes not to challenge or question such exclusion on any ground, including the lack of any hearing before the decision to resort to such exclusion is taken. This undertaking is given freely and after obtaining independent legal advice.

(4) If the Bidder / Contractor can prove that he has restored / recouped the damage caused by him and has installed a suitable corruption prevention system, the Principal may revoke the exclusion prematurely, provided such systems has been audited by an independent agency.

#### **Section 4 - Compensation for Damages**

(1) If the Principal has disqualified the Bidder from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover from the Bidder liquidated damages equivalent to Earnest Money Deposit / Bid Security.

(2) If the Principal has terminated the contract according to Section 3 or if the Principal is entitled to terminate the contract according to Section 3, the Principal shall be entitled to demand and recover from the Contractor liquidated damages equivalent to Security Deposit /Performance Bank Guarantee.

#### **Section 5 - Previous transgression**

(1) The Bidder declares that no previous transgressions occurred in the last 3 years with any other Company in any country conforming to the TI approach or with any other Public Sector Enterprise in India that could justify his exclusion from the tenderprocess.

(2) If the Bidder makes incorrect statement on this subject he can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

#### **Section 6 - Equal treatment of all Bidders /Contractors/ Subcontractors**

(1) The Bidder / Contractor undertakes to demand from all subcontractors a

commitment in conformity with this Integrity Pact, and to submit it to the Principal before contract signing.

(2) The Principal will enter into agreements with identical conditions as this one with all Bidders, Contractors and Subcontractors.

(3) The Principal will disqualify from the tender process all bidders who do not sign this Pact or violate its provisions.

### **Section 7 - Criminal charges against violating Bidders/Contractor/ Subcontractors**

If the Principal obtains knowledge of conduct of a Bidder, Contractor or Subcontractor, or of an employee or a representative or an associate of a Bidder, Contractor or Subcontractor, which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the Vigilance Office.

### **Section 8 – Independent External Monitor (IEM)**

(1) The IEMs have been appointed by the Central Vigilance Commission. The task of the IEMs is to review independently, whether and to what extent the parties comply with the obligations under this agreement.

(2) The IEM is not subject to instructions by the representatives of the parties and performs his functions, neutrally and independently. He reports to the Chairperson of the Board of the Principal.

(3) The Contractor accepts that the IEM has the right to access without restriction to all Project documentation of the Principal including that provided by the Contractor. The Contractor will also grant the IEMs, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors. The IEM is under contractual obligation to treat the information and documents of the Bidder / Contractor / Subcontractor with confidentiality.

(4) The Principal will provide to the IEMs 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 Principal and the Contractor. The parties offer to the IEMs the option to participate in such meetings.

(5) As soon as the IEM notices, or believes to notice, a violation of this agreement, he will so inform the Management of the Principal and request the Management to discontinue or heal the violation, or to take other relevant action. The IEMs can in this regard submit non-binding recommendations. Beyond this, the IEM has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.

(6) After award of work, the IEMs shall look into any issue related to execution of contract if specifically raised before them. However, the IEMs may suggest systemic improvements to the Principal if considered necessary to bring about transparency, equity and fairness in the system of procurement.

(7) The IEMs would examine all complaints received by them and give their recommendations/views to the Chief Executive of the Principal, at the earliest. They may also send their report directly to the CVO in case of suspicion of serious irregularities requiring legal/administrative action. Only in case of very serious issue having a specific, verifiable Vigilance angle, the matter should be reported directly to the Commission. IEMs are expected to tender their advice on the complaints, within 30 days.

(8) For ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process or during execution of contract, the matter should be examined by the full panel of IEMs jointly, who would look into the records, conduct an investigation and submit their joint recommendations to Principal.

(9) IEMs should examine the process integrity, they are not expected to concern themselves with fixing of responsibility of officers.

(10) In the event of any dispute between the Principal and the Contractor/Bidder, in case, both the parties are agreeable, they may try to settle the dispute through mediation before the IEMs in a time bound manner, not more than five meetings for a particular dispute resolution. The sitting fees and expenses towards travel and stay arrangements for such meetings for the IEMs shall be equally shared by both the parties.

(11) If required, the Principal may adopt any mediation rules for this purpose. In case, the dispute remains unresolved even after mediation by the panel of IEMs, the Principal may take further action as per the terms and conditions of the contract.

(12) The advisory role of IEMs is envisaged as that of a friend, philosopher and guide. The advice of IEMs would not be legally binding and it is restricted to resolving issues raised by a bidder regarding any aspect of the tender which allegedly restricts competition or bias towards some bidders. At the same time, it must be understood that IEMs are not consultants to Principal. Their role is independent in nature and the advice once tendered would not be subject to review at the request of Principal.

(13) Issues like warranty/guarantee etc shall be outside the purview of IEMs.

(14) The reference to 'IEM' would include both Singular and Plural.

(15) The IEM can be removed from his office, before the expiry of his tenure only with the

approval of the Board of the Principal.

**Section 9 - Pact Duration**

Integrity Pact, in respect of a particular contract, shall be operative from the date IP is signed by both the parties till the final completion of the contract. Any violation of the same would entail disqualification of the bidders and exclusion from future business dealings. For all other bidders it shall be operative upto 6 months after the contract has been awarded.

If any claim is made / lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged / determined by Chairperson of the Principal.

**Section 10 – Other provisions**

(1) This agreement is subject to Indian Law. Place of performance and jurisdiction is the Registered Office of the Principal, i.e. Chennai / Tuticorin. The Arbitration clause provided in the main tender document / contract shall not be applicable for any issue / dispute arising under Integrity Pact.

(2) Changes and supplements as well as termination notices need to be made in writing.

(3) If the Contractor is a partnership or a consortium this agreement must be signed by all partners or consortium members.

(4) Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

(5) “A person signing IP shall not approach the Courts while representing the matters to IEMs and he / she will await their decision in the matter”.

For the Principal

For the Bidder / Contractor Place

Date:

Witness 1.....

Witness1 .....

Witness 2.....

Witness 2.....

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**DETAILS OF INDEPENDENT EXTERNAL MONITORS.**

S.No.	Name and Address	Phone No. and e-mail
1	Shri. Rakesh Jain, IA&AS (Retd.), Dy.Comptroller & Auditor General, Flat No. 701, Platinum Tower, Chandrakala Colony, Durgapura, Jaipur - 302018.	e-Mail: rakeshjain18@hotmail.com
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