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No. C-34014/03/2021-Vig.
Government of India
Ministry of Education
Department of Higher Education
Vigilance Section

Room No. 106-C, Shastri Bhawan,
New Delhi, Dated: 03/01/2022

OFFICE MEMORANDUM

Subject: Use of Integrity Pact by Ministries / Departments and Appointment of Independent External Monitors (IEMs) in the Ministry of Education-reg.

The undersigned is directed to enclose herewith a copy of CVC circular No.06/5/21 dated 03.06.2021 regarding adoption of Integrity Pact-SOP and to say that with the concurrence of Central Vigilance Commission, the following persons have appointed as Independent External Monitor for Ministry of Education:

- (i) Shri Anil Kaushal, ITS(Retd.)
A-1/245, GF-Janakpuri,
New Delhi-110058
E-mail: kaushal.anil17@gmail.com
- (ii) Smt. Seema Bahuguna, IAS (Retd.)
E-12/7, Vasant Vihar,
New Delhi-110057
E-mail: bahugunaseema@gmail.com

2. In this context Para 2(ii) of Department of Expenditure's O.M. No.14(12)/2008-EII(A) dated 20.7.2011 provides that "*Ministries/ Departments may, in consultation with the respective Financial Adviser and with the approval of Minister-in-Charge, decide on and lay down the nature of procurements/contracts and the threshold value above which the Integrity Pact would be used in respect of procurement transactions/contracts concluded by them or their attached/subordinate offices.*" Accordingly, with the approval of the Competent Authority, the following threshold value has been decided:

- (i) All Autonomous Bodies: Rs. 1.00 Crore
- (ii) Department: Rs. 30.00 Lakh

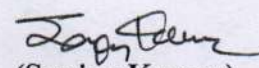
3. As per para 3.5 of the CVC circular No.06/5/21 dated 03.06.2021, the Purchase/procurement wing of the organization would be the focal point for the implementation of Integrity Pact. Form of Integrity Pact as vetted by Ministry of Law is enclosed herewith for the use of Bureau proposing to undertake procurement/contract above the aforesaid threshold value. The Pact envisages an agreement between the prospective vendors/bidders and the buyer, committing the persons/officials of both sides, not to resort to any corrupt practices in any aspect/stage of the contract. A summary of procurement/contract awarded, which are covered under the Integrity Pact shall be compulsorily shared with the Independent External Monitors on

quarterly basis, during the meeting. Based on the specific requirement of the organization and no. of tenders floated, the meetings may be held on monthly or bi-monthly basis, instead of quarterly periodicity. A communication regarding terms and conditions for appointment of IEM is being issued separately.

4. It is requested that all autonomous institutions under the administrative control of respective Bureaus may also be advised to implement system of Integrity Pact in their organizations by appointing Independent External Monitors. Such institutions may be advised to send a proposal together with a panel of names either from the panel of the Central Vigilance Commission available on website of Commission under the link <http://www.cvc.nic.in/panel-iems> or otherwise as per eligibility laid down vide Commission's Circular No.02/01/2017 dated 13/01/2017 for appointment of IEM. Form of 'Confidentiality Agreement' and 'Declaration of Absence of conflict of Interest' are also enclosed alongwith 'Form of Integrity Pact' and may be further circulated among these institutions for their use.

5. This issues with the approval of IFD/MoE vide their Dy. No.467 dated 06/10/2021.

Encl: As above.


(Sanjay Kumar)

Under Secretary to the Govt. of India

To,

All Bureau Heads, Ministry of Education

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सत्यमेव जयते

केन्द्रीय सतर्कता आयोग
CENTRAL VIGILANCE COMMISSION



सतर्कता भवन, जी.पी.ओ. कॉम्प्लैक्स,
ब्लॉक-ए, आई.एन.ए., नई दिल्ली-110023
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सं./No..... 015/VGL/091

दिनांक / Dated..... 03.06.2021

Circular No. 06/05/21

**Subject:- Adoption of Integrity Pact-Revised Standard Operating Procedure:-
regarding.**

The Commission has reviewed the Standard Operating Procedure (SOP) for adoption of Integrity Pact (IP) by all Government Organizations, Public Sector Enterprises, Public Sector Banks, Insurance Companies, other Financial Institutions and Autonomous bodies etc. A copy of the revised SOP is enclosed, which would be applicable for adoption and implementation of the IP by the organizations concerned.

2. The present SOP would replace the earlier SOP issued vide Circular No. 02/01/2017 dated 13.01.2017.

(Rajiv Varma)
Officer on Special Duty

Encl.: As above.

To

- (i) All Secretaries of Ministries/Departments. (The revised SOP may also be shared with the existing IEMs in the organizations concerned)
- (ii) All CMDs/Head of CPSUs/Public Sector Banks/Organizations. (The revised SOP may also be shared with the existing IEMs in the organizations concerned)
- (iii) All CVOs of Ministries/Departments/CPSUs/Public Sector Banks/Organizations. (The revised SOP may be brought to the notice of the Chief Executive of the organization concerned)
- (iv) All Independent External Monitors.

STANDARD OPERATING PROCEDURE FOR ADOPTION OF INTEGRITY PACT

1.0 BACKGROUND

1.1 In order to ensure transparency, equity and competitiveness in public procurement, the Commission recommends adoption and implementation of the concept of Integrity Pact (IP) by Government organizations, Public Sector Enterprises, Public Sector Banks, Insurance Companies, other Financial Institutions and Autonomous Bodies etc.

1.2 Vide Circular No. 02/1/2017 dated 13.01.2017, the Commission issued a Comprehensive Standard Operating Procedure (SOP) for adoption and implementation of Integrity Pact.

Further, vide Circular no. 15/10/20 dated 20.10.2020, the eligibility criteria for consideration for empanelment as Independent External Monitor (IEM) was reviewed and revised.

1.3 Deptt. of Expenditure vide OM dt. 19.7.2011, issued guidelines to all Ministries/ Departments/Organizations including their attached/subordinate offices and autonomous bodies for implementation of IP. Also, vide OM dated 20.7.2011 Deptt. of Expenditure requested Department of Public Enterprises for directions to Central Public Sector Enterprises for use of IP.

1.4 Further, in view of the increasing procurement activities of Public Sector Banks (PSBs), Insurance Companies (ICs) and Financial Institutions (FIs), the Commission vide Circular No. 02/02/2015 dated 25.02.2015 advised that all PSBs, PSICs and FIs shall also adopt and implement the Integrity Pact.

2.0 INTEGRITY PACT

2.1 The Pact essentially envisages an agreement between the prospective vendors/bidders and the buyer, committing the persons/officials of both sides, not to resort to any corrupt practices in any aspect/stage of the contract. Only those vendors/bidders, who commit themselves to such a Pact with the buyer, would be considered competent to participate in the bidding process. In other words, entering into this Pact would be a preliminary qualification. The essential ingredients of the Pact include:

- Promise on the part of the principal not to seek or accept any benefit, which is not legally available;
- Principal to treat all bidders with equity and reason;
- Promise on the part of bidders not to offer any benefit to the employees of the Principal not available legally;
- Bidders not to enter into any undisclosed agreement or understanding with other bidders with respect to prices, specifications, certifications, subsidiary contracts, etc.
- Bidders not to pass any information provided by Principal as part of business relationship to others and not to commit any offence under PC/IPC Act;
- Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or associates;
- Bidders to disclose the payments to be made by them to agents / brokers or any other intermediary;
- Bidders to disclose any transgressions with any other company that may impinge on the anti corruption principle.

Any violation of Integrity Pact would entail disqualification of the bidders and exclusion from future business dealings, as per the existing provisions of GFR, 2017, PC Act, 1988 and other Financial Rules/Guidelines etc. as may be applicable to the organization concerned.

- 2.2 Integrity Pact, in respect of a particular contract, shall be operative from the date IP is signed by both the parties till the completion of contract. After award of work, the IEMs shall look into any issue relating to execution of contract, if specifically raised before them. As an illustrative example, if a contractor who has been awarded the contract, during the execution of contract, raises issue of delayed payment etc. before the IEMs, the same shall be examined by the panel of IEMs.

However, the IEMs may suggest systemic improvements to the management of the organization concerned, if considered necessary, to bring about transparency, equity and fairness in the system of procurement.

3.0 IMPLEMENTATION PROCEDURE

- 3.1 As stated in Department of Expenditure's O.M. dated 20.7.2011, Ministries/Departments may, in consultation with the respective Financial Adviser and with the approval of the Minister-in-charge, decide on and lay down the nature of procurements/contracts and the threshold value above which the Integrity Pact would be used in respect of procurement transactions/contracts concluded by them or their attached/sub-ordinate offices.

In case, any individual organization desires to lower the threshold value, they may do so with the approval of the competent authority of the organization.

Procurements/contracts would cover procurement of works, goods and services by the organization concerned.

- 3.2 The above provision is also applied for procurements/contracts made by autonomous bodies for which the Administrative Ministry/Department concerned should decide the type of procurement activities and the threshold value above which the Integrity Pact would be applicable.

The procurements/contracts would cover both purchases and works/services contracts being entered into by the organization concerned.

- 3.3 The provision for the Integrity Pact is to be included in all Requests for Proposal/Tender documents issued in future in respect of the procurements/contracts that meet the criteria decided in terms of para 3.1 and 3.2 above.
- 3.4 In all tenders covered under the Integrity Pact, particulars of all IEMs, including their email IDs, should be mentioned, instead of mentioning details of a single IEM.
- 3.5 The Purchase / procurement wing of the organization would be the focal point for the implementation of IP.
- 3.6 It has to be ensured, through an appropriate provision in the contract, that IP is deemed as part of the contract so that the parties concerned are bound by its provisions.
- 3.7 IP would be implemented through a panel of Independent External Monitors (IEMs), appointed by the organization. The IEM would review independently and objectively, whether and to what extent parties have complied with their obligations under the Pact.
- 3.8 A clause should be included in the IP that 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.
- 3.9 In case of a joint venture, all the partners of the joint venture should sign the Integrity Pact. In case of sub-contracting, the Principal contractor shall take the responsibility of the adoption of IP by the sub-contractor. It is to be ensured that all sub-contractors also sign the IP.
- 3.10 A summary of procurement/contract awarded, which are covered under the IP shall be compulsorily shared with the IEMs on quarterly basis, during the meeting. Based on the specific requirement of the organisations and the no. of tenders floated, the meetings may be held on monthly or bi-monthly basis, instead of quarterly periodicity.

- 3.11 The final responsibility for implementation of IP vests with the CMD/CEO of the organization.

4.0 ROLE AND DUTIES OF IEMs

- 4.1 The IEMs would be provided access to all documents/records pertaining to the contract for which a complaint or issue is raised before them, as and when warranted. However, the documents/records/information having National Security implications and those documents which have been classified as Secret/Top Secret are not to be disclosed.
- 4.2 It would be desirable to have structured meetings of the IEMs with the Chief Executive of the Organisation on a half yearly basis to discuss / review the information on tenders awarded during the preceding six months' period. Additional sittings, however, can be held as per requirement.
- 4.3 The IEMs would examine all complaints received by them and give their recommendations/views to the Chief Executive of the organization, 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.
- 4.4 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 the Management.
- 4.5 IEM should examine the process integrity, they are not expected to concern themselves with fixing of responsibility of officers. Complaints alleging malafide on the part of any officer of the organization should be looked into by the CVO of the concerned Organization.

- 4.6 The advisory role of IEMs is envisaged as that of a friend, philosopher and guide. The advice of IEM 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 the Management. Their role is independent in nature and the advice once tendered would not be subject to review at the request of the organization.
- 4.7 Issues like warranty/guarantee etc. should be outside the purview of IEMs.
- 4.8 All IEMs should sign non-disclosure agreements with the organization in which they are appointed. They would also be required to sign a declaration of absence of conflict of interest.
- 4.9 A person acting as an IEM shall not be debarred from taking up other assignments such as consultancy with other organizations or agencies subject to his declaring that his / her additional assignment does not involve any conflict of interest with existing assignment. In case of any conflict of interest arising at a later date from an entity wherein he is or has been a consultant, the IEM should inform the CEO and recuse himself/herself from that case.
- 4.10 All organizations may provide secretarial assistance to IEMs for rendering his/her job as IEM.
- 4.11 In case of any misconduct by an IEM, the CMD/CEO should bring it to the notice of the Commission detailing the specific misconduct for appropriate action at the Commission's end.
- 4.12 The role of the CVO of the organization shall remain unaffected by the presence of IEMs. A matter being examined by the IEMs can be separately investigated by the CVO in terms of the provisions of the CVC Act or Vigilance Manual, if a complaint is received by him/her or directed to him/her by the Commission.

- 4.13 All the deliberations during the IEMs' meetings should be minuted and in the next meeting, the IEMs should confirm the recorded minutes of the previous meeting.

5.0 APPOINTMENT OF IEMS

- 5.1 The IEMs appointed should be eminent personalities of high integrity and reputation. A periodical notice inviting applications from eligible persons will be published on the Commission's website. After due scrutiny and verification of the applications and accompanying documents, as may be deemed appropriate by the Commission, the name(s) would be included in the panel for consideration for nomination as IEM.

All applications received after due date of notice issued by the Commission, shall be considered alongwith applications received in response to the subsequent notice.

- 5.2 The zone of consideration of eminent persons for empanelment as IEMs would consists of:-

- (i) Officer who have held the post of Secretary to Govt. of India or were in equivalent pay scale, at the time of retirement.
- (ii) Officer who have held the post of Chief Secretary of any state of Union of India or were equivalent pay scale, at the time of retirement.
- (iii) Officers who have held the post of Director General of Police or were in apex pay scale, at the time of retirement.
- (iv) Persons who have held the post of CMD of Schedule 'A' Public Sector Enterprise and were equivalent to Additional Secretary to Govt. of India, at the time of retirement.
- (v) Persons who have held the post of CMD/MD and CEO of Public Sector Banks, Insurance Companies and other Financial Institutions, at the time of retirement.
- (vi) Chief Executive Officer of an organization [other than listed above and were equivalent to Secretary to Govt. of India, at the time of retirement.

- (vii) Officers who were in the apex pay scale at the time of retirement in Central Government/State Government/Forest Service.
- (viii) Officers in the apex pay scale in all three Armed Forces.

- 5.3 The Commission would not include a retired person in the panel being maintained by it for consideration for nomination as IEM, if that retired person had accepted a full time assignment, post retirement, either in government sector or private sector or elsewhere. All those empanelled persons have accepted full time employment elsewhere, would cease to remain on the panel, from the date on which they have accepted the said assignment.
- 5.4 The Commission would nominate IEMs for an organization, from the panel of IEMs maintained by it.
- 5.5 The Commission would not consider the name of a retired officer/ executive for nomination as IEM in a particular organisation, in case that person has retired from the same organization or has conflict of interest in any form.

However, in case the person being appointed as IEM in a particular organization has a conflict of interest, which may have gone unnoticed, despite best efforts, he/she should inform the Appointing Authority about the same at the time of offer of appointment being given to him/her and should not accept the offer for appointment as IEM in that particular organization.

- 5.6 Three IEMs shall be nominated for appointment in Maharatna and Navratna PSUs and two IEMs shall be nominated in all other organizations.
- 5.7 A person may be appointed as an IEM in a maximum of three organizations at a time.
- 5.8 An empanelled person cannot be appointed in one organization for a period of more than three years.

- 5.9 Age should not be more than 70 years at the time of appointment.
- 5.10 In any organization, the IEMs shall be paid per sitting a fees of Rs. 25,000/- or fees as payable to Independent Board Members, whichever is less. However, in case, in any organization, the fee payable to Independent Board Members is less than Rs. 25,000/-, the organization concerned may, after due deliberation increase the fees payable to IEM, subject to the ceiling of Rs. 25,000/- per sitting.

However, the maximum amount payable to IEMs in a calendar year shall not exceed Rs. 3,00,000/- with respect to sitting fees.

Expenses on travel and stay arrangement of IEMs shall be equal to that of Independent Board Member of that organization.

- 5.11 The terms and conditions of appointment, including the remuneration payable to the IEMs, should not be included in the Integrity Pact or the NIT. This may be communicated individually to the IEMs concerned.
- 5.12 At the time of appointment of an IEM, a copy of SOP should be made available to the person being appointed by the organizations concerned. A copy of Commission's guidelines on "Illustrative check points for various stages of public procurement", available on Commission's website, i.e., www.cvc.gov.in, under CTE's corner may also be provided to the IEMs at the time of their appointment, for guidance purpose.
- 5.13 In the event of any dispute between the management and the contractor relating to those contracts where Integrity Pact is applicable, in case, both the parties are agreeable, they may try to settle dispute through mediation before the panel of IEMs in a time bound manner. If required, the organizations may adopt any mediation rules for this purpose.

In case, the dispute remains unresolved even after mediation by the panel of IEMs, the organization may take further action as per the terms & conditions of the contract.

The fees for such meetings shall be same as fee payable to IEMs otherwise and in addition to the fees for the regular meeting of IEMs, to be held otherwise and over and above the ceiling of Rs. 3,00,000/- annually, to be calculated as per financial year. The travel and stay arrangement for such meetings shall be equal to that of Independent Board Member of the organization concerned. However, not more than five meetings shall be held for a particular dispute resolution. The fees/expenses on dispute resolution shall be equally shared by both the parties.

- 5.14 The names of all the IEMs of the organization should be available on the website of the organization concerned.

6.0 REVIEW SYSTEM

- 6.1 All organizations implementing IP would undertake a periodical review and assessment of implementation of IP and submit progress reports to the Commission. CVOs of all organizations would keep the Commission posted with the implementation status through their annual reports and special reports, wherever necessary.
- 6.2 All organizations are called upon to make sincere and sustained efforts to imbibe the spirit and principles of the Integrity Pact and carry it to its effective implementation.

INTEGRITY PACT

This **INTEGRITY PACT** is made and executed at.....on this day of.....,20.....

BY AND BETWEEN

THE PRESIDENT OF INDIA acting through (insert name & designation of the officer), Department of Higher Education/Department of School Education, Ministry of Education, Govt. of India having its office located at Shastri Bhawan, New Delhi-110001(hereinafter referred to as "**The Principal**") which terms or expression shall, unless excluded by or repugnant to the subject or context, mean and include its successor-in-office, administrators or permitted assignees) of the **First Part**;

AND

M/s.....a company incorporated under the Companies Act,..... through its representative/authorized signatory (insert name and designation of the officer) vide resolution dated passed by the Board of Directors, having its office at(hereinafter referred to as "**The Bidder/Contractor**") which term or expression shall, unless excluded by or repugnant to the subject or context, mean and include its successor-in-office, administrators or permitted assignees) of the **Second Part**.

Preamble

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

In order to achieve these goals, the Principal will appoint Independent External Monitors (IEMs) who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

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:-
 - a. 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 self or third person, any material or immaterial benefit which the person is not legally entitled to.
 - b. The Principal will, during the tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential / additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.
 - c. 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 IPC/PC Act, or if there be a substantive suspicion in this regard, the Principal will inform the Chief Vigilance Officer and in addition can initiate disciplinary actions.

Section 2 – Commitments of the Bidder(s)/ Contractor(s)

- (1) The Bidder(s)/ Contractor(s) commit themselves to take all measures necessary to prevent corruption. The Bidder(s)/ Contractor(s) commit themselves to observe the following principles during participation in the tender process and during the contract execution.
 - a. The Bidder(s)/ Contractor(s) 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 other 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.
 - b. The Bidders(s)/ Contractor(s) 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 introduce cartelization in the bidding process.
 - c. The Bidder(s)/ Contractor(s) will not commit any offence under the relevant IPC/PC Act; further the Bidders(s)/ Contractor(s) 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.
 - d. The Bidder(s)/ Contractors(s) of foreign origin shall disclose the name and address of the Agents/representatives in India, if any. Similarly the Bidder(s)/Contractors(s) of Indian Nationality shall furnish the name and address of the foreign principals, if any. Further details as mentioned in the "Guidelines on Indian Agents of Foreign Suppliers" shall be disclosed by the Bidder(s)/Contractor(s). Further, as mentioned in the Guidelines all the payments made to the Indian agent/representative have to be in Indian Rupees only. Copy of the "Guidelines on Indian Agents of Foreign Suppliers" is placed at (page no. 6)
 - e. The Bidder(s)/ Contractor(s) will, when presenting their bid, disclose any and all payments made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.
 - f. Bidder(s) /Contractor(s) who have signed the Integrity Pact shall not approach the Courts while representing the matter to IEMs and shall wait for their decision in the matter.
- (2) The Bidder(s)/ Contractor(s) 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(s)/Contractor(s), before award or during execution has committed a transgression through a violation of Section 2, above or in any other form such as to put their reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s)/Contractor(s) from the tender process or take action as per the procedure mentioned in the "Guidelines on Banning of business dealings". Copy of the "Guidelines on Banning of business dealings" is placed at (page nos. 7-13).

Section 4 – Compensation for Damages

- (1) If the Principal has disqualified the Bidder(s) from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover the 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 of the Contract value or the amount equivalent to Performance Bank Guarantee.

Section 5 – Previous transgression

- (1) The Bidder declares that no previous transgressions occurred in the last three years with any other Company in any country conforming to the anti-corruption approach or with any Public Sector Enterprise in India that could justify his exclusion from the tender process.
- (2) If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or action can be taken as per the procedure mentioned in “Guidelines on Banning of business dealings”.

Section 6 – Equal treatment of all Bidders / Contractors / Subcontractors

- (1) In case of Sub-contracting, the Principal Contractor shall take the responsibility of the adoption of Integrity Pact by the Sub-contractor.
- (2) The Principal will enter into agreements with identical conditions as this one with all Bidders and Contractors.
- (3) The Principal will disqualify from the tender process all bidders who do not sign this Pact or violate this provisions.

Section 7 – Criminal charges against violating Bidder(s) / Contractor(s) / Subcontractor(s)

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 same to the Chief Vigilance Officer.

Section 8 – Independent External Monitor

- (1) The Principal appoints competent and credible Independent External Monitor for this Pact after approval by Central Vigilance Commission. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
- (2) The Monitor is not subject to instructions by the representatives of the parties and performs his/her functions neutrally and independently. The Monitor would have access to all Contract documents, whenever required. It will be obligatory for him / her to treat the information and documents of the Bidders/Contractors as confidential. He / she reports to Secretary, MoE.
- (3) The Bidder(s)/Contractor(s) accepts that the Monitor 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 Monitor, upon his/her request and demonstration of a valid interest, unrestricted and unconditional access to their project documentation. The same is applicable to Sub-contractors.

- (4) The Monitor is under contractual obligation to treat the information and documents of the Bidder(s)/ Contractor(s)/ Sub-contractor(s) with confidentiality. The Monitor has also signed declarations on 'Non-Disclosure of Confidential Information' and of 'Absence of Conflict of Interest'. In case of any conflict of interest arising at a later date, the IEM shall inform Secretary, D/o Higher Education.
- (5) The Principal will provide to the Monitor sufficient information about all meeting 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 Monitor the option to participate in such meetings.
- (6) As soon as the Monitor notices, or believes to notice, a violation of this agreement, he/she will so inform the Management of the Principal and request the Management to discontinue or take corrective action, or to take other relevant action. The monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.
- (7) The Monitor will submit a written report to the Secretary, D/o Higher Education within 8 to 10 weeks from the date of reference or intimation to him by the Principal and, should the occasion arise, submit proposals for correcting problematic situations.
- (8) If the Monitor has reported to the Secretary, D/o Higher Education, a substantiated suspicion of an offence under relevant IPC/ PC Act, and the Secretary, MoE has not, within the reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.
- (9) The word '**Monitor**' would include both singular and plural.

Section 9 – Pact Duration

This Pact begins when both parties have legally signed it. It expires for the Contractor 12 months after the last payment under the contract, and for all other Bidders 6 months after the contract has been awarded. Any violation of the same would entail disqualification of the bidders and exclusion from future business dealing.

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 Secretary, D/o Higher Education.

Section 10 – Other provisions

- (1) This agreement is subject to Indian Law. Place of performance and jurisdiction is the Office of the Principal, i.e. New Delhi.
- (2) Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.
- (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 Pact turn out to be invalid, the remainder of this Pact remains valid. In this case, the parties will strive to come to an agreement to their original intentions.
- (5) Issues like Warranty / Guarantee etc. shall be outside the purview of IEMs.
- (6) In the event of any contradiction between the Integrity Pact and its Annexure, the Clause in the Integrity Pact will prevail.
- (7) The actions stipulated in this Integrity Pact are without prejudice to any other legal action(s) that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.

IN WITNESS WHEREOF, the parties hereunto set their hands and seals and executed this INTEGRITY PACT as of the day/month/year first above written:

For and on behalf of

THE PRESIDENT OF INDIA (First Party)

SIGNED, SEALED AND DELIVERED by

Name:

Designation:

Address:

Authorized Signatory

For and on behalf of

M/s.....(Second Party)

SIGNED, SEALED AND DELIVERED by

Name _____

Designation:

Address:

Representative/authorized signatory

Vide resolution dated passed by the Board of Directors

In the presence of Witness:

1.

2.

GUIDELINES FOR INDIAN AGENTS OF FOREIGN SUPPLIERS

- 1.0 There shall be compulsory registration of agents for all Global (Open) Tender and Limited Tender. An agent who is not registered with dprocure.gov.in/MoE shall apply for registration in the prescribed Application –Form.
- 1.1 Registered agents will file an authenticated Photostat copy duly attested by a Notary Public/Original certificate of the principal confirming the agency agreement and giving the status being enjoyed by the agent and the commission/remuneration/salary/retainer-ship being paid by the principal to the agent before the placement of order by the Ministry.
- 1.2 Wherever the Indian representatives have communicated on behalf of their principals and the foreign parties have stated that they are not paying any commission to the Indian agents, and the Indian representative is working on the basis of salary or as retainer, a written declaration to this effect should be submitted by the party (i.e. Principal) before finalizing the order.

2.0 DISCLOSURE OR PARTICULARS OF AGENTS/ REPRESENTATIVES IN INDIA. IF ANY.

- 2.1 Tenderers of Foreign nationality shall furnish the following details in their offer:
 - 2.1.1 The name and address of the agents/representatives in India, if any and the extent of authorization and authority given to commit the Principals. In case the agent/representative be a foreign Company, it shall be confirmed whether it is real substantial Company and details of the same shall be furnished.
 - 2.1.2 The amount of commission/remuneration included in the quoted price(s) for such agents/representatives in India.
 - 2.1.3 Confirmation of the Tenderer that the commission/ remuneration if any, payable to his agents/representatives in India, may be paid by M/o Education in Indian Rupees only.
- 2.2 Tenderes of Indian Nationality shall furnish the following details in their offers:
 - 2.2.1 The name and address of the foreign principals indicating their nationality as well as their status, i.e., whether manufacturer or agents of manufacturer holding the Letter of Authority of the Principal specifically authorizing the agent to make an offer in India in response to tender either directly or through the agents/representatives.
 - 2.2.2 The amount of commission/remuneration included in the price (s) quoted by the Tenderer for himself.
 - 2.2.3 Confirmation of the foreign principals of the Tenderer that the commission/remuneration, if any, reserved for the Tenderer in the quoted price (s), may be paid by M/o Education in India in equivalent Indian Rupees on satisfactory completion of the Project or supplies of Stores and Spares in case of operation items.
- 2.3 In either case, in the event of contract materializing, the terms of payment will provide for payment of the commission /remuneration, if any payable to the agents/representatives in India in Indian Rupees on expiry of 90 days after the discharge of the obligations under the contract.
- 2.4 Failure to furnish correct and detailed information as called for in paragraph 2.0 above will render the concerned tender liable to rejection or in the event of a contract materializing, the same liable to termination by M/o Education. Besides this there would be a penalty of banning business dealings with M/o Education or damage or payment of a named sum.

Guidelines on Banning of Business Dealing

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1. Introduction

- 1.1 M/o Education, being 'State', within the meaning of Article 12 of Constitution of India, has to ensure preservation of rights enshrined in Chapter III of the Constitution. M/o Education has also to safeguard its commercial interests. M/o Education deals with *Agencies*, who have a very high degree of integrity, commitments and sincerity towards the work undertaken. It is not in the interest of M/o Education to deal with *Agencies* who commit deception, fraud or other misconduct in the execution of contracts awarded / orders issued to them. In order to ensure compliance with the constitutional mandate, it is incumbent on M/o Education to observe principles of nature justice before banning the business dealing with any *Agency*.
- 1.2 Since banning of business dealings involve civil consequences for an *Agency* concerned, it is incumbent that adequate opportunity of hearing is provided and the explanation, if tendered, is considered before passing any order in this regard keeping in view the facts and circumstances of the case.

2. Scope

- 2.1 The General Conditions of Contract (GCC) of M/o Education generally provide that M/o Education reserves its rights to remove from list of approved suppliers / contractors or to ban business dealings if any *Agency* has been found to have committed misconduct and also to suspend business dealings pending investigation. If such provision does not exist in any GCC, the same may be incorporated.
- 2.2 Similarly, in case of sale of material there is a clause to deal with the *Agencies* / customers / buyers, who indulge in lifting of material in unauthorized manner. If such a stipulation does not exist in any Sale Order, the same may be incorporated.
- 2.3 However, absence of such a clause does not in any way restrict the right of the Ministry to take action / decision under these guidelines in appropriate cases.
- 2.4 The procedure of (i) Removal of *Agency* from the List of approved suppliers / contractors; (ii) Suspensions and (iii) Banning of Business Dealing with *Agencies*, has been laid down in these guidelines.
- 2.5 These guidelines apply to all the Bureaus and Organisations/Autonomous Institution under the Ministry.
- 2.6 It is clarified that these guidelines do not deal with the decision of the Management not to entertain any particular *Agency* due to its poor / inadequate performance or for any other reason.
- 2.7 The banning shall be with prospective effect, i.e., future business dealings.

3. Definitions

In these Guidelines, unless the context otherwise requires:

- i) *'Party / Contractor / Supplier / Purchaser / Customer/Bidder/Tenderer'* shall mean and include a public limited company or a private limited company, a firm whether registered or not, an individual, a cooperative society or an association or a group of persons engaged in any commerce, trade, industry, etc. *'Party / Contractor / Supplier / Purchaser / Customer/Bidder / Tenderer'* in the context of these guidelines is indicated as *'Agency'*.
- ii) *'Inter-connected Agency'* shall mean two or more companies having any of the following features:
 - a) If one is a subsidiary of the other.
 - b) If the Director(s), Partner(s), Manager(s) or Representative(s) are common;
 - c) If management is common;
 - d) If one owns or controls the other in any manner;
- iii) *'Competent Authority' and 'Appellate Authority'* shall mean the following:
 - a) For M/o Education, the Bureau Head shall be the *'Competent Authority'* for the purpose of these guidelines. Secretary, D/o Higher Education/School Education as the case may be, shall be the *'Appellate Authority'* in respect of such cases except banning of business dealings with Foreign Suppliers of imported coal/coke.
 - b) For Subordinate offices, Autonomous organization of the Ministry of Education, the Competent Authority and the Appellate Authority shall be such, as may be decided by the Governing body of the organisation.
 - c) In case the foreign supplier is not satisfied by the decision of the First Appellate Authority, it may approach M/o Education as Second Appellate Authority.
 - d) Secretary, higher Education/Secretary, School Education, M/o Education shall have overall power to take suo-moto action on any information available or received by him and pass such order(s) as he/she may think appropriate, including modifying the order(s) passed by any authority under these guidelines.
- iv) *'Investigating Department'* shall mean any Department or Unit investigating into the conduct of the Agency and shall include the Vigilance Bureau, Central Bureau of Investigation, the State Police or any other department set up by the Central or State Government having powers to investigate.
- v) *'List of approved Agencies – Parties / Contractors/Suppliers/Purchasers/Customers/Bidders/Tenderers'* shall mean and include list of approved/registered Agencies – Parties/ Contractors /Suppliers/ Purchasers / Customers / Bidders/ Tenderers, etc.

4. Initiation of Banning / Suspension

Action for banning / suspension business dealings with any Agency should be initiated by the department having business dealings with them after noticing the irregularities or misconduct on their part. Besides the concerned department, Vigilance Department of each Plant / Unit / Corporate Vigilance may also be competent to advise such action.

5. Suspension of Business Dealings

- 5.1 If the conduct of any Agency dealing with M/o Education is under investigation by any department, the Competent Authority may consider whether the allegations under investigation are of a serious nature and whether pending investigation, it would be advisable to continue business dealing with the Agency. If the Competent Authority, after consideration of the matter including the recommendation of the Investigating Department, if any, decides that it would not be in the interest to continue business dealings pending investigation, it may suspend business dealings with the Agency. The order to this effect may indicate a brief of the charges under investigation. If it is decided that inter-connected Agencies would also come within the ambit of the order of suspension, the same should be specifically stated in the order. The order of suspension would operate for a period not more than six months and may be communicated to the Agency as also to the Investigating Department. The Investigating Department may ensure that their investigation is completed and whole process of final order is over within such period.
- 5.2 The order of suspension shall be communicated to all Bureau/ Organisation/ Autonomous Institution under the Ministry. During the period of suspension, no business dealing may be held with the Agency.
- 5.3 As far as possible, the existing contract(s) with the Agency may continue unless the Competent Authority, having regard to the circumstances of the case, decides otherwise.
- 5.4 If the gravity of the misconduct under investigation is very serious and it would not be in the interest of M/o Education, as a whole, to deal with such an Agency pending investigation, the Competent Authority considers that depending upon the gravity of the misconduct, it would not be desirable for all institutions/organisations of M/o Education to have any dealings with the Agency concerned, an order suspending business dealings may be issued to all institutions/organisations by the Competent Authority, copy of which may be endorsed to the Agency concerned. Such an order would operate for a period of six months from the date of issue.
- 5.5 If the Agency concerned asks for detailed reasons of suspension, the Agency may be informed that its conduct is under investigation. It is not necessary to enter into correspondence or argument with the Agency at this stage.
- 5.6 It is not necessary to give any show-cause notice or personal hearing to the Agency before issuing the order of suspension. However, if investigations are not complete in six months time, the Competent Authority may extend the periods of suspension by another three months, during which period the investigations must be completed.

6. Ground on which Banning of Business Dealings can be initiated

- 6.1 If the security consideration, including questions of loyalty of the Agency to the State, so warrants;

- 6.2 If the Director / Owner of the Agency, proprietor or partner of the firm, is convicted by a Court of Law for offences involving moral turpitude in relation to its business dealings with the Government or any other public sector enterprises during the last five years;
- 6.3 If there is strong justification for believing that the Directors, Proprietors, Partners, owner of the Agency have been guilty of malpractices such as bribery, corruption, fraud, substitution of tenders, interpolations, etc;
- 6.4 If the Agency continuously refuses to return / refund the dues of Ministry / organisations/ Autonomous Institution under Ministry without showing adequate reason and this is not due to any reasonable dispute which would attract proceedings in arbitration or Court of Law;
- 6.5 If the Agency employs a public servant dismissed / removed or employs a person convicted for an offence involving corruption or abetment of such offence;
- 6.6 If business dealings with the Agency have been banned by the Govt. or any other public sector enterprise;
- 6.7 If the Agency has resorted to Corrupt, fraudulent practices including misrepresentation of facts and / or fudging /forging /tampering of documents;
- 6.8 If the Agency uses intimidation / threatening or brings undue outside pressure on the Ministry or its official in acceptance / performances of the job under the contract;
- 6.9 If the Agency indulges in repeated and / or deliberate use of delay tactics in complying with contractual stipulations;
- 6.10 Willful indulgence by the Agency in supplying sub-standard material irrespective of whether pre-despatch inspection was carried out by M/o Education or not;
- 6.11 Based on the findings of the investigation report of CBI / Police against the Agency for malafide / unlawful acts or improper conduct on his part in matters relating to M/o Education or even otherwise;
- 6.12 Established litigant nature of the Agency to derive undue benefit;
- 6.13 Continued poor performance of the Agency in several contracts;
- 6.14 If the Agency misuses the premises or facilities of Ministry of Education forcefully occupies, tampers or damages the Ministry's properties including land, water resources, forests / trees, etc.

(Note: The examples given above are only illustrative and not exhaustive. The Competent Authority may decide to ban business dealing for any good and sufficient reason).

7 Banning of Business Dealings

- 7.1 Normally, a decision to ban business dealings with any Agency should apply throughout Ministry and Organisations/Autonomous Institution under its control. Any ban imposed by the Ministry shall be applicable on all organisations/Autonomous Institutions under the Ministry.

- 7.2 If the Competent Authority is prima-facie of view that action for banning business dealings with the Agency is called for, a show-cause notice may be issued to the Agency as per paragraph 9.1 and an enquiry held accordingly.

8. Removal from List of Approved Agencies – Suppliers / Contractors, etc.

- 8.1 If the Competent Authority decides that the charge against the Agency is of a minor nature, it may issue a show-cause notice as to why the name of the Agency should not be removed from the list of approved Agencies – Suppliers / Contractors, etc.
- 8.2 The effect of such an order would be that the Agency would not be disqualified from competing in Open Tender Enquiries but LTE may not be given to the Agency concerned.
- 8.3 Past performance of the Agency may be taken into account while processing for approval of the Competent Authority for awarding the contract.

9 Show-cause Notice

- 9.1 In case where the Competent Authority decides that action against an Agency is called for, a show-cause notice has to be issued to the Agency. Statement containing the imputation of misconduct or mis-behaviour may be appended to the show-cause notice and the Agency should be asked to submit within 15 days a written statement in its defence.
- 9.2 If the Agency requests for inspection of any relevant document in possession of Ministry, necessary facility for inspection of documents may be provided.
- 9.3 The Competent Authority may consider and pass an appropriate speaking order:
- a) For exonerating the Agency if the charges are not established;
 - b) For removing the Agency from the list of approved Suppliers / Contractors, etc.
 - c) For banning the business dealing with the Agency.
- 9.4 If it decides to ban business dealings, the period for which the ban would be operative may be mentioned. The order may also mention that the ban would extend to the interconnected Agencies of the Agency.

10 Appeal against the Decision of the Competent Authority

- 10.1 The Agency may file an appeal against the order of the Competent Authority banning business dealing, etc. The appeal shall lie to Appellate Authority. Such an appeal shall be preferred within one month from the date of receipt of the order banning business dealing, etc.
- 10.2 Appellate Authority would consider the appeal and pass appropriate order which shall be communicated to the Agency as well as the Competent Authority.

11 Review of the Decision by the Competent Authority

Any petition / application filed by the Agency concerning the review of the banning order passed originally by the Competent Authority under the existing guidelines either before or after filing of

appeal before the Appellate Authority or after disposal of appeal by the Appellate Authority, the review petition can be decided by the Competent Authority upon disclosure of new facts / circumstances or subsequent development necessitating such review. The Competent Authority may refer the same petition to the Standing Committee for examination and recommendation.

12 Circulation of the names of Agencies with whom Business Dealings have been banned

- 12.1 Depending upon the gravity of misconduct established, the Competent Authority may circulate the names of Agency with whom business dealings have been banned, to the Government Departments, other Public Sector Enterprises, etc. for such action as they deem appropriate.
- 12.2 If Government Departments or a Public Sector Enterprise request for more information about the Agency with whom business dealings have been banned, a copy of the report of Inquiring Authority together with a copy of the order of the Competent Authority / Appellate Authority may be supplied.
- 12.3 If business dealings with any Agency has been banned by the Central or State Government or any other Public Sector Enterprise, M/o Education may, without any further enquiry or investigation, issue an order banning business dealing with the Agency and its inter-connected Agencies.

Annexure**CONFIDENTIALITY AGREEMENT**

This **CONFIDENTIALITY AGREEMENT** is made and executed at on this day of....., 20....

BY AND BETWEEN

THE PRESIDENT OF INDIA acting through (insert name of the officer), Joint Secretary, Ministry of Education, Govt. of India having its office located at Shastri Bhawan, New Delhi-110001 (hereinafter referred to as "**Ministry of Education**") which term or expression shall, unless excluded by or repugnant to the subject of context, mean and include its successor-in-office, administrators or permitted assignees) of the **First Part**;

AND

Sh./Ms..... having its residence/office at..... (hereinafter referred to as "**The Independent Monitor**") which term or expression shall, unless excluded by or repugnant to the subject or context, mean and include its successors) of the **Second Part**.

1. Preamble

1.1 Whereas the Ministry of Education, Government of India, is proposing to appoint separate panel of Independent Monitors for procurement cases of Goods/services/work contract of MoE.

1.2 Whereas the Pre-Contract Integrity Pact provide for appointment of Independent Monitors for the purpose of monitoring of various provision of the said Pact and whereas the said Pact provides for perusal of the relevant records of the Ministry of Education by the said Independent Monitors in connection with the relevant procurement case on which the said Integrity pact has been signed with the bidders;

1.3 Now, therefore, with a view to ensuring and maintain the complete and total confidentiality of every official information contained in any file, document, records, brief, presentation, electronic or telephonic medium, as may be made available by the Ministry of Education to the Independent Monitors.

The parties hereto hereby agree as follows:-

2. Objective of the Agreement

2.1 The objective of this Agreement is to ensure non-disclosure of all official information by the Independent Monitors, to which they will have access through their perusal of any official record, file, document, presentation, electronic or telephonic exchange, as part of their functions so as to preserve the secrecy and confidentiality of defence-related official information.

3. Obligation of Independent Monitors

3.1 An Independent Monitor shall make use of all official information made available to him by the Ministry of Education solely and exclusively for the purpose of the duty assigned to the Independent Monitor and shall no one any case, disclose any of such information to any third person whosoever.

Duration of this Agreement

6. This Agreement shall commence after the same is signed and returned to the Ministry of Education accepting the terms contained herein.

Law and Place of Jurisdiction

7. The provisions of the Agreement shall be governed under the Indian Law as applicable in the territory of Union of India and the Courts of Law located in New Delhi shall have jurisdiction in the matter.

Having so set out the terms of this Agreement, the parties to this Agreement hereby on this day _____ of the Month _____ and year _____ at New Delhi sign the Agreement with full intention of carrying out the provisions thereof.

For and on behalf of

THE PRESIDENT OF INDIA (First Party)

SIGNED, SEALED AND DELIVERED by

Name:

Designation: Joint Secretary

Address:

Authorized Signatory

(Second Party)

Name _____

Address:

In the presence of Witness:

1.

2.

DECLARATION OF ABSENCE OF CONFLICT OF INTEREST

1. I, _____, understand that conflict of interest refers to situations in which financial or other personal considerations may compromise my recommendations in relating to Integrity Process/examination of complaints/resolution of issues between the Ministry and the bidder.
2. I hereby declare that I do not have any personal conflict of interest that may arise from my appointment as Independent External Monitor in M/o Education. I understand that my appointment may be cancelled if found out that there is conflict of interest.
3. Further, in case of any form of conflict of interest (possible or actual) which may inadvertently emerge during my tenure as IEM, I will duly report it to the Secretary, D/o Higher Education.
4. I understand that I may be held accountable by the Ministry of Education for any conflict of interest which I have intentionally concealed.

IEM : _____

SIGNATURE : _____

DATE : _____