

NTECL's Policy & Procedure for Withholding and Banning of Business Dealings (for Bidding documents)

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Policy & Procedure for Withholding and Banning of Business Dealings

1. Introduction

- 1.1 NTECL deals with Agencies, who are expected to adopt ethics of highest standards and a very high degree of integrity, transparency, commitments and sincerity towards the work undertaken. It is not in the interest of NTECL to deal with any Agency who commit deception, fraud or other misconduct of whatsoever nature in the tendering process and/or execution. NTECL is committed for timely completion of the works within the awarded value without compromising on quality.
- 1.2 Since suspension/banning of business dealings involves 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.
- 1.3 This policy has been drawn from NTPC's policy with appropriate changes, as NTPC is one of the JV partners & NTECL is adopting the systems & practices of NTPC for its day to day management.

2. Scope

- 2.1 NTECL reserves its right to withhold or ban business dealings with any Agency, if such Agency is found to have committed misconduct or any of its action(s) fall into any such categories as laid down in this policy.
- 2.2 The procedure for (i) Withholding and (ii) Banning of Business Dealing with any Agency, has been laid down in these guidelines.
- 2.3 The provisions of this Policy supersede and will have overriding effect on all earlier guidelines, procedures & system circulars issued for the similar purpose.
- 2.4 This policy comes into force from the date of its issuance.
- 2.5 The provisions of this policy will be effective on investigations conducted or misconduct/irregularities noticed on the part of any Agency in all contracts awarded on or after the date of implementation of this policy and in the contracts under execution or contracts not yet closed, on the date of the implementation of this policy.

3. Definitions

In these Guidelines, unless the context otherwise requires:

- i) **Agency** shall mean Contractor / Supplier / Purchaser / Bidder/ NTECL approved Sub-contractor of a Contractor' to whom work has been awarded. It shall include, but not limited to, a public limited company or a private limited company, a firm whether registered or not, any individual, a cooperative society or an association or a group of persons engaged in any commerce,

trade industry, or constituents of an unincorporated Joint Venture Company, etc.

ii) **Competent Authority and 'Appellate Authority'** shall mean the following :-

The Chief Executive Officer, NTECL shall be the 'Competent Authority' for the purpose of these guidelines. The Regional Executive Director, South, NTPC shall be the 'Appellate Authority' in respect of contracts awarded by the company.

iii) **'Investigating Department'** shall mean any Department of NTECL, investigating into the conduct of the Agency and shall include the NTECL Vigilance Department, Central Bureau of Investigation, the State Police or any other department set up by the Central or State Government having powers to investigate.

iv) **'List of Enlisted Agencies'** shall mean and include list of Enlisted Parties / Contractors / Suppliers / Bidders, etc. of NTECL.

v) **State** – includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

vi) **Fraud Prevention Policy** – shall mean the policy related to prevention of fraud displayed on NTECL tender website <http://www.ntpcntecljv.co.in>.

vii) **Completion of Facilities/Works** shall mean the term Completion of Facilities/works as defined in the Contract.

viii) **Standing Committee** shall mean the following for Contracts awarded by the company:

A Committee constituted for the purpose of these guidelines and comprising HODs (not below E-7 level) from C&M (Convener), Finance and Indenting department. Additional member(s) from any other department as considered appropriate may also be co-opted on case to case basis.

ix) **Suspension/Banning** – In the context of these guidelines, the words suspension and banning are interchangeable and shall have same connotation & meaning.

4. Withholding of business dealings

4.1 Grounds

The business dealing with the Agency may be withheld, if they are found to be in breach of the terms & conditions of the Contract, on account of the reasons attributable to them, which shall include, but not be limited to the following:

if the Agency

- a) Either fails to commence work on the Facilities in terms of contract or suspends the progress of Contract performance.
- b) Fails to achieve the 'Completion of Facilities/works' or execute the contract within time schedule stipulated in the contract



- c) Suspends/stops work on any unfounded pretext including seeking higher compensation.
- d) Fails to conduct the Guarantee test in the time limit stipulated in the contract.
- e) Diverts funds advanced to the Contractor for purpose other than the Contract.
- f) Does not deploy or withdraws the technical staff or equipment considered necessary as per the terms & conditions of contract;
- g) Fails to furnish the required documents / information as required under the terms & conditions of contract;
- h) Does not fulfill the obligations as required under the Contract .
- i) Violates terms & conditions of the contract.
- j) Does not Supply material /supplies material of inferior quality with respect to Technical Specifications under the Contract.
- k) On prima-facie scrutiny, work executed found to be of poor quality beyond acceptable limits stipulated in the Technical Specifications under the Contract.
- l) If a disaster / major failure / accident / collapse of a structure/ system caused during the contract execution or during defect liability period *prima facie* appears to be due to negligence of contractor or design deficiency or poor quality of execution.
- m) Assigns, transfers, sublets or attempts to assign, transfer or sublet the entire Works or any portion thereof without the prior written approval of the company;
- n) Misbehavior or physical manhandling by the Agency or his representative or any person acting on his behalf with any official of the company dealing with the concerned contract.
- o) If NTECL prima-facie of the view that the Agency is guilty of an offence involving corrupt, fraudulent practices including misrepresentation of facts as per NTECL's Fraud Prevention Policy, moral turpitude in relation to the business dealings.
- p) If the Central Vigilance Commission, Central Bureau of Investigation or any other Central/State Government investigation Agency or any other Central/State Government Department recommends such a course in respect of a case under investigation;
- q) If the security consideration, including questions of loyalty of the Agency to the state, so warrants ;
- r) The finished work either prematurely fails or fails to give the desired output/service during the defect liability period and the Agency fails to rectify it.
- s) On any ground as per which doing business dealings with the Agency is not in the public interest in the opinion of Competent Authority.

- t) If the Agency fails to comply with any of the statutory laws and regulations in force, in totality, even after completion of work.
- u) If the agency is financially incapable to ensure continuous deployment of resources to execute the works meeting the company's requirements.
- v) If the agency raises undue claims /disputes leading to stoppage of works.

4.2 Procedure

- (a) For Packages awarded by the company

The concerned department at Site on noticing any non/under performance and/or irregularities and/or misconduct and/or unethical practice as mentioned above, shall refer the matter to Convener of the Standing Committee along with relevant details. The Standing Committee shall analyze the referred case and if considered appropriate, shall put up the proposal for issuing Notice of Default for the purpose of withholding of business dealings with the Agency for approval of the Competent Authority. The above draft Notice of Default to be issued to the Agency should clearly indicate the charges based on the facts as can be proved.

The action for withholding of business dealings shall be initiated in those cases where 30% or more shortfall in work progress is observed with respect to agreed work schedule for the reasons attributable to the Contractor.

In case the Standing Committee recommends waiver of withholding of business dealings with the Agency, the proposal along with reasons thereof shall be put up for approval of the Chief Executive Officer, NTECL.

All the above proposals shall be routed through Vigilance department.

Besides the Standing Committee, Vigilance Department of NTECL may also initiate the proposal for withholding.

4.3 Notice of Default

Once the proposal for issuance of Notice of default is approved by the Competent Authority, a 'Notice of Default' duly vetted by Legal Department shall be issued by the Competent Authority himself or by a person authorized by the Competent Authority for the said purpose to the Agency giving them a period of twenty eight (28) days to remedy the default.

If Agency fails to remedy or take adequate steps to remedy the default to the satisfaction of NTECL within the notice period mentioned above, then business dealings shall be withheld with the Agency after approval of the Competent Authority. The order of such withholding of business dealings shall be communicated to the Agency (after vetting by legal deptt) by the Competent Authority himself or by a person authorized by the Competent Authority, for the said purpose.



4.4 Area of Operation

A decision to withhold business dealings with any Agency for contracts shall apply throughout the Company.

When any agency has been withheld by NTPC Corporate Centre, the same shall be applicable in the company, without any further examination. Likewise upon, revocation, the same shall stand automatically revoked on NTECL also.

4.5 Effect of Withholding

The Agency, after issue of order of withholding of business dealings, would not be allowed to participate in any future tender enquiry and if the Agency has already participated in any tender process and the price bids are not opened, his techno-commercial bid will be rejected and price bid will be returned unopened. However, where the price bids of Agency have been opened prior to order of withholding, bids of the Agency shall not be rejected.

4.6 Duration of Withholding

Duration of withholding the Agency shall be for a period of one year. Within this period, if the Agency rectifies the reason / ground on which the Agency has been withheld, to the satisfaction of the Competent Authority, then on written representation of the Agency, the Competent Authority can review and, if satisfied, may revoke the order of withholding of business dealing. Similarly, the agency withheld by NTPC and if the order is revoked by NTPC, the same shall be applicable in NTECL, without any further examination.

Provided further that, even till completion of one year of withholding period, if the Agency does not rectify, then the Competent Authority after reviewing the situation may issue order extending the period of withholding for one more year or advise initiation of action for banning of business dealings with Agency in accordance with the procedure prescribed in Para 5.2 below.

4.7 Hosting at NTECL intranet

The names of the Agencies with whom Business Dealings have been withheld shall be hosted at NTECL intranet by C&M for information of all departments.

4.8 Revocation of Orders

An order for withholding of business dealing passed for a certain specified period, including extension thereof, shall not be revoked automatically. Such withholding shall be revoked only after order in this respect is issued with the approval of Competent Authority.

5. Banning of business dealings

5.1 Grounds on which Banning of business dealings can be initiated

Banning of business dealings can be initiated against Agency, on following grounds :-

- a) If the Agency fails to accept the award of contract or has abandoned or repudiated the Contract.
- b) If the Contractor is found to be non-performing in execution of contract
- c) If a disaster / major failure / accident / collapse of a structure / system is caused during the contract execution or during defect liability period due to negligence of contractor or design deficiency or poor quality of execution.
- d) Misbehavior or physical manhandling by the Agency or his representative or any person acting on his behalf with any official of the Company dealing with the concerned contract is established.
- e) If the Director / Owner of the Agency, proprietor or partner of the Agency, is convicted by a court of law for offences involving corrupt and fraudulent practices including moral turpitude in relation to its business dealings with the government or NTECL, during the last five years.
- f) If the proprietor of the Agency has been guilty of malpractices such as bribery, corruption, fraud, substitution of the tenders, interpolations, etc.
- g) If the Agency continuously refuses to return / refund the dues of NTECL, without showing adequate reason and this is not due to any reasonable dispute which would attract proceedings in arbitration or court of Law;
- h) If the Agency employs a public servant dismissed / removed or employs a person convicted for an offence involving corruption or abetment of such offences;
- i) If business dealings with the Agency have been banned by the Ministry of Power or Government of India or the Govt. of Tamil Nadu and the ban is still in force;
- j) If it is established that Agency has resorted to corrupt, fraudulent practices including misrepresentation of facts;
- k) If the Agency uses intimidation/threatening or brings undue outside pressure on NTECL, or its official in acceptance / performance of the job under the contract;
- l) If the Agency indulges in repeated and / or deliberate use of delay tactics in complying with contractual stipulations;
- m) If the Agency is found to be involved in cartel formation during bidding.
- n) On willful indulgence by the Agency in supplying sub-standard material with respect to Technical Specifications under the Contract irrespective of whether pre-dispatch inspection was carried out by the Company or not;
- o) 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 the Company or even otherwise;



- p) If the Agency is declared bankrupt or insolvent or its financial position has become unsound, and in the case of a limited company, it is wound up or liquidated.
- q) Established litigant nature of the Agency to derive undue benefit;
- r) Continued poor performance of the Agency;
- s) If the Agency commits fraud as defined under the Fraud Prevention Policy of NTECL.
- t) If the Agency has assigned or transferred the contract or engaged sub-contractor(s) without the prior approval of the Competent Authority in violation of the provisions of the contract.
- u) If the Agency misuses the premises or facilities of the NTECL forcefully occupies, tampers or damages the Company's properties including land, water resources, forests / trees, etc.
- v) If the security consideration, including questions of loyalty of the Agency to the state, so warrants;
- w) If the agency raises undue claims /disputes leading to stoppage of works.
- x) The examples given above are only illustrative and not exhaustive. The Competent Authority may decide to ban business dealing for any other reason not mentioned above but qualifying as a good & sufficient reason.

5.2 Procedure

(a) For Packages where banning is proposed by the company

The concerned department on noticing any non/under performance and/or irregularities and/or misconduct and/or unethical practice as mentioned above, shall refer the matter to Convener of the Standing Committee along with relevant details. The Standing Committee shall analyze the referred case and if considered appropriate, shall put up the proposal for issuing Show Cause Notice for the purpose of banning of business dealings with the Agency for approval of the Competent Authority.

In case the Standing Committee recommends waiver of banning of business dealings with the Agency, the proposal along with reasons thereof shall be put up for approval of one level above the Competent Authority.

All the above proposals shall be routed through Vigilance department.

Besides the Standing Committee, Vigilance Department may also be competent to initiate the proposal for banning.

5.3 Show Cause Notice

Once the proposal for issuance of Show Cause Notice is approved by the Competent Authority, a 'Show Cause Notice' duly vetted by legal department shall

be issued by the Competent Authority himself or by a person authorized for the said purpose to the delinquent Agency. The Agency shall be asked to submit the reply of Show Cause Notice within 15 days of its issuance. Further, the Agency shall be given an opportunity for Oral hearing to present its case in person, if it so desires, and the date for Oral Hearing shall be necessarily indicated in the Show Cause Notice.

In cases where investigation has been carried out by Vigilance Department or CBI etc., the show cause notice will also be vetted by Vigilance Department before issuance. Statement containing the imputation of misconduct or misbehavior may be appended to the Show Cause Notice.

The purpose of issuing the Show Cause Notice is only that the Agencies concerned shall be given an opportunity to explain their stand before any action is taken. All that is required in such cases is that the grounds on which action is proposed to be taken shall be disclosed to the Agency inviting representation and after considering that representation, orders may be passed. Such orders require only the subjective satisfaction of the authority that passed the final orders.

If the Agency requests for inspection of any relevant document in possession of the Company, necessary facility for inspection of documents may be provided.

In cases processed by Vigilance deptt, oral hearing shall be conducted by a separate committee (constituted on case to case basis) comprising members from C&M and Vigilance deptt. Additional member(s) from any other deptt/site as considered appropriate may also be co-opted on case to case basis.

During the conductance of oral hearing, only the regular employees of Agency will be permitted to represent the Agency and no outsider shall be allowed to represent the Agency on its behalf.

Reply to the Show Cause Notice given by the Agency and their submissions in oral hearing, if any, will be processed by the Standing Committee for obtaining final decision of the Competent Authority in the matter. Further, reply to the Show Cause Notice given by the Agency and submissions in oral hearing, if any, with regards to Vigilance cases shall be processed by a Separate Committee which shall put up its final recommendations to the Competent Authority in the matter. In case, no reply to Show Cause Notice is received from the Agency within stipulated time, action for processing ex-parte against the concerned Agency shall be initiated.

5.4 Speaking Order

The speaking order for banning the business dealing with the Agency shall be issued (after vetting by legal dept.) by the Competent Authority himself or by a person authorized for the said purpose. In cases where investigation has been carried out by Vigilance Department or CBI etc., the speaking order will also be vetted by Vigilance Department before issuance.

5.5 Communication to Agencies

The decision regarding banning of business dealings taken after the issue of a Show Cause Notice and consideration of representation, if any, in reply thereto,



shall be communicated to the Agency concerned along with a reasoned order. The fact that the representation has been considered shall invariably be mentioned in the communication. Also the fact that if no reply was received to the Show Cause Notice shall invariably be indicated in the final communication to the Agency.

5.6 Period of banning

The period for which the ban would be operative may be mentioned in the order. The banning shall normally be for a period of three years.

In case the information/documents submitted by Agency in competing for the tender found to be false/forged then NTECL, without prejudice to any other rights or remedies it may possess, shall recover from Agency the cost incurred in carrying out physical assessment for establishing veracity of such information/documents. In case Agency refuses to reimburse such cost to NTECL then banning period of Agency shall be extended by another one year.

5.7 Area of Operation

For contracts awarded by the company, banning shall apply throughout the Company.

When any agency has been banned by NTPC Corporate Centre, the same shall be applicable in NTECL, without any further examination. Likewise upon, revocation, the same shall stand automatically revoked on NTECL also.

5.8 Effect of Banning

The Agency, after issue of the order of banning of business dealings, would not be allowed to participate in any future tender enquiry and if the Agency has already participated in tender process and the price bids are not opened, his techno-commercial bid will be rejected and price bid will be returned unopened. However, where the price bids of Agency have been opened prior to order of banning, bids of Agency shall not be rejected.

5.9 Process of reply

The Agency shall be separately advised of the decision regarding banning of business, taken in reply to their representation, if any. As regard any further representation from the Agency, business dealings with whom have been banned, the same shall be processed by the concerned C&M department in consultation with Vigilance department, wherever applicable. If any reply is considered necessary to be sent to the Agency, the same shall be sent by the C&M Department.

5.10 Hosting at NTECL intranet

The names of the Agencies with whom Business Dealings have been banned shall be hosted at NTECL intranet by C&M, for information of all NTECL departments.

5.11 Appeal against the Decision of the Competent Authority.

The Agency may file an appeal against the order of the Competent Authority banning of business dealing before Appellate Authority. Such an appeal shall be preferred within one month from the date of receipt of the order of banning of

business dealing. Appellate Authority would consider the appeal and pass appropriate order which shall be communicated to the Agency as well as the Competent Authority.

5.12 Revocation of Orders

- a) An order for banning of business dealing passed for a certain specified period, including extension thereof, shall not be revoked automatically. Such banning shall be revoked only after order in this respect is issued with the approval of Competent Authority.
- b) An order of banning for the reasons mentioned at para 5.1 (e) above may be revoked if, in respect of the same facts, the accused has been wholly exonerated by a Court of Law.

6.0 During the banning/withholding period, if it is found at any stage that Agency has participated in tender enquiry under a different name then such Agency would immediately be debarred from the tender/contract and its Bid Security/Performance Security would be forfeited. Payment, if any, made shall also be recovered.

7.0 Further in case of banning/withholding following would also be applicable:

(i) Participation of Agency as an Associate/Collaborator of the Main Contractor

Where Stage-I bids have been opened prior to banning/withholding of Agency and such Agency has been proposed as Associate/Collaborator by any of the bidders, in such cases the tendering process shall not be annulled on this

ground and the Agency shall be permitted to continue as Associate/Collaborator for such bidding.

However where opening of Stage-I bids (Two Stage Bidding) / Envelope-I Techno-Commercial bids (Single Stage Two Envelope Bidding) has not taken place prior to banning/withholding of Agency then in such case Agency shall not be permitted to participate as Associate/Collaborator in such bidding.

(ii) Participation of Agency as an approved Sub-Vendor of the Main Contractor

After banning/withholding order, the banned/withheld Agency shall not be allowed to participate as Sub-Vendor in the tenders for supplying/manufacturing equipment (s)/component (s)/service if it has been banned on grounds of supplying sub-standard material/equipment/service.



Further, if the banned/withheld agency is an approved Sub-vendor under any Contract for such equipment/component/service, the Main Contractor shall not be permitted to place work order/Purchase order/Contract on the banned/withheld agency as a sub-vendor after the date of banning/withholding even though the name of the party has been approved as a sub-vendor earlier.

(iii) Procurement of spares/awarding of Contracts in operating stations

There would be no bar on procuring the spares and awarding Contracts towards Annual Maintenance (AMC)/ O&M/ Repair works on Agencies pertaining to the packages for which they have been banned provided the Equipment has been supplied by such Agency.