



BOKARO POWER SUPPLY CO.(P) LTD

(A Joint Venture of SAIL & DVC)
Hall No.- M-01, Old ADM Building
Ispat Bhawan, Bokaro Steel City- 827 001

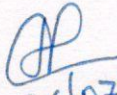
O/o No.- BPSCL/CEO/P&W Policy-2015/Amendment-II/3695

Date: 26.07.2017

Office Order

Sub.: Amendment in Procurement & Work Policy-2015 of BPSCL

Approval of the Chief Executive Officer is hereby conveyed for amendment to clause no. 28.0 of P&W Policy-2015 regarding "*Guidelines on Banning of Business Dealing*" of BPSCL as per Annexure-I.


26/07/2017

(J.M. Prasad)
DGM (P&C)

e-Copy to:

1. GM I/c (PP)
2. GM (Project)
3. GM (Operation)
4. GM (Maint.)
5. VO – For needful as per clause 1.4 of P&WP-2015

e-Copy to: CEO - For kind information please.

Subject	Guidelines on Banning of Business Dealing
Objective	To keep a tab on supplier/ contractor in case of any default, bad performance, fraud, deception and misconduct.

28.0 BANNING OF SUPPLIERS/ CONTRACTORS

In case of default, bad performance, fraud, deception and misconduct, etc. by any supplier / contractor / vendor, action may be taken as per the instructions issued by BPSCL from time to time w.r.t “Guidelines on Banning of Business Dealings” as mentioned below:

GUIDELINES ON BANNING OF BUSINESS DEALINGS

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26/07/2017

GUIDELINES ON BANNING OF BUSINESS DEALINGS

1.0 Introduction

- 1.1 BOKARO POWER SUPPLY CO. (P) LTD (BPSCL), being a Joint Venture Company of Steel Authority of India Ltd. and Damodar Valley Corporation and 'State', within the meaning of Article 12 of Constitution of India, has to ensure preservation of rights enshrined in Chapter III of the Constitution. BPSCL has also to safeguard its commercial interests. BPSCL deals with *Agencies*, who have very high degree of integrity, commitments and sincerity towards the work undertaken. It is not in the interest of BPSCL 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 BPSCL to observe principles of natural justice before banning the business dealings with any Agency.
- 1.2 Since 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.

2.0 Scope

- 2.1 The General Conditions of Contract (GCC) of BPSCL generally provide that BPSCL 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 a situation 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 Company (BPSCL) 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) Suspension and (iii) Banning of Business Dealing with Agencies, has been laid down in these guidelines.
- 2.5 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.
- 2.6 The banning shall be with prospective effect, i.e., future business dealings.

3.0 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:
- Any officer not below the rank of General Manager / Deputy General Manager appointed or nominated by the Chief Executive Officer (CEO) shall be the '*Competent Authority*' for the purpose of these guidelines. The Chief Executive Officer shall be the '*Appellate Authority*' in all such cases.
- a) Chairman, BPSCL shall have overall power to take suo-moto action on any information available or received by him and pass such order(s) as he 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 Department, Central Bureau of Investigation, the State Police or any other department setup 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.

4.0 Initiation of Banning / Suspension

Action for banning / suspension of 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 Plant / Unit may also be competent to advise such action.

5.0 Suspension of Business Dealings

- 5.1 If the conduct of any Agency dealing with BPSCL is under investigation by the standing committee, 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 standing committee, 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 standing committee. The standing committee 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 Sectional Heads. 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.


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- 5.4 If the gravity of the misconduct under investigation is very serious and it would not be in the interest of BPSCL, as a whole, to deal with such an Agency pending investigation, the Competent Authority may send his recommendation to Chief Vigilance Officer (CVO) along with the material available. If CVO considers that depending upon the gravity of the misconduct, it would not be desirable for BPSCL to have any dealings with the Agency concerned, an order suspending business dealings may be issued 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 period of suspension by another three months, during which period the investigations must be completed.

6.0 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 or BPSCL, 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 BPSCL 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 documents**;
- 6.8 If the Agency uses intimidation / threatening or brings undue outside pressure on the Company (BPSCL) 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 Wilful indulgence by the Agency in supplying sub-standard material irrespective of whether pre-dispatch inspection was carried out by BPSCL 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 the Company (BPSCL) or even otherwise;

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- 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 the BPSCL, forcefully occupies, tampers or damages the BPSCL'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).

7.0 Banning of Business Dealings

7.1 There will be a Standing Committee to be appointed by Chief Executive Officer for processing the cases of "Banning of Business Dealings".

The functions of the committee shall, inter-alia include:

- i) To recommend for issue of show-cause notice to the Agency by the concerned department.
- ii) To examine the reply to show-cause notice and call the Agency for personal hearing, if required.
- iii) To submit final recommendation to the Competent Authority for banning or otherwise.

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.

8.0 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.

9.0 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 misbehaviour 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 BPSCL, 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.

10.0 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.

11.0 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 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 Chief Executive Officer / 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.

12.0 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 Enquiring 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 have been banned by the Central or State Government or any other Public Sector Enterprise, BPSCL may, without any further enquiry or investigation, issue an order banning business dealing with the Agency and its inter-connected Agencies.