



BOKARO POWER SUPPLY COMPANY (P) LIMITED

(A Joint Venture of SAIL & DVC)

Bokaro Steel City

BPSCL/MM/P&W Policy-2015/Amendment/2413

date: 11.11.2024

Office Order

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

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

A K Das
CGM (MM)

e-copy to:

- 1) CGM (P&A)
- 2) CGM I/c (PP)
- 3) CGM (Maintenance)
- 4) GM (F&A)
- 5) GM (Operation)
- 6) I/c (Projects)
- 7) Vigilance Officer

e-copy to CEO- For kind information PI

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

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

TABLE OF CONTENTS

1.0	Introduction	02
2.0	Scope	02
3.0	Definitions	03
4.0	Initiation of Banning / Suspension	03
5.0	Suspension of Business Dealings	04
6.0	Ground on which Banning of Business Dealings can be initiated	05-06
7.0	Banning of Business Dealings	07
8.0	Show-cause Notice	08
9.0	Appeal against the Decision of the Competent Authority	09
10.0	Effect of Debarment/ Banning	09
11.0	Revocation of Banning/ Debarment Orders	09
12.0	Circulation of the names of Agencies with whom Business Dealings have been banned	10


11.11.2024

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 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 in Sale Order 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 mentioned at 2.1 and 2.2 above 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) Suspension and (ii) 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, partnership firm, Limited Liability Partnership, 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 termed 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 Functional 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;
 - e) If the agencies have same authorized signatory (ies)
 - f) If they have the same address/ same Permanent Account Number/ Same Bank Account Number/ Common email ID.

Note: This list is only illustrative in nature.
- iii) The terms "banning of firm", 'suspension 'Black-Listing' etc. convey the same meaning as of Debarment".
- iv) '**Competent Authority**' and '**Appellate Authority**' shall mean the following:
 - a) **CGM I/c (Power Plant)** shall be the '**Competent Authority**' for the purpose of these guidelines. The **Chief Executive Officer** shall be the '**Appellate Authority**' in all such cases.
 - b) 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.
- v) 'Investigating Department' shall mean any Department 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.

4.0 Initiation of Banning / Suspension

Action for banning / suspension of business dealings with any Agency should be initiated by the concerned department such as Indenting/ Contracting/ Executing Departments, etc. having business dealings with Agency or by the department which floated the tender (*in case where the tenderer has committed deception, fraud or other misconduct*) subsequent to noticing the irregularities or misconduct on their part. Besides the concerned department, Vigilance Department of Plant may also be competent to advise such action to Competent Authority.

5.0 Suspension of Business Dealings

- 5.1 If the conduct of any Agency dealing with BPSCL is under investigation by any department, the Concerned Department may consider whether the allegations under investigation are of serious nature and whether pending investigation, it would be advisable to suspend (temporarily discontinue) business dealings with the Agency. Recommendation in the matter shall be submitted to the Competent Authority for this Purpose.
- 5.2 If the Competent Authority, after consideration of the matter including the recommendation of the Investigating Department, decides that it would not be in the interest of BPSCL to continue business dealings pending investigation, it may suspend business dealings with the Agency. **The Suspension order to this effect shall be issued by the Head of Concerned Department, indicating a brief of the charges under investigation and the period of suspension.** 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. Ordinarily, the order of suspension would operate for a period not more than six (06) months and may be communicated to the Agency and also to the Investigating Department.
- Further to the suspension, the investigation, recommendation by the Standing Banning Committee and final decision by the Competent Authority to be completed **within Six (06) months from order of suspension.**
- 5.3 The order of suspension of business dealing with the Agency under investigation shall be communicated to all Departmental Heads. During the period of suspension, no fresh contract will be entered into with the Agency.
- 5.4 As far as possible, the Agency under suspension should be allowed to complete the job of existing contracts, unless the Competent Authority, having regard to the circumstances of the case, decides otherwise. Once the order for suspension is issued, existing offers against ongoing tenders (prior to issuance of contract) / new offers of the Agency shall not be entertained during the period of suspension.
- 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 (06) months' time, the Competent Authority with approval of CEO may extend the period of suspension by another three (03) months, during which period the investigations must be completed.

6.0 Ground on which Banning of Business Dealings can be initiated

6.1 Grounds for banning up to One year:

1. Backing out of L-1 Bidder.
2. Refusal of L-1 Bidder to give break-up of price.
3. If the Agency fails to accept the award of contract or has abandoned or repudiated the Contract.
4. If the Agency fails to submit Performance Security within stipulated timeframe as per Contract terms,
5. If the Agency fails to execute Contract Agreement within stipulated timeframe as per Contract terms.
6. Either fails to commence work on the facilities in terms of the contract or suspends progress of Contract.
7. Fails to achieve or complete the contract milestones with the time schedule stipulated in the Contract.
8. Suspends/stops work on any unfounded pretext including compensation, claims beyond Contract.
9. Fails to complete the Guarantees in the time limit indicated in the Contract.
10. Diverts funds advanced to the Contractor for purposes other than the Contract.
11. Does not deploy or withdraws the technical staff or equipment considered necessary as per terms & conditions of Contract.
12. Fails to furnish the required deliverables as required under the terms & conditions of Contract.
13. Does not supply material or supplies material of inferior quality or work executed is of poor quality which is not as per the Technical Specifications of the Contract.
14. Does not fulfil the obligations as required under the Contract.
15. Violates terms & conditions of the Contract.
16. Assigns, transfers, sublets or attempts to assign, transfer or sublet the entire works or any portion thereof without prior written approval of the Employer.
17. The finished work either permanently fails or fails to give the desired output/service during the defect liability period and the Agency fails to rectify it.
18. If the Agency fails to comply with any of the statutory laws and regulations in force, in totality, even after completion of work.
19. If the Agency resorts to unauthorized sale of materials purchased from the Company.
20. If the Central Vigilance Commission, Central Bureau of Investigation or any other Central government investigating agency/department recommends such a course in respect of a case under investigation.



6.2 Grounds for banning up to Two years:

1. If a disaster/ major failure/ accident/ collapse of a structure/ system caused during erection or during defect liability period due to negligence/ design deficiency/ poor execution of the contractor, or any other reason attributable to contractor, or any other reason attributable to contractor.
2. 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 BPSCL during the last five years preceding date of tender opening or during execution of contract, provided such information is known to BPSCL.
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. during the last five years preceding date of tender opening or during execution of contract, provided such information is known to BPSCL.
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.
5. If the Agency uses intimidation / threatening / misbehaves with BPSCL Officials or brings undue outside pressure or influence on the Company (BPSCL) or its official in acceptance/ performance of the job under the contract.
6. If the Agency indulges in repeated and / or deliberate use of delay tactics in complying with contractual stipulations / delayed the tendering process.
7. If the Agency wilfully indulges itself in supplying sub-standard material which are not as per Technical Specifications of the Contract irrespective of whether pre-dispatch inspection was carried out by BPSCL or not.
8. If the Agency misuses the premises or facilities of BPSCL, forcefully occupies, tampers or damages BPSCL's properties including land, water resources, forests / trees, etc.
9. If the agency fails to disburse labour payments within stipulated timeframe as per contract on continuous basis for three or more months.
10. 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.
11. If there is an established record of litigant nature of the Agency to derive undue benefit.
12. Continued poor performance of the Agency. (In case Performance of the vendor is 'Unsatisfactory', in a single contract in two consecutive billing cycles).
13. If the Agency employs a public servant dismissed / removed or employs a person convicted for an offence involving corruption or abetment of such offence, provided such information is known to BPSCL;
14. If the Agency has committed a transgression through violation of any of its commitments under the Integrity Pact entered with BPSCL.
15. If the Agency has resorted to corrupt, fraudulent practices including misrepresentation of facts **and / or fudging / forging / tampering documents;**
16. If business dealings with the Agency have been banned by the Govt. or any other public sector enterprise at the time of submitting his bid or on the date of tender opening or at the time of placement of order, provided such information is known to BPSCL;
17. If security consideration, including questions of loyalty of the Agency to the State, so warrants.

[Handwritten Signature]
11.11.2024

- 6.3 The above grounds are not exhaustive. The competent authority may decide to ban business dealing for any good and sufficient reason beyond and inclusive of the above.)
- 6.4 No experience certificate shall be issued by Engineer in Charge/ Executing Authority against the contract to the Agency found to have submitted forged/ fabricated documents/ indulged in corrupt/ fraudulent practices.)

7.0 Banning of Business Dealings

- 7.1 There will be a Standing Banning Committee to be appointed by Competent Authority for processing the cases of "Banning of Business Dealings".
- 7.2 The functions of the committee shall, inter-alia include:
- i) To examine in detail the allegation/ irregularities/ misconduct mentioned in the proposal for banning forwarded by the concerned Department, hold preliminary meeting and decide if a prima-facie case for banning under the guidelines exists. If during preliminary meeting, Standing Banning Committee is of opinion that prima facie no case is made out, it shall return the case to the Concerned Department.
 - ii) If it is decided to proceed for banning action, to recommend for issue of show-cause notice (as mentioned later) to the Agency by the Concerned Department, as to why action should not be taken against the Agency, including its interconnected agencies, under the Guidelines for Banning of Business Dealings with them. Agency should be asked to submit its reply **within 15 days of the show-cause notice.**
 - iii) To examine the reply given by the Agency to show-cause notice and call the Agency for personal hearing, if required.
 - iv) To submit final recommendation to the Competent Authority for banning of business dealings with the Agency on participation of the Agency in tenders or exoneration.
- 7.3 If banning is recommended by the Standing Banning Committee, the proposal containing the facts of the case, proper justification of the action proposed, relevant supporting documents along with the recommendation of the SBC and proposed banning period **as per clause 6 above** should be sent to the Competent Authority. Based on this proposal, a decision for banning or otherwise shall be taken by the Competent Authority. At this stage, if it is felt by the Competent Authority that there is no sufficient ground for banning, then the case with detailed reasons shall be sent back to the respective Department for necessary action at their end.

The Competent Authority may consider and pass an appropriate Order:

- a) For exonerating the Agency if the charges/ allegations are not established;
- b) For banning the business dealings with the Agency.


11.11.2024

- 7.4 If the Competent Authority decides that it is a fit case for banning business dealings, the period for which the ban would be operative shall be mentioned in accordance with clause 6 above. If applicable, the order may also mention that the ban would extend to the interconnected agencies of the Agency. The Order for banning would be conveyed by the Concerned department to the Agency concerned and copy circulated to all Departmental Heads.
- 7.5 A bidder or any of interconnected agencies may be debarred from participating in any procurement process for a period not exceeding two years as mentioned in clause 6. However, for the cases not defined there, Banning period, depending on the gravity of the case, shall be decided by the Competent Authority.
- 7.6 As far as possible, the Agency under banning should be allowed to complete the job of existing contracts, unless the Competent Authority, having regard to the circumstances of the case, decides otherwise. Once the order for banning is issued, existing offers against ongoing tenders (prior to issuance of contract)/ new offers of the Agency shall not be entertained during the period of banning. In addition, if the Agency has been banned under provisions of **Para 15 of clause 6.2**, then the particular contract in which irregularity has been proven will be terminated with immediate effect. In exceptional cases, where it would not be prudent to terminate the said contract with immediate effect, the contract may be allowed to continue for such minimum period during which alternate arrangement (s) can be made. The same shall however require the approval of CEO where the exigency to continue the contract has been clearly brought out.
- 7.7 In case the Competent Authority has decided to exonerate the Agency, the Concerned Department will issue the exoneration letter to the Agency concerned as well as communicate to all Departmental Heads. If the agency has been suspended in the case under consideration, in the same letter to the Agency it must be clarified that the Suspension has also been revoked.

8.0 Show-cause Notice

- 8.1 In case where the Competent Authority decides that action against an Agency is called for, a show-cause notice shall be issued to the Agency by the Concerned Department. Statement containing the imputation of misconduct should be appended to the show-cause notice and the Agency should be asked to submit within 15 days a written statement in its defence. It must be clearly mentioned in the Show-Cause Notice that BPSCL hereby proposes to initiate action against the Agency in terms of the Guidelines on Banning of Business Dealings. Generally, all communication with the Agency shall be through email mentioned by Agency in contract or last known email and postal address.
- 8.2 If the Agency requests for inspection of any relevant document in possession of BPSCL, necessary facility for inspection of documents may be provided.

9.0 Appeal against the Decision of the Competent Authority

- 9.1 The Agency may file an appeal against the order of banning business dealings/ suspension of the Agency in tenders. The appeal shall lie to the Appellate Authority. Such an appeal shall be preferred **within 30 days from** the date of receipt of the order.
- 9.2 Appellate Authority would consider the appeal and pass appropriate Order which shall be communicated by the Concerned Department to the Agency as well as the Competent Authority whose order has been appealed.

10.0 Effect of Debarment/ Banning:

- 10.1 No new contract of any kind whatsoever shall be placed to debarred firm including its interconnected agencies after the issue of banning/ debarment order.
- 10.2 Bids from only such firms shall be considered for placement of contract, which are neither debarred on the date of opening of techno-commercial bid nor debarred on the date of issuance of LOA/PO/Work Order/LOA-cum-Work Order. Even in the cases of risk purchase, no contract should be placed on such debarred firms.
- 10.3 In case, any debar firms has submitted the bid, the same will be ignored. In case such firm is lowest (L-1), next lowest firm shall be considered as L-1. Bid security submitted by such debarred firms shall be returned to them.
- 10.4 Existing Contracts before issuance of banning/ debarment order shall not be affected by the banning/ debarment orders.
- 10.5 Debarment in any manner does not impact any other contractual or other legal rights of BPSCL.
- 10.6 The period of debarment shall start from the date of issue of debarment order.
- 10.7 The Order of debarment will indicate the reason(s) in brief that lead to debarment of the firm.
- 10.8 Ordinarily, the period of debarment should not be less than six months.

11.0 Revocation of Banning/ Debarment Orders:

- 11.1 An order for banning/ debarment passed shall be deemed to have been automatically revoked on the expiry of that specified period and it will not be necessary to issue a specific formal order of revocation.
- 11.2 A banning/ debarment order may be revoked before the expiry of the Order only with the approval by Chairman, BPSCL, if it is of the opinion that the disability already suffered is adequate in the circumstances of the case or for any other reason.



11.11.2024

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

- 12.1 BPSCL shall upload/ update the list of banned agencies along with the period of banning immediately on issue of Banning Order on BPSCL Tenders website for wider publication.
- 12.2 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.
- 12.3 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 Investigating Department/ Standing Banning Committee together with a copy of the order of the Competent Authority / Appellate Authority may be provided.
- 12.4 If business dealings with any Agency have been banned by the Central or State Government or any other Public Sector Enterprise, BPSCL may, on receipt of such information, without any further enquiry or investigation, issue an order banning business dealing with the Agency and its inter-connected Agencies.

In event of receipt of information, the procedure for banning in BPSCL will still have to be followed though no investigation will be called for, and the banning period proposed should be co-terminus with the period of banning in the organization which has issued the banning order but limited to the maximum period of banning as per the extant banning guidelines of BPSCL. On completion of the banning period as per BPSCL banning order, the Agency will be eligible for participation in any tenders in BPSCL irrespective of banning status in the other organization.

- 12.5 Guidelines for Banning of Business Dealing shall be made a part of the Tender documents.


11.11.2024