

# **OIL INDIA LIMITED**

**PLOT NO. 19, SECTOR - 16A  
NOIDA**

## **BANNING POLICY**

**GUIDELINES FOR APPROPRIATE ACTION AGAINST  
ERRING AND DEFAULTING BIDDERS, CONTRACTORS,  
SUPPLIERS, VENDORS, AND SERVICE PROVIDERS**

**6<sup>th</sup> January, 2017**

## **1.0 INTRODUCTION:**

- 1.1 Oil India Limited (OIL) deals with various Agencies, in the course of various procurement, works and service contracts, who are expected to adopt ethics of highest standard and a very high degree of integrity, transparency, commitments and sincerity towards the work undertaken by them. It is not in the interest of OIL to deal with any agency who commits deception, fraud or other misconduct of whatsoever nature in the tendering process and/or contract execution processes.
- 1.2 While participating in the tender and performing under a Contract/Order, the Agencies are required to meet certain standard of integrity and adherence to the terms and conditions of the tender/contract. In case any agency fails to meet the standard benchmark of integrity, it is prudent to put the agency on holiday/banning list for specific periods in order to deter the Agencies from committing such defaults. Such decisions shall be taken after following a laid down process. Since holiday listing or banning from business dealings involves civil consequences for the agency concerned, it is incumbent that adequate opportunity of hearing is provided and the explanation, if submitted by agency, is considered before passing any order in this regard keeping in view the facts and circumstances of the case.

## **2.0 DEFINITION:**

- (i) **"Corrupt practice"** means the offering, giving or soliciting of anything of value to improperly influence the procurement process or in contract execution.
- (ii) **"Fraudulent practice"** includes any act or omission committed by a bidder by misrepresenting, misleading/submitting false document and or false information or concealment of facts in order to influence the procurement process as well as during the execution of contract.
- (iii) **"Collusive practice"** amongst bidders means a scheme or arrangement designed to establish bid prices at artificial non competitive level and to deprive the Company (OIL) of the benefit of free and open competition.
- (iv) **"Coercive practice"** means impairing or harming or threatening to impair or harm directly or indirectly, any agency or its property to influence the improperly actions of an agency, obstruction of any investigation or auditing of a procurement/contract process.
- (v) **'Agency'** shall mean Bidder / Contractor / Supplier / Consultant /OIL empanelled contractors, Service Provider and vendors.
- (vi) **"Tender"** shall mean all or any tender and shall include Enquiry, Request for Quotation and Notice Inviting Tender.

(vii) **“Contract”** shall mean all or any contract awarded to an Agency and shall include Purchase Orders/Works Contract/Service Contract.

(viii) **“Company”** shall mean Oil India Limited.

### **3.0 PROVISION FOR ACTION IN CASE OF ERRING / DEFAULTING AGENCIES:**

Action against erring and defaulting agencies like bidder, contractor, supplier, vendor, service provider can be taken generally under following three heads:

- i) Banning
- ii) Suspension
- iii) Holiday

### **4.0 BANNING :**

4.1 The bidder, contractor, supplier, vendor, service provider can be considered for banning in case of corrupt, fraudulent, collusive and coercive practice.

4.2 Action against agencies in respect of an ongoing tender/contract where the agency has indulged in corrupt, fraudulent, collusive and coercive practice.

(i) The irregularities is noticed during the evaluation of bids:

If it is observed that, bidder has indulged in committing irregularities like, corrupt, fraudulent, collusive and coercive practice; the Company shall reject the bid of such bidder. If the bid is rejected after price bid opening and such bidder happens to be the lowest evaluated bidder, the tender shall be scrapped and retendered. The Earnest Money Deposit (EMD)/Bid Security submitted by such bidder shall be forfeited. Further, the bidder shall be put on the banning list after following the due process.

(ii) The irregularities noticed after the award of contract:

(a) **During execution of Contract:**

If the contractor is found to have indulged in corrupt, fraudulent, collusive and coercive practice, in respect of ongoing contract, such contractor shall be put on banning list of OIL after following the due process.

The concerned contract/order where irregularities have been committed shall be suspended forthwith by the Engineer-in-charge, who is supervising the contract, with the approval of the concerned HoD at Corporate Office/head of sphere/fields/Pipeline Headquarter/project, as applicable. The work/services/ supply and payment shall be suspended. The action shall be initiated for putting the vendor on banning list.

After following the due process, the order/contract where it has been concluded that irregularities have been committed shall be terminated. The contract Performance Bank Guarantee submitted by the Contractor shall be forfeited. Any payment due to the contractor for work already executed and accepted shall be payable after adjustment of any amount due from the contractor as per the provision of the contract.

In this case no Risk and Cost Clause will be applicable.

(b) **The irregularities noticed after execution of the contract during defect liability period:**

If it is found after execution of the contract, that the contractor has indulged in corrupt, fraudulent, collusive and coercive practice, such agency shall be banned for future business with OIL after following the due process. The contract performance bank guarantee submitted by the contractor shall be forfeited.

4.3 **Period for banning:**

The period of banning shall be 3 (three) years from the date of issuance of banning order.

4.4 **Allowing the contractor to complete the job in respect of the contract where the irregularities have been committed:**

In exceptional circumstances, the contract where irregularities like corrupt, fraudulent, collusive and coercive practice have been committed, the contractor may be allowed to complete the job in case it is considered that the work/supply is of critical nature and discontinuity of contract shall have adverse effect on operation/project completion/revenue generation. The approval for allowing the agency to complete the supply/work to be obtained from head of C&P at Corporate Office/head of sphere/fields/Pipeline Headquarter/project with recommendation of a Committee consisting of Head of Contracts & Purchase, Finance and User Department.

After the approval for continuing with the contractor, job will be executed and payment shall be made as per the provision of contract.

The Performance bank guarantee of such agency shall not be forfeited.

However, the agency shall be put on banning list after following due process after completion of work.

4.5 In case of any member/leader of a consortium is found to be indulged in corrupt, fraudulent, collusive and coercive practice in a particular contract which is under execution shall be dealt in the same manner as described at para 4.2, 4.3 and 4.4 above. The action regarding banning shall be against all members even if irregularity is committed by an individual member against the particular contract.

4.6 **Process for banning an agency in case of corrupt, fraudulent, collusive and coercive practice:**

- i) Once it comes to the notice of any Head of the Department/Head of sphere/Fields/Pipeline Headquarter/Project, about an irregularity committed by an agency, a committee consisting of members from C&P, Finance and user/indentor, shall be constituted by the Head of sphere/Fields/Pipeline Headquarter/Project. In case of matter related to activities at Corporate Office, the committee shall be constituted by Head of C&P Department.
- ii) This committee shall examine the case in detail and submit its report.
- iii) If the committee, after examinations comes to a conclusion that there is no substance in the matter and it does not require any further action; shall make a recommendation for closure of the case with due reasoning. Such recommendation shall be submitted to the authority who constituted the committee for approval.
- iv) In case the committee after detailed examination comes to the conclusion that the case requires further action, it shall make a recommendation for banning and the same shall be put up to the head of sphere/fields/Pipeline Headquarter/project as the case may be applicable.
- v) The above recommendation shall contain a show cause notice to be issued to the agency. The show cause notice should contain the alleged breach committed by the agency stating provision of the tender/contract. The explanation to be sought from the agency as to why action should not be taken as per provision of the tender/contract. The show cause notice shall require vetting by the legal department. Therefore, the committee recommendation along with the draft show cause notice shall be routed through legal department while placing before the competent authority to approve.
- vi) After obtaining approval from the competent authority, the show cause notice shall be issued by the Head of C&P Department. The concerned agency shall be given 2 (two) weeks time from the date of issuance of notice for submission of its response to the show cause notice.
- vii) In case the agency requires some documents in respect of show cause notice, the same may be provided promptly by OIL. However, such request should be entertained only once.
- viii) In case the agency seeks additional time, reasonable extension for response to Show Cause Notice may be given.
- ix) The response to show cause notice received from the agency shall be forwarded by C&P department to the committee, which made the recommendation. The committee shall examine the reply from the agency and make its final recommendation for banning or otherwise. In case the committee recommends for banning, a draft speaking order giving complete reason for banning to be provided along with the recommendation by the committee. The above recommendation shall require vetting by legal department with reference to show cause notice before it is put up for approval by competent authority, which shall be the head of sphere/fields/Pipeline Headquarter/project.

- x) After obtaining the approval of the competent authority, Head of C&P department will issue a speaking order banning the agency and intimate the same to the Corporate C&P. The Corporate C&P will intimate the same to all the spheres and simultaneously post on OIL's intranet.
  - xi) The banning order after expiry of the banning period shall automatically get revoked and shall not require issuance of any separate order. The name of the agency should be removed from the banning list hosted on OIL's intranet after expiry of the banning period.
- 4.7 The tender conditions should have the provision of above guidelines for action to be taken in case of corrupt, fraudulent, collusive and coercive practice, preferably in ITB (Instruction to Bidders).
- 4.8 The banning process should be completed within 4 (four) months from the date of initiation by concerned department/sphere. If the banning process is not completed within 4 (four) months, such exceptions with due reasoning shall be brought to the notice of the head of sphere/fields/Pipeline Headquarter/project.
- 4.9 If an agency is put on banning list, the subsidiary, sister companies/joint venture and holding company of the erring agency shall not be considered as banned.
- 4.10 If a communication from Govt of India is received debarring an agency from any business with Govt. department or PSE, such agency shall automatically be banned and put on the banning list of OIL.
- 4.11 **Appeal against decision of banning:**
- i) The banned agency if not satisfied with decision of banning may file an appeal to the competent authority giving full justification within 30 days from the date of issuance of banning order.
  - ii) The appeal should be disposed off within 45 days from the date of filing. The appellate authority shall pass a suitable order which shall be communicated to the agency by C&P department of the sphere/project concerned.
  - iii) The appellate authority shall be concerned Director of OIL.
  - iv) Pending order against the appeal, the banning order shall continue to be in force.
- 4.12 **Effect of Banning on other ongoing tenders/contracts:**
- i) An agency which is put on banning list should not be considered for any ongoing /future tenders during the banning period.
  - ii) If an agency is banned during the tendering process the following action to be taken :

- (a) The agency is put on banning list after issuance of enquiry and receipt of bids, however, before technical bid opening, the offer of such bidder should be ignored and the EMD/Bid Security submitted by the bidder to be returned to the agency.
  - (b) The agency is put on banning list after opening of the technical bid but before price bid opening, the price bid of such bidder need not be opened. The EMD/Bid Security submitted to be returned to such bidder.
  - (c) If the agency is put on banning list after price-bid opening, the price-bid of such agency shall not be considered for award. However, the price-bid shall be evaluated to know the ranking of the bidder. If it emerges as lowest bid, the tender to be scrapped and retendered. The bid security shall be returned.
  - (d) In case of a consortium bid, if any member of the consortium is banned during processing of the tender, the bid shall be treated in the same manner as in case of individual bidder at a, b, & c above.
- iii) If an agency is banned during the currency of a contract, following action to be taken :
- (a) If an agency who is banned is already executing other orders/contracts where no irregularities are committed the agency shall be allowed to continue till completion of the job including any increase in scope of work which are purely incidental to the main scope of work.
  - (b) If an agency is put on banning list and the same agency is a member of a consortium which is already executing an ongoing contract, the consortium shall be allowed to complete the work as per provision of the contract.
  - (c) In case the agency is Original Equipment Manufacturer (OEM) / Supplier / Service provider the procurement of spare parts and certain services may be continued with the banned agency for operational reason to be recorded in writing.

#### 4.13 **Suspension:**

Action for suspension shall be initiated mainly in the following situations:

- i) The Vigilance Department at Corporate Office, based on the facts gathered during its internal investigations recommends for taking action against an agency.
- ii) If a communication is received from any Government investigating agency directly or through Vigilance Department for action against a vendor in relation to procurement issue of OIL.
- iii) If action for Banning/Putting on Holiday has commenced against an Agency.

#### 4.14 **Process for Suspension:**

- i) Once a communication is received from Vigilance/any Govt. investigating agency for considering any action against a vendor, it is considered that prima facie

there exists a case for stopping further business with such vendor pending detailed enquiry for banning.

- ii) While communicating the suspension order, a show cause notice shall also be issued to the agency giving the brief reason for putting the vendor on suspension. The agency shall further be asked to explain as to why it should not be put on banning list for further business. The show cause notice shall be duly vetted by the legal department.
- iii) The C&P department shall process a proposal along with the show cause notice for putting the vendor for suspension.
- iv) After obtaining approval from the competent authority, the show cause notice shall be issued by head of C&P Department. In case of Corporate office, an officer designated by head of C&P shall issue the show cause notice. The concerned agency shall be given 2 (two) weeks time from the date of issuance of notice for submission of its response to the show cause notice.
- v) In case the agency requires some documents in respect of show cause notice, the same may be provided promptly by OIL. However, such request should be entertained only once.
- vi) In case the agency seeks additional time, reasonable extension can be given.
- vii) The concerned agency shall be informed that no future business dealings will be carried out with him /her during the currency of suspension.
- viii) The period of suspension shall be 3 (three) months which can be extended by one month at a time but total suspension period to be limited to 5 (five) months. The above extension for suspension period shall be with due approval of the competent authority, which shall be concerned head of sphere/fields/Pipeline Headquarter/project and head of C&P in case of Corporate office.
- ix) The process and decision regarding banning should be completed within 4 (four) months, only in exceptional circumstances it may be allowed upto 6 (six) months.
- x) The process of decision regarding banning in case of suspension shall be coordinated and followed by an officer from C&P Department for expeditious decision.
- xi) The suspension period served by the agency shall be accounted for in the period for banning if the final decision comes out for putting the agency in banning list.
- xii) If it is decided not to put the agency in the banning list after due process, the C&P Department will accordingly notify the agency regarding lifting suspension. Simultaneously, the name of the agency shall be removed from the suspension list from OIL's intranet with intimation to all spheres.

#### 4.15 **Effect of suspension:**

- i) An agency which is put on suspension list should not be considered for any ongoing / future tenders during the suspension.
- ii) If an agency is suspended during the tendering process the following action should be taken :
  - (a) If the agency is put on suspension list after issuance of enquiry and receipt of bids, however, before technical bid opening, the offer of such bidder should be ignored and the EMD/Bid Security submitted by the bidder to be returned to the agency.
  - (b) If the agency is put on suspension list after opening of the technical bid but before price bid opening, the price bid of such bidder need not be opened. The EMD/Bid Security submitted to be returned to such bidder.
  - (c) If the agency is put on suspension list after price-bid opening, the price-bid of such agency shall not be considered for award. However, the price-bid shall be evaluated to know the ranking of such bidder. If it emerges as lowest bid, the tender to be scrapped and retendered. The bid security shall be returned.
  - (d) If an agency who is suspended is already executing other orders/contracts where no irregularities are committed, the agency shall be allowed to continue till completion of the job including any increase in scope of work which are purely incidental to the main scope of work.
  - (e) Further, in case the agency is Original Equipment Manufacturer (OEM) / Supplier / Service provider the procurement of spare parts and certain services may be continued with the suspended agency for operational reason to be justified in writing.

#### 5.0 **HOLIDAY:**

5.1 The provision of putting an agency on holiday is mainly related to noncompliance/ nonperformance in respect of certain provisions of tender document/contract. An agency can be considered for holiday in case of the following:

- i) Has refused to accept LOA/ LOI/ Purchase Order / Contract after the same is issued by OIL within the period of Bid validity and as per agreed terms & conditions.
- ii) If an agency becomes bankrupt, insolvent, goes for voluntary liquidation.
- iii) If an agency fails to commence the work/supply leading to delay which may result in action like getting job done by other agency at the risk and cost of the contractor/supplier.
- iv) The contractor stops work without any valid reason.

- v) If the contractor does not comply with the conditions of the contract and violates statutory requirements like labor laws, Employees' Compensation Act, Mines Act or any other statutory obligations.
- vi) The material supplied by the agency are found to be defective and fails during its use/operation.
- vii) The workmanship and quality of job executed by the agency is found to be of substandard.
- viii) Premature failure of the work executed by contractor/failure of equipment during the operation, and not giving the desired result as per provision of the contract.
- ix) The contractor assigns/sublets the job without having permission from the company.
- x) If a major failure/accident/collapse of any structure occurs during erection or during defect liability period due to negligence of the agency or engineering deficiency or inferior quality of execution.
- xi) If the agency is found below acceptable limit of the vendor evaluation system as per laid down procedure requiring for putting the vendor on holiday.

5.1.1 The contract shall have provision to deal with most of the situation mentioned above. In case it is found that the performance of the contractor is not as required, the goods/materials/equipments supplied have certain defects or the work executed has certain deficiency, the progress is slow, the contractor shall be given an opportunity to take appropriate remedial action within a stipulated time as mentioned in the notice served to the contractor as per the provision of the contract. If the agency fails to comply with the above instruction, the contract shall have provision for getting the job done through alternative source at the risk and cost of the contractor.

## 5.2 **Process for putting agencies on holiday:**

- i) Once it is prima facie established that an agency has defaulted, and it calls for initiating action for putting the agency on holiday, the department supervising the tender/contract/purchase order shall initiate a note for taking action against the defaulting agency giving complete facts and figures. Based on the above, the HOD in case of Corporate Office/head of sphere/fields/Pipeline Headquarter/project will constitute a committee consisting of members from C&P, Finance and user department to examine.
- ii) The above committee shall analyze the matter in detail and make its recommendation for putting the vendor on holiday. The recommendation should contain a show cause notice giving the complete reason for such action, further the relevant provision of the tender/contract should be mentioned in the show cause notice.
- iii) The recommendation of the committee shall be routed through legal department, who shall vet the show cause notice before putting the recommendation for approval by competent authority. The competent authority shall be Head of sphere/Fields/Pipeline Headquarter/Projects and Head of C&P in case of Corporate office.
- iv) After obtaining approval from the competent authority, the show cause notice shall be issued by the Head of C&P Department. The concerned agency shall be

given 2 (two) weeks time from the date of issuance of notice for submission of its response to the show cause notice.

- v) In case the agency requires some documents in respect of show cause notice, the same may be provided promptly by OIL. However, such request should be entertained only once.
- vi) In case the agency seeks additional time, reasonable extension can be given.
- vii) The response to show cause notice shall be forwarded to the department from where the matter has been initiated, so that the committee examines the response from the agency and gives its final recommendation. Such recommendation from the committee shall be put up for approval by the competent authority. The final recommendation also shall be routed through legal department for its comments, if any.
- viii) After the approval by the competent authority, the Head of C&P department shall issue an speaking order to the agency for putting the agency on holiday list of OIL. The holiday list will be hosted on the intranet of OIL and simultaneously circulated to all spheres.
- ix) The banning process should be completed within 4 (four) months from the date of initiation by concerned department/sphere. If the banning process is not completed within 4 (four) months, such exceptions with due reasoning shall be brought to the notice of the head of sphere/fields/Pipeline Headquarter/project.

### 5.3 **Duration of holiday:**

Duration of holiday shall be 6 (six) months to 2 (two) years from the date of issue of the holiday order depending upon the gravity of the default which shall be recommended by the committee.

### 5.4 **Effect of holiday:**

If an agency is put on holiday list, it shall not be considered for any tender of Oil India Limited during the currency of holiday period unless revoked. The ongoing tenders, where the agency has participated, shall be dealt with in the same manner as given at sub-para ii) & iii) of para 4.12.

## 6.0 **CONTRACT PROVISION:**

The tender/contract condition should have relevant operating provision of this guideline in respect of banning and holiday to take care of issues which may lead to putting the vendor on holiday/banning list.

- 7.0 The Corporate C&P cell shall maintain the consolidated record of agencies placed under holiday/banning and also upload the same on OIL's intranet.

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