

Numaligarh Refinery Limited

Commercial Department

[Revised policy effective from 07.11.2022]

Policy for Holiday listing/ Banning/ Debarring of Contractors/ Suppliers

Agencies engaged through contracts are expected to adopt ethics of highest standard and a very high degree of integrity, commitment and sincerity towards the contracts undertaken. However, in few occasions the terms are found to be infringed and deviations from expected behavior are observed. It is not in the interest of NRL to deal with agencies who commit deception, fraud or other misconduct in the tendering and execution process. To deal with such situation policy for Holiday listing/ Banning/ Debarring of Contractors/ Suppliers has been formulated as below.

1. Definitions:

In these Guidelines, unless the context otherwise requires

- (i) The terms "Holiday listing", "Banning of firm", "Suspension", "Black-Listing" etc. convey the same meaning as of "Debarment".
- (ii) Agency: "Party/Contractor/Supplier/Vendor/Consultant/Bidder/Licensor" in the context these guidelines is indicated as 'Agency'. "Party Contractor/ Supplier/ Vendor/ Consultant/ bidders/ Licensor" shall mean and include a public limited company or a private limited company, a joint venture, Consortium, HUF, a firm whether registered or not, an individual, co-operative society or an association or a group of persons engaged in any commerce, trade, industry etc.

Firm: The term 'firm' or 'bidder' has the same meaning for the purpose of these Guidelines, which includes an individual or person, a company, a cooperative society, a Hindu undivided family and an association or body of persons, whether incorporated or not, engaged in trade or business.

Allied firm: All concerns which come within the sphere of effective influence of the debarred firms shall be treated as allied firms. In determining this, the following factors may be taken into consideration:

- a. Whether the management is common;
 - b. Majority interest in the management is held by the partners or directors of banned/ suspended firm;
 - c. Substantial or majority shares are owned by the banned/ suspended firm and by virtue of this it has a controlling voice.
 - d. Directly or indirectly controls, or is controlled by or is under common control with another bidder.
 - e. All successor firms will also be considered as allied firms.
- (iii) Appellate Authority: "Appellate Authority" shall mean the Managing Director, NRL. The Appellate authority shall be higher than the "Competent Authority".
 - (iv) Competent Authority: "Competent Authority" shall mean the authority, who is competent to take final decision for Holiday listing/ Banning/ Debarring of Contractors/ Suppliers as per provision of DOA
 - (v) Corrupt Practice: "Corrupt Practice" means the offering, giving, receiving or soliciting, directly or indirectly, anything of value to improperly influence the actions in selection process or in contract execution. Corrupt Practice" also includes any omission for misrepresentation that may mislead or attempt to mislead so that financial or other benefit may be obtained or an obligation avoided.
 - (vi) Fraudulent Practice: "Fraudulent Practice" means and include any act or omission committed by an agency or with his connivance or by his agent by misrepresenting/ submitting false

documents and/ or false information or concealment of facts or to deceive in order to influence a selection process or during execution of contract/order.

- (vii) Collusive Practice : "Collusive amongst bidders (prior to or after bid submission)" means a scheme or arrangement designed to establish bid prices at artificial non-competitive levels and to deprive NRL of the benefits of free and open competition.
- (viii) Coercive Practice: "Coercive practice" means impairing or harming or threatening to impair or harm directly or indirectly, any agency or its property to influence the improper actions of an agency, obstruction of any investigation or auditing of a procurement process.
- (ix) Officer-in-Charge: "Officer-in-Charge (OIC)" or "Engineer-in-Charge (EIC)" shall mean the person(s) designated to act for and on behalf of NRL for the execution of the work as per requirement of the concerned department.
- (x) Malpractice: Malpractice means any Corrupt Practice. Fraudulent Practice, Collusive Practice or Coercive practice as defined herein;
- (xi) Mis-Conduct: "Mis-conduct" means any act or omission by the Agency, making it liable for action for Holiday Listing as per these guidelines.
- (xii) Nodal Department: "Nodal Department" means the Department primarily assigned with the role of overseeing the Holiday Listing Process to ensure adherence to guidelines, maintaining, updating and publishing the list of Agencies with whom NRL has decided to ban business dealings and shall be the Commercial Department.

2. Reasons for Holiday Listing:

An agency may be placed in Holiday List for any one or more of the following circumstances:

2.1 If the Agency, in the context of its dealings with the Corporation:

- a) Has breached the Code of Integrity for Public Procurement (CIPP)
- b) Has indulged in malpractices;
- c) Has submitted fake, false or forged documents / certificates;
- d) Has substituted materials in lieu of materials supplied by NRL or has not returned or has unauthorized disposed off materials / documents / drawings / tools or plants or equipment supplied by NRL.
- e) Has deliberately violated and circumvented the provisions of labour laws/ regulations / rules, safety norms, environmental norms or other 'statutory' requirements.
- f) Has deliberately indulged in construction and erection of defective works or supply of defective materials.
- g) Has not cleared previous dues to NRL if applicable.
- h) Has committed breach of contract or has abandoned the contract.
- i) Poor performance of the Agency in one or several contracts.
- j) Has not honoured the fax of award / letter of award / Contract / Purchase order after the same is issued by NRL.
- k) Withdraws/ revises the bid upwards after becoming the L1 bidder (downward revision by H1 in case of disposal).
- l) Has parted with, leaked or provided confidential / proprietary information of NRL to any third party without the prior consent of NRL.
- m) The L1 bidder (Lowest quoted price) quotes an abnormally low/ unworkable price and the bidder fails to provide proper price break up and reasonability of his quoted price, resulting in cancellation of tender.
- n) Bidder withdraws his quote after opening of techno-commercial bid.
- o) GST registration/ account of the contractor is cancelled/ revoked/ seized by Government authority during the pendency of the contract.

2.2 The following additional grounds can also be reasons for Holiday listing of an agency:

- a) If a communication is received from the Administrative Ministry of the Corporation to ban Agency from dealing with the Corporation;

- b) If the Agency is or has become bankrupt, OR is being dissolved OR has resolved to be wound up OR if proceedings for winding up or dissolution has been instituted against the Agency;
- c) Any other ground, including transgression of Integrity Pact, which, in the opinion of the Corporation makes it undesirable to deal with the Agency; In the case of transgression of Integrity Pact, the same should be substantiated by the verdict of the Independent External Monitor.

3. Duration of Holiday Listing:

SI No.	Reasons for holiday listing	Period of holiday listing
1	Indulged in malpractices (including cartel formation/collusive bidding/bid rigging) resulting in financial loss to the Company	2 years
2	Submitted fake, false or forged documents / certificate	2 years
3	Has submitted materials in lieu of materials supplied by NRL or has not returned or has unauthorised disposed off materials/ documents/ drawings/ tools or plants or equipment supplied by NRL.	2 years
4	Has deliberately violated and circumvented the provisions of labour laws/regulations/rules, safety norms, environmental norms or other statutory requirements	2 years
5	Has deliberately indulged in construction and erection of defective works or supply of defective materials	2 years
6	Has not cleared NRLs previous dues if applicable	1 year
7	Has committed breach of contract or has abandoned the contract	2 years
8	Poor performance of the Agency in one or several contracts / Supply of sub-standard materials / sub-standard quality of works.	1 year
9	Has not honoured the fax of award/ letter of award/ Contract/ Purchase order/ after the same is issued by NRL / Failure to abide "Bid Securing Declaration".	1 year
10	Withdraws/ revises the bid upwards after becoming the L1 bidder	2 years
11	Has parted with, leaked or provided confidential/ proprietary information of NRL to any third party without the prior consent of NRL	2 years
12	If the Agency is or has become bankrupt, OR is being dissolved OR has resolved to be wound up OR if proceedings for winding up or dissolution has been instituted against the Agency	2 years
13	Transgression of Integrity Pact, which, in the opinion of the Corporation, makes it undesirable to deal with the Agency; Breach of the Code of Integrity for Public Procurement (CIPP)	2 years
14.	The L1 bidder (Lowest quoted price) quotes an abnormally low/ unworkable price and the bidder fails to provide proper price break up and reasonability of his quoted price, resulting in cancellation of tender.	1 year
15.	Bidder withdraws their quote after opening of techno-commercial bid.	1 year
16.	GST registration/ account of the contractor is cancelled/ revoked/ seized by Government authority during the pendency of the contract.	Till the time the information of restoration of Vendor's GST registration by Government authority is made available to NRL.

4.1 Banning of Business Dealings:

- a) EIC or the designated in-charge or department responsible for invitation of bids of a service, works or supply being satisfied that prima-facie the case is fit for banning, a Show Cause Notice would be served upon the agency to explain why action should not be taken against the agency, which agency should reply within 10 days of issue of notice. If requested by firm, personal hearing may also be allowed.
- b) Based on the agencies reply or no reply the recommendations would be put up through the nodal department to the Competent Authority for final decision on banning or otherwise as per provision of Para 3 above.
- c) In cases where Holiday Listing is proposed based on advice from the Administrative Ministry, no show cause or formal decision by competent authority will be required. The Nodal Department will directly intimate the Agency that they have been placed in Holiday Listing by NRL based on the Ministry's advice.
- d) The Debarment shall be automatically extended to all its allied firms. In case of joint venture/ consortium is debarred all partners will also stand debarred for the period specified in Debarment Order. The names of partners should be clearly specified in the "Debarment Order".
- e) The period of debarment shall start from the date of issue of debarment order.
- f) The Order of debarment will indicate the reason(s) in brief that led to debarment of the firm.
- g) A bidder or any of its successors may be debarred from participating in any procurement process for a period not exceeding two years. Ordinarily, the period of debarment should not be less than six months.

4.2 Provision for Appeal:

- i. An agency aggrieved with the decision of the Competent Authority shall have the option of filing an appeal against the decision of the Competent Authority.
- ii. Consideration of any appeal for review, filed after expiry of the above period, shall be at the sole discretion of the Appellate Authority;
- iii. On receipt of the Appeal from the Agency, the Appellate Authority, if it so desires, may call for comments from the Competent Authority;
- iv. The Appellate Authority, if it so desires, may also give an opportunity for personal hearing to the Appellant Agency;
- v. After examining the facts of the case and documents available on record and considering the submissions of the Appellant Agency, the Appellate Authority may pass appropriate order before the period of debarment is over by which the Appellate Authority may either:
 - a) Uphold the decision of Competent authority with or without any variation / lesser period of Holiday Listing; OR
 - b) Annul the order of the Competent Authority.
- vi. No Appeal is permitted in case an Agency is placed in Holiday List by NRL, based on Ministry's advice.

4.2(a) Provision for revocation:

A debarment order may be revoked before the expiry of the Order, by the competent authority, if it is of the opinion that the disability already suffered is adequate in the circumstances of the case or for any other reason.

5. Effect of Holiday Listing:

1. No enquiry / bid / tender shall be entertained with an Agency as long as the 'Agency' name appears in the active Holiday list.

2. If an 'Agency' is put on the Holiday list during tendering:

- a) If an 'Agency' is put on Holiday List after issue of the enquiry / bid / tender but before opening of the un-priced bid, the un-priced bid of the 'Agency' shall not be opened and BG/EMD, if submitted by the 'Agency' shall be returned. If an 'Agency' is put on Holiday List after un-priced bid opening but before price bid opening, the price bid of the 'Agency' shall not be opened and BG/EMD submitted by the 'Agency' shall be returned,
- b) If an 'Agency' is put on Holiday List after opening of price bid but before finalization of the tender, the offer of the 'Agency' shall be ignored and will not be further evaluated and the BG/EMD if any submitted by the 'Agency' shall be returned. The 'Agency' will not be considered for issue of order even if the 'Agency' is the lowest (L1). In case such 'Agency' is lowest (L-1), next lowest firm shall be considered as L-1.
- c) If contract with the 'Agency' concerned is in operation, (including cases where contract has already been awarded before decision of holiday listing) order for Holiday Listing from business dealings cannot affect the contract, because contract is a legal document and unless the same is terminated in terms of the contract, unilateral termination will amount to breach and will have civil consequences.
- d) Even in the cases of risk purchase, no contract should be placed on such debarred firms.
- e) Debarment in any manner does not impact any other contractual or other legal rights of the procuring entities.

6. Updation of records after holiday listing:

Once a vendor is holiday listed in accordance to the provisions of this policy, respective Commercial officer (DO) shall intimate the Vendor Master Governor. Accordingly following actions shall be taken by Vendor Master Governor:

- a) Vendor master data in SAP shall be updated with Holiday Listing status and period.
- b) Updated report on holiday listed vendors will be published in NRL website.
- c) Necessary action to be taken in CPP portal to activate holiday listing of the vendor.
- d) Necessary updation will also be done in case of any annulment / lessening of holiday period against order / approval by Appellate Authority.
- e) An order for 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.
- f) In case of shortage of suppliers in a particular group, such debarments may also hurt the interest of procuring entities. In such cases, endeavour should be to pragmatically analyze the circumstances, try to reform the supplier and may get a written commitment from the supplier that its performance will improve.

7. Safeguarding Procuring Entity's Interests during debarment of suppliers:

Suppliers/ contractors/ consultants/ service providers are important assets for the procuring entities and punishing delinquent suppliers should be the last resort. It takes lot of time and effort to develop, register and mature a new supplier. In case of shortage of suppliers in a particular group of materials/equipment, such punishment may also hurt the interest of Procuring Entity. Therefore, views of the concerned Department may always be sought about the repercussions of such punitive action on the continuity of procurements. Past records of performance of the supplier may also be given due weightage. In case of shortage of suppliers and in cases of less serious misdemeanours, the endeavour should be to pragmatically analyse the circumstances, reform the supplier and get a written commitment from the supplier that his performance will improve. If this fails, efforts should be to see if a temporary debarment can serve the purpose.
