

NUMALIGARH REFINERY LIMITEDPolicy for Holiday listing/ Suspension/ Banning/ Debarring of Contractors/ Suppliers

Works and procurement contract have become a major activity for corporate in current times. In course of such contracting Oil sector PSEs deal with various Agencies viz. parties/contractors/suppliers/consultants/bidders. These entities are expected to adopt ethics of highest standard and a very high degree of integrity, commitments and sincerity towards the works 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 PSE 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/ Suspension/ Banning/ Debarring of Contractors/ Suppliers has been formulated as below.

1. Definitions:

In these Guidelines, unless the context otherwise requires

- (i) 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.
- (ii) Appellate Authority: "Appellate Authority" shall mean the concerned functional Director of NRL or any other authority nominated by the MD. The Appellate authority shall be higher than the "Competent Authority".
- (iii) Competent Authority: "Competent Authority" shall mean the authority, who is competent to take final decision for Banning of business dealings with Agencies, in accordance with these guidelines: The Competent Authority for a Procurement Department which is initiating the Holiday Listing process should be the Entity head as the case may be relevant to the said Procurement Department, but not below the level of General Manager
- (iv) Corporation: "Corporation" means Numaligarh Refinery Limited with its Registered Office at 122A, G.S. Road, Christanbasti, Guwahati-781005
- (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 a 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 the Employer 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 improperly 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 indulged in malpractices;
- b. Has submitted fake, false or forged documents / certificates
- c. 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 equipments supplied by NRL.
- d. Has deliberately violated and circumvented the provisions of labor laws/ regulations / rules, safety norms, environmental norms or other statutory requirements.
- e. Has deliberately indulged in construction and erection of defective works or supply of defective materials
- f. Has not cleared previous dues to NRL if applicable.
- g. Has committed breach of contract or has abandoned the contract.
- h. Poor performance of the Agency in one or several contracts;
- i. Has not honored the fax of award / letter of award / Contract / Purchase order after the same is issued by NRL.
- j. Withdraws/ revises the bid upwards after becoming the L1 bidder.
- k. Has parted with, leaked or provided confidential / proprietary information of NRL to any third party without the prior consent of NRL.

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:

Sl. No.	Reasons for holiday listing	Period of holiday listing
1	Indulged in malpractices resulting in financial loss to the Corporation	15 years
2	Submitted fake, false or forged documents / certificates	3 years
3	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 equipments supplied by NRL	15 years
4	Has deliberately violated and circumvented the provisions of labour laws/ regulations / rules , safety norms, environmental norms or other statutory requirements	3 years
5	Has deliberately indulged in construction and erection of defective works or supply of defective materials	3 years
6	Has not cleared NRLs previous dues if applicable	1 years
7	Has committed breach of contract or has abandoned the contract	3 years
8	Poor performance of the Agency in one or several contracts	1 years
9	Has not honored the fax of award/ letter of award /Contract / Purchase order after the same is issued by NRL	1 years
10	Withdraws/ revises the bid upwards after becoming the L1 bidder	1 years
11	Has parted with , leaked or provided confidential/ proprietary information of NRL to any third party without the prior consent of NRL	15 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	3 years
13	Transgression of Integrity Pact, which, in the opinion of the Corporation, makes it undesirable to deal with the Agency;	3 years

3.1 Banning of Business Dealings:

- EIC or the designated in-charge or department responsible for invitation of bids of a 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 will not be taken against the agency, which agency should reply within 10 days of issue of notice.
- 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.
- 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.

4. Provision for Appeal;

- 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 within a maximum of 15 days from the date of receipt of intimation of holiday listing.

- 4.2 Any appeal filed after expiry of the above period shall not be considered by the Appellate Authority;
- 4.3 On receipt of the Appeal from the Agency, the Appellate Authority, if it so desires, may call for comments from the Competent Authority;
- 4.4 After receipt of the comments from the Competent Authority, the Appellate Authority, if it so desires, may also given an opportunity for personal hearing, to the Appellant Agency;
- 4.5 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 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.
- 4.6 No Appeal is permitted in case an Agency is placed in Holiday List by NRL, based on Ministry's advice.

5. Effect of Holiday Listing

- 5.1. No enquiry / bid / tender shall be entertained with an Agency as long as the 'Agency' name appears in the Holiday list.
- 5.2. 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 such situation next lowest shall be considered as L1;
 - c) If contract with the 'Agency' concerned is in operation, (including cases were contract has already been awarded before decision of holiday listing) normally 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.

