

ENGINEERING PROJECTS (INDIA) LTD.

POLICY FOR SUSPENSION OF BUSINESS DEALINGS WITH DEFAULTING CONTRACTORS/ CONSULTANTS/ SUPPLIERS

1.0 GENERAL

With the intention of safeguarding the commercial/financial interests of Engineering Projects (India) Ltd. (EPI) it is of utmost importance to formulate a policy to take action against any such **Tenderer, Contractor, Consultant, Supplier** (hereinafter referred to as "**contractor**" for brevity), who fail to implement business ethics, commitment and sincerity of the highest standards for the work being undertaken by them. EPI shall be bound to suspend/ban any business dealings with any such contractor who fails to perform or defaults/ deviates from the terms of tender/contract without any reasonable cause, is responsible for loss of business/ money/ reputation to EPI, indulges in malpractices, cheating, bribery, fraud or any other misconduct or formation of cartels so as to influence the tendering process or influence the price. Suspension of Business dealing involves putting a contractor on bench or banning a contractor for business with EPI for a particular period of time.

2.0 SCOPE

- 2.1 These guidelines are applicable for imposition/revoking of suspension/banning of the Contractor on various grounds enlisted herein. The Contract Division, Corporate Office shall act as Nodal office for Policy matters, and record keeping.
- 2.2 These guidelines shall be applicable to all contracts and apply to all **contractor(s)** having business dealings with EPI and shall be without prejudice to all remedies available under the contract with the contractors.
- 2.3 In case of the contractor being a partnership firm, action under these guidelines shall be taken/ applicable against the firm and all its partners.
- 2.4 In respect of consortia and unincorporated Joint Ventures/ Association of Persons (AOP)/ Body of Individuals (BOI), action under these guidelines shall be taken/ applicable against all the consortium partners and members of the unincorporated Joint ventures/ Association of Persons (AOP)/ Body of Individuals (BOI).

3.0 SUSPENSION OF BUSINESS DEALINGS WITH CONTRACTORS

The period of putting the Tenderer/Contractor on bench or period of banning shall be decided depending upon the gravity of the omission or commission by the Tenderer/Contractor which shall be for a period not less than one (1) year extending utmost till three (3) years. Business dealings with a Tenderer /Contractor may be put under suspension on the basis of receipt of evidence of one or more of the following reasons:

- 3.1 Submission of any document, information, data, certificate, affidavit, statement or undertaking by the Tenderer/Contractor in its Proposals or alongwith the bid/tender, based on which the Contractor was qualified as eligible or successful, is found to be false, fake, forged, incorrect or misleading and/or the Tenderer/Contractor has tampered with the records or has resorted to unethical, illegal means in getting the contract.
- 3.2 Non-compliance / breach of the terms and conditions or violation of commitments of the Integrity Pact submitted by the Tenderer/Contractor.
- 3.3 Non-disclosure about debarment/ blacklisting of the Contractor by any other organization, body, company, ministry etc. which is brought to notice of EPI.
- 3.4 Involvement in any sort of tender fixing, cartel formation or in any act so as to influence the bidding process or influence the price.
- 3.5 Withdraws / revises the bid upwards after becoming Lowest Bidder.
- 3.6 Termination of a contract with EPI due to violation/ non compliance of any of the conditions.
- 3.7 Indulgence in malpractices or misconduct such as bribery, corruption, fraud, pilferage etc.
- 3.8 Misbehavior/ ill treatment/ Derogatory Conduct to EPI officials during tendering process/ execution of work.
- 3.9 Contractor is found to have obtained any internal information/ documentation of EPI by unauthorized means.
- 3.10 Contractor has misused EPI documents/ drawings or has breached the confidentiality agreement with EPI.
- 3.11 Contractor has substituted, damaged, failed to return, or unauthorizedly disposed-off equipment / materials/ tools etc. of EPI.
- 3.12 In spite of warnings, the Contractor persistently violates or circumvents the provisions of labour laws/ rules and other statutory regulations.

- 3.13 Tarnishing the image of EPI using print, electronic and other media or Indulging in any other activity with intent to malign the image of EPI.
- 3.14 The Contractor is found guilty by any court of law for criminal activity/ offences involving moral turpitude in relation to business dealings.
- 3.15 In case a major portion of the payment released by EPI to the contractor against work done or advance, is taken away by the financial institutions/Banks, to adjust lending / debits / interest etc resulting in acute shortage of resources/ material at site affecting the work progress.
- 3.16 The contractor against whom insolvency proceedings have been admitted in NCLT, and a Resolution Professional has been appointed.
- 3.17 The Contractor is declared bankrupt, insolvent, has wound up or been dissolved; i.e. ceases to exist for all practical purposes.
- 3.18 A decision has been taken by the administrative ministry or any superior office of the Government of India to ban business dealings with a Contractor and such decision has been communicated to EPI.
- 3.19 The foreign Principals along with the representing Agent shall be banned together if information submitted by them about their precise relationship, commission/ remuneration etc. payable/ receivable and other particulars as asked by EPI, as per the extant guidelines regarding dealing with Agents of Foreign Suppliers is found false/ incorrect.
- 3.20 Security consideration of the State i.e. any action that jeopardizes the security of the State.

An entity, with whom business dealings have been suspended / banned by EPI stands automatically, disqualified for any bid/tender/enquiry issued by EPI.

4.0 PROCEDURE

- 4.1 Suspension from business dealings involves civil consequences to the contractor concerned, hence, the same requires adherence to the Principles of Natural Justice. It is, therefore, essential to provide fair and adequate opportunity of hearing to the contractor concerned and to consider his written explanation, if tendered, keeping in view the facts and circumstances of the case before passing any order in this regard.

- 4.2 If prima-facie evidence or sufficient grounds exist under any of the above circumstances stated under para 3 for taking action against a Tenderer/Contractor, for the lapses pertaining to tendering process or in contract execution, the concerned HOD (Contracts) at Corporate Office or the Regional Office In-charge, in the capacity of tender issuing authority or contract execution authority as the case may be, with the approval of the Competent Authority will issue a "Show Cause Notice" to the Contractor immediately on occurrence of such incident/reason.
- 4.3 To enable the Contractor to understand and reply to the notice, the Show Cause Notice should clearly and precisely mention the facts of the matter stating that an action under these guidelines has been proposed, the omission or commission on part of the contractor, along with all the relevant/substantial documents, giving a notice period of 14 days to the contractor for reply from the date of issue of letter.
- 4.4 If the Contractor responds within the stipulated time or up to such date as considered fit by the concerned HOD (Contracts) at Corporate Office or the Regional Office In-charge, the reasons for accepting the delayed reply, if any, shall be mentioned in the report and the HOD (Contracts) at Corporate Office or the Regional Office In-charge will examine the reply and will recommend for closure of the case if the reply is considered satisfactory, to the Competent Authority.
- 4.5 Otherwise, the HOD (Contracts) at Corporate Office or the Regional Office In-charge will send the reply to Competent Authority along with their recommendations for further consideration of a Committee to be constituted for this purpose by the Competent Authority.
- 4.6 The said Committee as constituted by the Competent Authority will consider the entire matter and in case the explanation of contractor has not been found satisfactory, submit its recommendations, to Competent Authority through concerned HOD (Contracts) at Corporate Office or the Regional Office In-charge.
- 4.7 This proposal of the Committee should consist of a background note narrating the case including the Show Cause Notice, reply of the contractor and its point wise analysis along with all relevant supporting documents. The Committee may also like to know the details from other sites where the Contractor is working and also take into consideration, any warning letters issued previously to the contractor.
- 4.8 In case of mitigating circumstances, which are to be recorded in writing, such as prompt corrective action or unconditional apology being tendered or good & long previous track record of the contractor, or other such circumstances, the Committee may, following *Principles of Natural Justice*, only recommend a "Warning Letter" with the approval of Competent Authority, to be issued by HOD (Contracts) at Corporate Office or the Regional Office In-charge, as the case may be.

- 4.9 This warning letter, to be issued by HOD (Contracts) at Corporate Office or the Regional Office In-charge, shall become a part of the record to be maintained in Contract Division at Corporate Office or the Regional Office and shall be referred in any subsequent matter being decided / considered by the aforesaid Committee against the contractor.
- 4.10 If the Committee recommends suspension of business dealings with a contractor, the Competent Authority, after examining all the materials on record, including the explanation from the Contractor, will give decision on the proposal. The recommendation will be put up to Competent Authority through the concerned HOD (Contracts) at Corporate Office or the Regional Office In-charge. The Competent Authority in its decision may approve or reject the proposal or impose the penalty of suspension of business dealings for a higher/lower period considering the circumstances/ gravity of the case.
- 4.11 Whenever a decision is taken for suspension of business dealings, HOD (Contracts) at Corporate Office or the Regional Office In-charge on behalf of EPI shall immediately communicate the decision to Contractor stating (a) reasons for suspension, (b) period of suspension and (c) that the onus shall be with the Contractor to inform EPI regarding the corrective/ preventive actions taken to address the reasons which has led to its suspension. The maximum period of suspension of business dealings shall be three (3) years.

5.0 CONTRACTUAL OBLIGATIONS:

- 5.1 Bids from Tenderer/Contractor against whom action to suspend business dealings has been taken under this policy by EPI shall not be accepted for any future enquiry/ bid/ tender till the expiry of period of debarment. Contractual obligations already entered into with such a Tenderer/Contractor before the date of issue the order of suspension shall not be affected. The contractor will be allowed to complete his ongoing works, unless otherwise rescinded by the Competent Authority on grounds of breach of conditions of contract.
- 5.2 In ongoing cases where Techno-commercial Bids (Part - I) are under evaluation and any of the participant Tenderer/Contractor has been put on bench or banned then the tender may be processed excluding the bid of that Contractor. However, if Price Bid (Part - II) has been opened and that Contractor happens to be L-1, then re-tendering is to be resorted to. The EMD submitted by the contractor in such cases shall be forfeited.
- 5.3 A Consolidated list of all such Tenderers / Contractors/ Consultants/ Suppliers etc., against whom a decision to suspend business dealings has been taken in terms of this Policy, shall be hosted on EPI's website along with the 'date of suspension' and 'period of suspension', by Contracts Division, Corporate office.

5.4 Where a decision to suspend business dealings under this policy has been taken against a Contractor, its sister concerns/ other allied companies under the same management should also be on the watch list for concurrent review of their performance and care should be taken that any Partner/ Director of the firm/ company of the Supplier under suspension does not get registered/ pre-qualified under different firm/ company name.

6.0 REVOCATION:

6.1 An order for debarment/ suspension of business dealings passed, shall be deemed to have been automatically revoked on the expiry of the specified period of suspension/ debarment and it will not be necessary to issue specific formal order of revocation.

6.2 Once the suspension order is issued, it shall not be revoked ordinarily before the specified expiry of suspension/ debarment period unless the component authority finds that:

6.2.1 On review at a later date by the concerned HOD (Contracts) at Corporate Office or the Regional Office In-charge, on receiving written request from the contractor and there is sufficient justification to revoke the order of suspension,

6.2.2 In respect of the same offence which formed the basis of suspension of business dealings under this policy, the accused has been honorably acquitted by a court of law.

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