

**WBPDCL's POLICY & PROCEDURE FOR BLACKLISTING AND
DEBARMENT OF AGENCIES FROM BUSINESS DEALINGS**

1. PREFACE

The West Bengal Power Development Corporation Limited (WBPDCL) is a company owned by the Government of West Bengal engaged in the business of coal-based thermal power generation. The WBPDCL incorporated in July 1985 presently has thermal power generating units at Kolaghat (1260 MW), Bakreswar (1050 MW), Sagardighi (600 MW), Santaldih (500 MW), and Bandel (450 MW) with total generating capacity of 3860 MW. Further 02 (two) more units of 500 MW each capacity are under construction at Sagardighi Thermal Power Project which will enhance the total installed capacity of the company to 4860 MW.

Ministry of Coal, Government of India allotted six no. of coal mines namely (i) Tara (East) & (West), (ii) Barjora, (iii) Gangaramchak & Gangaramchak – Bhadulia, (iv) Pachhwara (North), (v) Barjora (North) & (vi) Kasta (East) to WBPDCL on 31.03.2015 for the purpose of utilizing the coal excavated from the referred mines as raw material for operation of the coal fired power plants of WBPDCL. However, Kasta (East) is presently non operational.

The core objective of the corporation is to promote the business of the energy-efficient electric power generation while ensuring reliability of power supply to the State thereby catering to almost 60 percent of the State's energy demand.

1. INTRODUCTION:

1.1 The West Bengal Power Development Corporation Limited (WBPDCL), being a Govt. of West Bengal Enterprise has to safeguard its commercial interest at the time of dealing with agencies and maintain a high degree of integrity, commitment and sincerity towards the work undertaken. It is not in the interest of WBPDCL to deal with agencies who commit deception, fraud, or other misconduct in the execution of contracts awarded/orders issued to the agencies.

1.2 The business activity / operational activities of WBPDCL a demand dealing with agencies in various spheres and it is expected that such agencies will accomplish its contractual assignment with utmost integrity, transparency and sincerity while fulfilling its commercial and ethical commitment to WBPDCL.

Since WBPDCL is committed to the timely completion of any project and/or execution of any job awarded to the agencies without compromising on quality, WBPDCL considers that it would be against its interest to deal with any agency whose integrity is in question or is involved in any misconduct(s) of various natures.

1.3 In order to ensure compliance with the constitutional mandate, it is incumbent on WBPDCL to observe principles of natural justice before blacklisting and debarment of the business dealings with any agency.

2. Short Title & Commencement :

2.1 The policy shall be called **Policy & Procedure for Blacklisting and Debarment of Agencies from Business Dealings.**

2.2 This policy comes into force w.e.f. **01.04.2016**.

3. **Applicability :**

Guidelines made under this policy shall be applicable to all the plants / projects / mines / offices / establishments of WBPDCCL and this shall be construed to have formed a part of GCC, unless otherwise specified.

4. **Scope :**

4.1 WBPDCCL reserves the right to blacklist and debar an agency from any business dealings with it, if such agency is found to have committed misconduct or any of its action(s) falling into categories as laid down in this policy.

4.2 The procedure for blacklisting and debarment of business dealings with any agency has been laid down in these guidelines.

4.3 The provisions of this policy will be effective for investigation(s) required to be conducted on the misconduct/irregularities noticed on the part of any agency in all/any contract awarded on or after the date of coming into effect of this policy and for the contracts under execution or contracts not yet closed, on the date of coming into effect of this policy.

5. **Definitions:**

A. **'Agency'** means Contractor / Supplier / Purchaser / Bidder / Consultant and their affiliates. The Contractor shall also include sub-contractor.

Explanation: 'affiliate' means persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways competent authority may determine, control, include but are not limited to –

- A. Interlocking management or ownership;
- B. Identity of interests among family members;
- C. Shared facilities and equipment;
- D. Common use of employees; or
- E. A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as excluded person.

B. **'Appellate Authority'** means:

- (i) Contract, Purchase & Procurement Committee of the Board of Directors of WBPDCCL where the order of blacklisting and debarment has been issued by the Chairman & Managing Director of WBPDCCL or
- (ii) the Chairman & Managing Director of WBPDCCL where the order of banning is issued by any Authorised Officer for this purpose

These shall be construed to be part of the Delegation of Power of The WBPDCCL.

- C. **'Authorised Officer'** means an officer of WBPDCCL not below the rank of General Manager duly authorized by competent authority to issue show cause notice to the agency and cause enquiry.
- D. **'Blacklisting & Debarment'** means prohibition imposed upon any agency to do the business deal with WBPDCCL.
- E. **'Competent Authority'** means Chairman & Managing Director of WBPDCCL.
- F. **'Department'** means the concerned wing of the plant / project / mines / corporate office responsible for execution of the contract.
- G. **'Enquiring Authority'** means any authority who has been entrusted with the task of investigation / enquiry by the competent authority or authorized officer, as the case maybe.
- H. **General Conditions of Contract (GCC)'** means a set of standard terms and conditions of the contract which is part of the LOA and to be adhered to by the agency while executing the contract and shall include changes made in the GCC with the approval of the Board, during execution of the contract.
- I. **'Government'** means executive wing of the Government of India & Government of West Bengal.
- J. **'Investigating Department'** means any department or unit of WBPDCCL investigating into the conduct of the agency and shall include Vigilance Department of WBPDCCL, the State Police or any other department / agency set up by the Central or State Government having powers to investigate.
- K. **'Letter of Intent (LOI)'** means a confirmation to the agency regarding acceptance of the bid of the said agency.
- L. **'Letter of Award (LOA)'** means a firm order detailing scope of work and other relevant terms and conditions pertaining to the contract awarded to the agency.
- M. **'Prescribed'** means prescribed by this policy unless otherwise mentioned in the Letter of Award (LOA), statutory requirements, Government Orders, Directives, Circulars in the relevant matters.

6. Initiation of Blacklisting and Debarment:

Proposal for blacklisting and debarment of business dealings with any agency shall be initiated by the department responsible for awarding the contract / execution of the job upon noticing element(s) of irregularities or misconduct(s) on the part of the alleged agency. Besides the concerned department, Vigilance department of WBPDCCL may also be competent to initiate such action upon receiving direct complaint and in addition on the basis of the recommendation of the investigating agency viz. State Vigilance Commission, Central Bureau of Investigation etc.

7. Grounds for Blacklisting and Debarment of Business dealings :

Blacklisting and Debarment of business dealings can be initiated against the agency on the following grounds:

7.1 Security consideration, including questions of loyalty of the agency to the State, so warrants.

7.2 Where the agency has been refused labour licence under Rule 22(a) (iv) of The West Bengal Contract Labour (R&A) Rules 1972 being convicted during the last 05 (five) years.

If the Director / Owner of the Agency, Proprietor or Partner of the firm, is convicted by a court of law for offences involving moral turpitude in relation to its business dealings with the Government or any other public sector or WBPDCCL, during the last five years;

7.3 If there is reason to believe that the Directors, Proprietors, Partners, Owner of the Agency may have indulged in malpractices such as bribery, corruption, fraud, substitution of tenders, interpolations, etc.

7.4 The agency refuses to pay the legitimate dues of WBPDCCL without showing adequate reason and this is not due to any bonafide dispute which would attract proceedings in arbitration or court of law;

7.5 The agency fails to accept the award of contract within the period mentioned therein.

7.6 The agency abandons the execution of contract in breach of its obligations.

7.7 The agency suspends / stops work on any unfounded pretext including labour trouble and / or seeking higher compensation.

7.8 If business dealings with the agency have been blacklisted and debarred by the Ministry of Power, Government of India/Department of Power & NES , Government of West Bengal or any other Ministry or Department of the Government of India or the Government of West Bengal or any other public sector enterprise and the ban is still in force;

7.9 The agency has resorted to corrupt, fraudulent practices including misrepresentation of facts;

7.10 The agency is found to have been involved in any anti competitive practices during bidding and / or execution including bid rigging;

7.11 The agency indulges in repeated and / or deliberate use of delay tactics in complying with contractual stipulations;

7.12 The agency is repeatedly found to be non-performing in execution of contract as per schedule of work or fails to achieve the 'Completion of Facilities' or execute the contract milestones within time schedule stipulated in the contract or as mutually agreed upon.

7.13 The agency deliberately or without any valid reasons fails to conduct the Performance Guarantee test within the time limit stipulated in the contract.

7.14 Supplying sub-standard material by the agency with respect to technical specifications under the contract irrespective of whether pre-dispatch inspection was carried out by WBPDCCL or not;

7.15 Based on the findings of the investigation report of any Central / State Investigating Authority /Police against the Agency for malafide / unlawful acts or improper conduct on his part in matters relating to the Company (WBPDCCL) or even otherwise;

7.16 The agency is declared bankrupt or un-discharged insolvent or its financial position has become unsound, and in the case of a limited company, it is wound up or liquidated;

7.17 Established litigant nature of the agency to derive undue benefit;

7.18 The agency has assigned or transferred the contract or engaged sub-contractors without the prior approval of the competent authority in violation of the provisions of the contract;

7.19 The agency misuses the premises or facilities of the WBPDCCL, forcefully occupies, tampers, or damages the Company's properties including land, water resources, forests / trees, etc.;

7.20 The agency is found to have been in default in paying any statutory contribution and/or dues resulting in incurring financial loss to the company by virtue of an order and / or direction of any Statutory Authority for making statutory payment in respect of the agency concerned.

The grounds given above are only illustrative and not exhaustive. The Competent Authority may decide to blacklist and debar an agency and ban business dealing for any other good and sufficient reason.

8. Procedure :

The concerned department on noticing any non / under performance and / or irregularities and / or misconduct and / or unethical practice and/or breach of contract or on any other ground mentioned in Clause 7 above shall refer the matter to the concerned Director / Executive Director in case of corporate office and General Manager in respect of power plants / projects as the case may be.

Concerned Director / Executive Director / General Manager on being prima facie satisfied with the allegation shall refer the proposal / case with necessary observation to the vigilance department of corporate office.

The Vigilance Department shall upon reference investigate and inquire into the allegation seeking necessary clarification(s) from any concerned official(s) and submit its observation / recommendation report to the competent authority. The Vigilance Department in the process of such investigation may seek assistance from the technical and/or HR&A and/or F&A wing.

The competent authority upon due consideration of the report of the vigilance wing may issue show cause notice directly or direct the authorized officer to issue show cause notice to the delinquent agency.

9. Show Cause Notice:

With due approval of the competent authority, the Show Cause Notice duly vetted by the legal department shall be issued by the competent authority or by the authorized officer not below the rank of General Manager, for the said purpose to the delinquent agency at its recorded address available with the WBPDCCL by special messenger and / or under registered post.

The statement containing the imputation of misconduct or misbehavior to be appended to the Show Cause Notice and the agency should be asked to submit a written statement in its defence within 15 days from the date of service of such notice.

The Competent Authority or the Authorised Officer shall carefully consider the reply of the agency in the light of available documents and provisions of the law of the land.

If the reply is found to be convincing and the agency's responsibility in the case is found not to be attracting further action the case may be dropped after taking opinion of the Vigilance Cell and with the approval of the competent authority. The decision in this regard is to be communicated to the agency.

If the reply is found not to be convincing and the agency's responsibility in the case is under shadow of doubt, an enquiry is to be ordered after taking opinion of the Vigilance Cell by the Authorized Officer and with due approval of the Competent Authority.

In case no reply to the show cause notice is received within the stipulated time the matter may be proceeded ex-parte.

However, in each case copy of service return of notice be kept and a confirmatory document through electronic mode is sine qua non.

10. Appointment of Enquiring Authority:

The competent authority or the authorized officer shall constitute an Enquiring Authority with maximum of three members for holding enquiry proceedings with due adherence to the principles of natural justice.

During the course of enquiry proceedings, only the authorized representative of the concerned agency shall be permitted to defend the case on behalf of the delinquent employee. Similarly WBPDCCL shall also appoint one of its officer not below the rank of Assistant Manager or equivalent to represent the case on behalf of WBPDCCL. No outsider or Advocate shall be allowed to represent any of the parties.

Enquiring Authority may allow examination of witnesses and submission of documents from both sides.

Upon conclusion of the proceedings the Enquiring Authority shall submit its Enquiry Report along with findings to the concerned authority preferably within 02 (two) months.

11. Reasoned Order :

The competent authority or the authorized officer as the case may be, upon careful consideration of the report of the enquiry along with comments thereon received from the Vigilance Department shall issue speaking order either exonerating the agency from the charges or blacklisting and debarring the agency from any business dealing.

The reasoned order shall be communicated to the agency at its recorded address available with WBPDCCL within 15 days of order issued.

12. Period of Blacklisting and Debarment:

The period for which an agency is blacklisted and debarred shall clearly be mentioned in the order. Period of blacklisting and debarment of business shall be decided by the Competent Authority in exercise of its discretion and would depend upon the seriousness of the case leading to such debarment. Generally, blacklisting and debarment shall be for a minimum period of three years and shall not exceed five years. However, if circumstances warrant, the Competent Authority may impose a longer period of debarment.

The debarment can be with or without forfeiture of security deposit and / or invoking bank guarantee furnished by the agency.

Provided further that in case the information / documents submitted by the agency in competing for the tender is found to be false / forged at any point of time, WBPDCCL without prejudice to any other rights / remedies under the law of the land, shall recover from the agency the cost incurred in carrying out physical assessment for establishing veracity of such information / documents. In case the agency refuses to reimburse such cost to WBPDCCL, the blacklisting and debarment period of the agency may be extended by another period up to two years. WBPDCCL also reserves the right to proceed with seeking appropriate legal remedy / recourse against the defaulting agency as per law of the land.

13. Consequences of Blacklisting and Debarment:

Upon issuance of the order of blacklisting and debarment of an agency from business dealings, the debarred agency shall not be allowed to participate in any tender during the banned period and if the agency has already participated in the tender process and the price bid is not opened prior to issuance of the order of debarment of business dealings, its Techno Commercial Bid will be rejected and Price Bid will be returned un-opened.

In the event the Price Bid of the participating agencies has been opened and the agency against whom the order of blacklisting and debarment of business dealings has been issued emerged as the L1 bidder, the bid of the blacklisted or debarred agency shall be rejected.

Provided the order of blacklisting and debarment of business dealings issued against any agency shall not override the rights of the blacklisted and debarred agency already engaged in executing any other contract(s) till its completion.

The names of the agencies with whom business dealings have been blacklisted and debarred shall be uploaded on the website of WBPDCCL with a copy to the Department of Power & NES, Government of West Bengal, as well as other power utilities in the State of West Bengal.

14. Withholding Business dealings:

The business dealings with the agency may be withheld, for a period not exceeding six months, if the competent authority has sufficient reason to believe that there is serious breach of terms and conditions of the contract on account of reasons attributable to the agency. Any such order withholding business dealings shall be followed by proceedings for blacklisting and debarment under this policy.

15. Appeal against the order of the Authority :

The agency may file an appeal before the Appellate Authority against the order of the competent authority or any other authority as the case may be for blacklisting and debarment of business dealing with the agency. Such an appeal may be preferred within one month from the date of receipt of the order of blacklisting and debarment of business dealing. Appellate Authority shall consider the appeal and pass appropriate order which is to be communicated to the agency.

16. Revocation of Order :

16.1 The order for blacklisting and debarment passed for certain specified period shall be deemed to have been automatically revoked on expiry of the specified period only.

16.2 An order of blacklisting and debarment for the reasons mentioned at para 7.2 above may be revoked if accused has been wholly exonerated by the Court of Law.

17. Disclaimer / Forfeiture of EMD / Security deposit:

During the blacklisting and debarment period if it is detected that the agency has participated in the tender under a different name or as a partner in participating consortium/Joint Venture or sub-agency of the participating bidder, the WBPDCCL would be at liberty to debar the agency from participating in the tender and in such case EMD / Security deposit shall be forfeited with option to take recourse to any legal remedy.

18. Interpretation :

The competent authority shall be responsible for the administration, interpretation, application and revision of this policy. The policy will be reviewed and revised as and when needed.