

**GOVERNMENT OF PAKISTAN
MINISTRY OF RAILWAYS
(RAILWAY BOARD)**

No.39-1/96-P&S

Islamabad: May 20, 2013

BLACKLISTING POLICY

In pursuance of Rule-19 of Public Procurement Rules, 2004 read with Rule-2(f) and in continuation and partial supersession of this Ministry's letters of even number dated July 03, 2012 and October 24, 2012, the criteria for Blacklisting of Suppliers and Contractors doing business with the Ministry of Railways and its attached departments/subsidiaries is reiterated hereafter to eliminate unfair trade practices.

2. SCOPE

This Policy shall govern the blacklisting of manufacturers, suppliers, distributors, contractors and consultants involved in procurement of goods, works and services with the Ministry of Railways and its attached departments/subsidiaries for offenses or violations committed during competitive bidding and contract implementation. The firm/individual blacklisted shall not be allowed to participate in the bidding during the period of disqualification unless delisted.

3. DEFINITION OF TERMS

- 3.1 **“Appellate Authority”** - Authority to Appeal against issuance of Blacklisting Order.
- 3.2 **“Appeal”** - Right of firm/individual to lodge protest against the issuance of Blacklisting Order.
- 3.3 **“Procuring Agency”** - Any department/division/factory/project exercising general and/or administrative control over the unit.
- 3.4 **“Blacklisting Order”** - An administrative penalty disqualifying a firm/individual from participating in procurement for a given period.
- 3.5 **“Suspension”** - The administrative penalty imposed for infractions committed during the competitive bidding stage, whereby such firms/individuals are prohibited from further participation in the bidding process of Procuring Agency.
- 3.6 **“Contract Implementation”** - A process of undertaking a project or contract in accordance with the contract documents.
- 3.7 **“Termination of Contract”** - Extinction of contract by reason of resolution or rescission under applicable rules/regulations/laws arising from the default of the firms/individuals.
- 3.8 **“Delist”** - Removal of supplier/contractor from blacklisting.

4. **GROUNDS FOR BLACKLISTING**

4.1 The following shall comprise the broad multilateral guidelines for blacklisting:

- 4.1.1 **“Corrupt Practice”** means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the procurement process or in contract execution;
- 4.1.2 **“Fraudulent Practice”** means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;
- 4.1.3 **“Collusive Practice”** means a scheme or arrangement between two or more bidders, with or without the knowledge of the Purchaser, designed to establish bid price at artificial, non-competitive levels, and
- 4.1.4 **“Coercive Practice”** means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or affect the execution of a contract.

4.2 In addition to above, blacklisting of firms/individuals may be resorted to when the charges are of serious nature, which include but are not limited to the following:

4.2.1 **Competitive Bidding Stage**

During the competitive bidding stage, the Procuring Agency shall impose on bidders or prospective bidders the penalty of Suspension from participating in the public bidding process, without prejudice to the imposition of additional administrative sanctions as the internal rules of the agency may provide and/or further criminal prosecution, as provided by applicable laws, for violations committed which include but are not limited to the following:

- i. Submission of eligibility requirements containing false information or falsified documents.
- ii. Submission of bids that contain false information or falsified documents, or the concealment of such information in the bids in order to influence the outcome of eligibility screening or any other stage of the public bidding.
- iii. Submission of unauthorised or fake documents for pre-qualification/ tendering i.e. without specific authorisation from the principals/ manufacturers etc.
- iv. Failure of the firm to provide authentic Warranty Certificate and Proforma Invoice of the manufacturers.
- v. Failure of the firm to submit specific authority letter of the Original Equipment Manufacturer (OEM) for participation in a particular tender;
- vi. Unauthorized use of one’s name, or using the name of the name of another for purpose of public bidding.
- vii. Deviations from specifications and terms & conditions of the purchase order/contract.

- viii. Withdrawal of a bid, or refusal to accept an award, or enter into contract with the government without justifiable cause, after he had been adjudged as having submitted the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.
- ix. Refusal or failure to post the required performance security within the prescribed time.
- x. Refusal to clarify or validate in writing its Bid during post qualification within a period of seven (7) working days, or as may be specifically prescribed, from receipt of the request for clarification.
- xi. Any documented unsolicited attempt by a bidder to unduly influence the outcome of the bidding in his favor.
- xii. Any attempt to give illegal gratification to any representative of the purchaser to influence the process of procurement.

In addition to the penalty of suspension, the bid security posted by the concerned bidder or prospective bidder could also be forfeited.

4.2.2 **Contract Implementation Stage**

During the contract implementation stage, the procuring entity shall impose on contractors after the termination of the contract the penalty of suspension from participating in the public bidding process, without prejudice to the imposition of additional administrative sanctions as the internal rules of the agency may provide and/or further criminal prosecution, as provided by applicable laws, for violations committed which include but are not limited to the following:

- i. Failure of the contractor, due solely to his fault or negligence, to mobilize and start work or performance within the specified period in the Notice to Proceed.
- ii. Failure by the contractor to fully and faithfully comply with its contractual obligations without valid cause, or failure by the contractor to comply with any written lawful instruction of the Procuring Agency or its representative(s) pursuant to the implementation of the contract. For the procurement of infrastructure projects or consultancy contracts, lawful instructions include but are not limited to the following:
 - a. Employment of competent technical personnel, competent engineers and/or work supervisors;
 - b. Provision of warning signs and barricades in accordance with approved plans and specifications and contract provisions;
 - c. Stockpiling in proper places of all materials and removal from the project site of waste and excess materials, including broken pavement and excavated debris in accordance with approved plans and specifications and contract provisions;
 - d. Deployment of committed equipment, facilities, support staff and manpower; and

- e. Renewal of the effectivity dates of the performance security after its expiration during the course of contract implementation.
- iii. Assignment and subcontracting of the contract or any part thereof or substitution of key personnel named in the proposal without prior written approval by the Procuring Agency.
- iv. For the procurement of goods, unsatisfactory progress in the delivery of the goods by the manufacturer, supplier or distributor arising from his fault or negligence and/or unsatisfactory or inferior quality of goods, as may be provided in the contract.
- v. For the procurement of consulting services, poor performance by the consultant of his services arising from his fault or negligence, any of the following acts by the consultant shall be construed as poor performance:
 - a. Defective design resulting in substantial corrective works in design and/or construction;
 - b. Failure to deliver critical outputs due to consultant's fault or negligence;
 - c. Specifying materials which are inappropriate, substandard or way above acceptable standards;
 - d. Allowing defective workmanship or works by the contractor being supervised by the consultant; and
 - e. Submitting CV's of key personnel in the prequalifying process or bid documents of professionals that are not in actual employment of the bidder.
- vi. For the procurement of infrastructure projects, poor performance by the contractor or unsatisfactory quality and/or progress of works arising from his fault or negligence.
- vii. Willful or deliberate abandonment or non-performance of the project or contract by the contractor resulting to substantial breach thereof without lawful and/or just cause.

In addition to the penalty of suspension, the performance security posted by the contractor could also be forfeited.

4.2.3 In addition to above, other grounds for blacklisting of firms/individuals include but are not limited to the following:

- i. Obtaining fraudulent payments;
- ii. Obtaining contracts by misleading the purchaser;
- iii. Refusal to pay Railway dues etc.;
- iv. Failure to fulfill contractual obligations;
- v. Changes in the status of firm's ownership/partnership etc., causing dissolution of the firm which existed at the time of inspection prior to original registration of the firm;

- vi. Registration of a firm with a new name by the Proprietor or family or a nominee thereof of a firm that has been already blacklisted;
- vii. Consequential operational damages caused to Pakistan Railways equipment or infrastructure as a result of equipment or parts thereof supplied on trial basis or due to failure of such equipment;
- viii. Contractors who have negotiated Plea Bargain under the National Accountability Ordinance 1999, or contractors involved with any other criminal proceedings conducted by any investigation agency where default has been proved specifically in relation to supplies made to or contracts concluded with Pakistan Railways or a subsidiary thereof;
- ix. Involved in litigation or needless petitioning to influence or obstruct the procurement process either on his own behalf or at the behest of any other vested interest;
- x. A firm may be disqualified for a period extendable to two years in case a decision by a court is awarded against the said firm after litigation, or where the firm is involved in litigation at least three times during two financial years, or where a firm has on account of litigation caused substantial financial losses to Pakistan Railways;
- xi. Blacklisted by other Federal and Provincial Government Ministries/Divisions/Departments and organisations/autonomous bodies subordinate thereto; and
- xii. Blacklisting in case of Joint Venture firms will also result in termination of the concerned Joint Ventures Partners.

5. SYSTEM OF PENALTIES

For the purpose of uniformity, following system of penalties shall be adopted for procurement of goods, works and services:

- 5.1. For three defaults or defaults in more than 10 percent but less than 25 percent of the purchase orders, whichever is higher, in a financial year, the firm may be blacklisted for doing business with Railway for one year;
- 5.2. For four to five defaults or defaults in more than 25 percent but less than 50 percent of purchase orders, whichever is higher, in a financial year, the firm may be blacklisted from doing business with Railway for two years;
- 5.3. For more than five defaults or defaults in more than 50 percent of purchase orders, whichever is higher, in a financial year, the firm may be blacklisted from doing business with Railway and their registration may be cancelled; and
- 5.4. In case of PSDP funded procurements, in addition to above system of penalties, a firm may be blacklisted even if there is a single default or cheating provided that such violation is of a serious nature.

6. SUSPENSION AND BLACKLISTING PROCEDURE

6.1 During the Competitive Bidding Stage

6.1.1 *Initiation of Action*

Any bidder/prospective bidder or duly authorized observer may initiate the Suspension and Blacklisting proceedings by filing a written complaint with the Procuring Agency. The Procuring Agency may also *motu proprio* commence the proceedings upon *prima facie* determination that the bidder or prospective bidder has committed any of the grounds for blacklisting during the competitive bidding stage.

6.1.2 *Notification*

Upon verification of the existence of grounds for blacklisting, the Procuring Agency shall immediately Notify the firm/individual concerned in writing, advising him that:

- a. a complaint for suspension and blacklisting has been filed against him, or he has been considered by the Procuring Agency for suspension and blacklisting, stating the grounds for such;
- b. he has the opportunity to show cause why he should not be suspended and blacklisted;
- c. a hearing shall be conducted before the Procuring Agency, upon his request, where he may present documentary evidence, verbal testimony and cross-examine the witnesses presented against him; and
- d. the consequences of being Suspended and Blacklisted.

Within five (5) working days from receipt of notification, the contractor shall submit its written answer with documentary evidence to the Procuring Agency with a manifestation for request of hearing to determine questions of fact, if he so desires. No time extension shall be allowed.

Should the contractor fail to answer within the same period, the Procuring Agency shall recommend to the Head of the Procuring Agency the immediate Suspension of the contractor from participating in any bidding process of the agency and possible forfeiture of his bid security, read with clause-7.

6.1.3 *Hearings*

If a Hearing is requested, the Procuring Agency shall immediately set the date and time for hearing. The hearing shall be non-litigious and shall be completed within five (5) working days.

If no request is made, the Procuring Agency shall make a determination of the case based on the complaint's answer, documentary evidence submitted and facts verified. If the Procuring Agency is convinced that the contractor is at fault, it shall recommend to the Head of the Procuring Agency the Suspension of the contractor from participating in any bidding process of the agency and possible forfeiture of his bid security.

6.1.4 *Decision*

The Head of the Procuring Agency shall, within fifteen (15) working days from receipt of the recommendation and the records of the proceedings, determine whether reasonable cause exists for the Suspension of the contractor and the forfeiture of the latter's bid security. If the Head of the Procuring Agency determines that such reasonable cause exists, he shall issue a Decision suspending the contractor from participating in any bidding process of the agency, and further declaring that his bid security is forfeited. Otherwise, he shall dismiss the case.

The Decision shall clearly and distinctly state the facts, evidence and the law on which it is based, as well as the date of effectivity of the penalty, if any.

In case a contractor commits more than one offense or a combination of offenses for the same project/contract in a particular agency, each violation shall be meted the corresponding penalty.

6.1.5 *Notice of Decision*

The Head of the Procuring Agency shall furnish the suspended contractor a copy of the decision immediately from its promulgation.

6.1.6 *Effect of Decision*

A firm/individual is suspended upon receipt of the Notice of Decision prohibiting him from participating in the bidding process of the agency. The suspension shall remain in effect during the period of Motion for Reconsideration and Appeal and shall terminate only upon a reversal of the decision by the Head of the Procuring Agency or Appellate Authority.

If no Motion for Reconsideration or Appeal is filed, the decision shall become final and executory after the lapse of seven (7) working days from the receipt of the Notice of Decision. Thereafter, the Head of Procuring Agency shall issue a Blacklisting Order disqualifying the erring contractor from participating in all the future bidding process.

6.1.7 *Motion of Reconsideration*

A Motion for Reconsideration may be filed by the suspended firm/individual within seven (7) working days from receipt of the Notice of Decision and shall be for either or both of the following causes, provided that only one (1) Motion for Reconsideration shall be filed with the blacklisting agency:

- a. The decision is not in conformity with the evidence and/or facts presented; and
- b. Newly discovered evidence or facts which could not be discovered and produced at the investigation and which when presented would probably alter the result of the investigation.

The Head of the Procuring Agency shall resolve with finality the Motion for Reconsideration within fifteen (15) working days from the filing thereof and furnish suspended contractor a copy of the decision immediately from its promulgation.

6.1.8 *Appeal*

An Appeal may be filed by the suspended firm/individual with the Appellate Authority within seven (7) working days from receipt of the decision on the Motion for Reconsideration.

6.1.9 *Finality of Decision*

The decision of the procuring agency shall become final and executory after the lapse of seven (7) working days from the receipt of the Notice of Decision or decision on the Motion for Reconsideration. If an Appeal is filed, the affirmed, modified or reversed decision shall become final and executory upon receipt thereof by the agency and firm/individual concerned.

Upon finality of the decision suspending the contractor, the Head of Procuring Agency or Appellate Authority shall issue a Blacklisting Order disqualifying the erring firm/individual from participating in all the future bidding process of the Railways, read with Clause 7.

6.2 **During the Contract Implementation Stage**

Upon termination of contract due to default of the contractor, the Head of the Procuring Agency shall immediately issue a Blacklisting Order disqualifying the erring contractor from participating in all the future bidding process of the agency. The performance security of said contractor could also be forfeited, read with Clause 7.

7. **APPELLATE AUTHORITY**

Proceedings for blacklisting of a firm/individual shall be initiated by the concerned Procuring Agency, provided that the formal Order for Blacklisting shall be issued after prior approval of the concerned Head of Procuring Agency/Tender Accepting Authority. In case an appeal is filed, the same shall be decided by the following Appellate Authority:

- 7.1 **Secretary/Chairman Railways;** in cases of procurement made by Director Procurement (falling within the powers of Railway Board Tender Committee).
- 7.2 **GM/Operations;** all procuring agencies under his administrative control.
- 7.3 **GM/M&S;** all procuring agencies under his administrative control.
- 7.4 **GM/Welfare & Special Initiative;** all procuring agencies under his administrative control.

8. **STATUS OF BLACKLISTED FIRM/INDIVIDUAL**

Blacklisting of a firm/individual will not affect other ongoing contracts/works/supply orders. However, such blacklisted firm shall stand barred from all future tender processes/participation and Standing Security, if any, could be confiscated until recovery of financial damages ascertained by the authority while issuing Blacklisting Order.

9. **DELISTING**

A blacklisted firm/individual shall be automatically Delisted after the period for the penalty has elapsed, unless the procuring agency wants to maintain the blacklisted status of firm/individual due to justifiable reasons with the prior approval of Appellate Authority. In the latter case, the blacklisted firm/individual shall be delisted only upon the issuance of a Delisting Order.

10. **AMENDMENTS**

10.1. In the implementation of Blacklisting Policy, the modifications may be introduced thereto through the amendment of its specific provisions as the need arises.

10.2. Any amendment to this Blacklisting Policy shall be applicable to tenders advertised for bid after the effectivity of the said amendment.

11. **EFFECTIVITY**

The Blacklisting Circular or any amendments thereof shall take effect immediately and become a part of each tender document from the date of its issuance by the Ministry of Railways. All future tender documents must be governed by these instructions. However, these cannot override the provisions of Public Procurement Rules, 2004.

This issues with the approval of Secretary/Chairman Railways.

(ASAD FAROOQ CHISHTI)
Deputy Director / Stores

1. General Manager/Operations, P.R. Headquarters Office, Lahore.
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3. General Manager/Welfare & Spl. Initiative, P.R. Headquarters Office, Lahore.
4. Director General, Pakistan Railway Academy, Walton, Lahore.
5. MD/PRACS, PRACS House, Railway Station Road, Rawalpindi.
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8. Member Finance, Ministry of Railways, Islamabad.
9. Secretary Railway Board, Ministry of Railways, Islamabad.
10. Director General/Planning, Ministry of Railways, Islamabad.
11. Director General/Operations, Ministry of Railways, Islamabad.

Copy, for information, to:

1. P.S. to Federal Minister for Railways, Ministry of Railways, Islamabad.
2. P.S. to Secretary/Chairman Railways, Ministry of Railways, Islamabad.

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