

JNPA  
GUIDELINES  
FOR BLACKLISTING

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## **JNPA BLACKLISTING POLICY**

In an endeavour to maintain and foster ethical and corruption free business environment and to streamline the Supply Chain/Purchase/Contract & Procurement Procedures, JNPA has introduced the guidelines for Blacklisting of the Bidders/Manufacturers/Vendors/Suppliers/ Contracting Agencies/PMC etc. (hereinafter referred to as "Policy for Blacklisting). The scheme of this Policy is detailed below-

### **1. SCOPE.**

This Policy shall govern the procedure, grounds and sanctions thereon for blacklisting of Bidders/Manufacturers/Vendors/Suppliers/ Contracting Agencies/PMC etc. by JNPA.

### **2. DEFINITIONS**

- a) "Agency or Agencies" for the purposes of the present blacklisting policy shall mean Bidder/Manufacturers /Vendors/Suppliers/ Contracting Agencies/ Contractual Service Providers or any other entity involved in public procurement. It shall also apply to procurement done by JNPA through any other mode.
- b) "Blacklisting" means an administrative action/penalty disqualifying an Agency or Agencies, from participating in any public procurement or any other mode of procurement, by the JNPA for a given period.
- c) "JNPA" for the purpose of the present Policy shall mean Jawaharlal Nehru Port Authority
- d) "Competent Authority" to take final decision for Blacklisting of 'Agency or Agencies' shall be the concerned Head of the Department issuing the tender. The Appellate Authority for filing the Appeal against the decision of blacklisting shall be Deputy Chairman, JNPA."

- e) "Corrupt Practice" means the offering, giving, receiving or soliciting, directly or indirectly, anything of value by the 'Agency or Agencies' to improperly influence the actions in selection process or in contract execution.
- f) Collusive Practice amongst bidders (prior to or after bid submissions)" means a scheme or arrangement designed to establish bid prices at artificial non- competitive levels and to deprive the 'JNPA' of the benefits of free and open competition.
- g) "Coercive practice" means harming or threatening to harm directly or indirectly, any other "Agency or Agencies or its property to influence the actions of such "Agency or Agencies". It shall also include harming or threatening directly or indirectly JNPA or its employees or representatives etc. It further means causing obstruction in any investigation or auditing being done in connection with the procurement process by or for JNPA or finalization of the procurement process.
- h) Fraudulent Practice" means and includes any act or omission committed by "Agency or Agencies" or with its connivance or by its 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. It shall also include any omission or false representation or misrepresentation by the Agency or Agencies in the selection process or the contract execution or any process relating thereto.
- i) "Poor Services" means services which are not acceptable to the 'JNPA' in terms of out puts, deliverables specifications, quality, quantity, timelines, spread of misinformation, unprofessional behaviours and non-compliance of the verbal/written instruction of dealing Executive/Officers of the 'JNPA'.



- j) "Procuring Entity" means JNPA and shall include all the officers/managers/authorised representatives working for JNPA /appointed 'by JNPA'.

**3. PROHIBITION ON BLACKLISTED CONTRACTORS TO PARTICIPATE IN BIDDING of TENDERS /ENQUIRIES FLOATED BY JNPA.**

- a) Any "Agency or Agencies" that is blacklisted by JNPA shall not be allowed to participate in the bidding of any tenders/enquiries/Expression of Interest (EOI) etc. floated by the 'JNPA' for any project/work/contract etc. during the period of blacklisting unless it is delisted by JNPA.
- b) A joint venture or consortium which is blacklisted by 'JNPA' or which has blacklisted member/s and/or partner/s as well as a person/entity who is a member of a blacklisted entity/ Joint Venture or consortium are, likewise, not allowed to participate in any tenders/enquiries/EOI etc. for projects floated by the 'JNPA' during the period of blacklisting.

**4. GROUNDS AND SANCTIONS FOR BLACKLISTING**

*a) During Competitive Bidding and Pre-Contract Signing Stage*

If it is observed during the bidding process/bids evaluation stage that a 'Agency or Agencies' has indulged in corrupt/fraudulent/collusive/coercive practice etc., the bid of such 'Agency or Agencies' shall be rejected by the 'JNPA' and its Earnest Money Deposit (EMD) shall be forfeited. Further 'JNPA' shall have the right to blacklist such 'Agency or Agencies' from future bidding with the 'JNPA'. The Agency or Agencies' will be liable to be blacklisted by JNPA under this head in following circumstances (these are inclusive and not exhaustive list):

- 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. Unauthorized use of one's name, or using the name of the another for purpose of public bidding.
- iv. Withdrawal of a bid, or refusal to accept an award, or enter into contract with the 'JNPA'. without justifiable cause, after such 'Agency or Agencies' had been adjudged as having submitted the lowest Calculated Responsive Bid or Highest Rated Responsive Bid or Letter of Intent has been awarded.
- v. Refusal or failure to submit the required performance security within the prescribed time or performance of other conditions under the Letter of Intent/ Letter of Approval/ Contract.
- vi. Refusal to clarify or validate in writing its bid during post qualification within a period of seven (7) calendar days from receipt of the request for clarification.
- vii. Any documented unsolicited attempt by a bidder to unduly influence the outcome of the bidding in his/its favour.

"The list of grounds under this head is indicative and not exhaustive and shall cover all other acts that tend to defeat the purpose of the competitive bidding and contract execution.

b) *During Execution of Contract*

If an 'Agency or Agencies' during execution of the contract is found to have indulged in corrupt / fraudulent/ collusive /coercive practices or provides "Poor Services" during execution of contract, such 'Agency or Agencies' shall be blacklisted by 'JNPA' .

The 'Agency or Agencies' shall liable to be blacklisted by JNPA under this head in following circumstances (these are inclusive and not exhaustive list).

- i. Failure by the 'Agency or Agencies' Solely due to its fault or negligence, to mobilize and start work or performance within the specified period.
- ii. Failure by the 'Agency or Agencies' to fully and faithfully comply with its contractual obligations without valid cause, or failure by the 'Agency or Agencies' to comply with any written lawful instruction of the procuring entity 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:
  - I. Employment of competent technical personnel, competent engineers and/or work supervisors;
  - II. Provision of warning signs and barricades in accordance with approved plans and specifications and contract provisions;
  - III. 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;
  - IV. Deployment of committed equipment, facilities, support staff and manpower; and
  - V. Renewal of the effectively dates of the performance security before and 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 entity and against the terms of the Contract.
- iv. For the procurement of goods, unsatisfactory progress in the delivery of the goods by the manufacturer, supplier or distributor without justifiable reason or supply or use etc. of inferior quality of goods, than as provided in the contract agreed with JNPA.
- v. For the procurement of services, poor performance by the Agency of its services without justifiable reason. Apart from others, following acts by the Agency/ Agencies shall be considered to be "poor performance":
  - I. Defective design resulting in substantial corrective works in design and/or construction;
  - II. Failure to deliver critical outputs affecting the project progress due to the fault or negligence of 'Agency or Agencies', and
  - III. Specifying materials which are inappropriate, substandard, or way above acceptable standards.
  - IV. Defective workmanship designs or works of the 'Agency or Agencies'.
  - V. Wilful or deliberate abandonment or non-performance of the project or contract by the 'Agency or Agencies' resulting to substantial breach thereof without lawful and/or just cause.

In addition to the penalty of blacklisting, the performance security deposited by the 'Agency or Agencies' shall also be forfeited.

*c) Blacklisting due to corporate defaults*



- i. If the 'Agency or Agencies' has been adjudged as Bankrupt by the competent Court of Law shall be blacklisted.

“bankrupt” means and includes—

- I. a debtor who has been adjudged as bankrupt by a bankruptcy order under Section 126 of the Insolvency and Bankruptcy Code, 2016 along with its amendments.
  - II. each of the partners of a firm, where a bankruptcy order under Section 126 of the Insolvency and Bankruptcy Code, 2016 along with its amendments has been made against the firm.
  - III. any person adjudged as an undischarged insolvent;
- ii. If the holding Company of the 'Agency or Agencies' or the Agency or Agencies itself is deleted by the 'Registrar of the Companies' due to default of any compliance. Unless and until restored by the competent court of law or authority.

*d) Other Grounds*

Apart from the grounds specified above in Clauses 4 (a), (b) and (c) 'Agency or Agencies' shall be blacklisted by 'JNPA' from future tenders/EOI/enquiries etc. in the following circumstances:

- i. Some significant structure(s) is passed against the 'Agency or Agencies' by a court of law and which makes it necessary to blacklist such 'Agency or Agencies', or;
- ii. The 'Agency or Agencies' violates the provisions of Labour Laws, Regulations and Rules, or
- iii. The 'Agency or Agencies' refuses to pay Government dues without showing adequate reasons; or
- iv. The 'Agency or Agencies' or his representative, has shown undesirable manners, behaviours etc. in business dealing such as defaming the procuring entity, filing frivolous legal cases and

complaints against the procuring entity, actions leading to loss of business and market reputation for the procuring entity, or;

- v. Where a 'Agency or Agencies' or his partner or his representative has been convicted by a court of law for offences involving moral turpitude in relation to the business dealings and two years has not passed from date of the end of the conviction period, or
- vi. Where security considerations including suspected disloyalty to the state so warrant the blacklisting order.
- vii. If the 'Agency or Agencies' has been involved in anti- national activities as declared by the competent court/government authorities.
- viii. Where the 'Agency or Agencies' by his conduct causes or seeks to cause damage/harm to the interest of the 'JNPA' or its image/reputation or when JNPA is of the opinion that the conduct of the Agency or Agencies is undesirable or unacceptable at a professional level.

## **5. PERIOD OF BLACKLISTING**

Blacklisting period shall be reckoned from the date of blacklisting order and ordinarily the period for which 'Agency or Agencies' is blacklisted should be 2 years. In exceptional cases where the act of 'Agency or Agencies' is a threat to the National Security or the Port, the banning shall be for indefinite period.

## **6. PROCEDURE FOR BLACKLISTING**

- a) If a prima-facie, case is made out that the 'Agency or Agencies' is guilty on the above grounds which can result in its blacklisting by JNPA, a show-cause notice shall be served by or on behalf of JNPA to the 'Agency or Agencies'.

- b) The show-cause notice shall indicate the ground on which the 'Agency or Agencies' is proposed to be blacklisted and shall grant the 'Agency or Agencies' a period of five days to submit its written response to the said blacklisting show-cause notice.
- c) The 'Agency or Agencies' shall be given an opportunity of being personally heard either in physical mode or Virtual Conference ('VC') mode by the JNPA if a written response is tendered within specified time and request is so made by the Agency or Agencies. In case no written response is tendered the JNPA shall proceed ex-parte with the proceedings to blacklist the Agency or Agencies.
- d) JNPA shall take a decision after considering the written response and response given in the personal hearing [if so requested by Agency or Agencies in terms of clause 6(c)] regarding blacklisting of the 'Agency or Agencies'. Such decision shall be final and binding on the said 'Agency or Agencies'.
- e) The final blacklisting order shall be uploaded on the official website of the 'JNPA' and a copy of same be forwarded to the 'Agency or Agencies'.
- f) Once the orders for blacklisting are issued they shall not be revoked unless:
  - i. On a review upon application by the 'Agency or Agencies' the competent authority or the authority higher than it, is of the opinion that the punishment already meted out is adequate in the circumstances of the case or the order so passed was not justified or,
  - ii. In respect of the same facts the accused has been honourably acquitted by a Court of Law.

An order for blacklisting passed shall 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.

- g) The above process of banning should be completed within 04 months from initiation of show cause notice by JNPA.

**7. MISCELLANEOUS**

- a) The above procedures supersede all earlier circular/clarification on the subject.
- b) This Policy on blacklisting shall be made a part of tender documents and uploaded on JNPA website.
- c) In the event of any dispute arising out of the blacklisting orders and Implementation thereof, such dispute shall be subject to the jurisdiction of the Courts of Mumbai or the Hon'ble High Court of Bombay at Mumbai.