

TABLE OF CONTENTS


S.No.	DESCRIPTION	Page No.
	Blacklisting Policy	3
Clause 1	Purpose	3
Clause 2	Definitions	3
Clause 3	Scope	4
Clause 4	Core responsibilities	5
Section-I Clause 5	Sanctions And Grounds For Blacklisting	6
Clause 5.1	Competitive Bidding Stage	6
Section-II Clause 6	Contract Implementation Stage	7
Clause 7	Procurement/ Hiring of consultancy services	9

(Note: This agreement contains of only 9pages)

BLACKLISTING POLICY DOCUMENTS

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BLACKLISTING POLICY

1. PURPOSE

- 1.1 To comply with the statutory obligation imposed on the procuring agencies by the Federal Government vide Rule 19 of Public Procurement Rules, 2004 amended on 28th June, 2021, inserted vide S.R.O. No.834 (1)/2021.
- 1.2 To define a comprehensive policy for blacklisting and debarring bidders for a specified time in accordance with regulations made by PPRA and explained at PPRA Rule 2004 sub clause 1 part 'f' & 'fa' of clause 2.
- 1.3 To create a due process and fair procedure prescribing fair criteria, proportionate duration of punishment and structuring of discretion of the authorities exercising the Power of blacklisting of contractors, bidders firms, JVs and suppliers etc .
- 1.4 To improve the performance monitoring mechanism of the Contractor(s) and Supplier(s) so as to impart best engineering practices in the organization.

2. DEFINITIONS

D2.1. "Blacklisting" means to put the name(s) of person(s), party , parties, consultant(s), firm(s), company/companies, contractors, Bidders, Suppliers on a blacklist to express PBC's dissatisfaction and discontent against such entity/ entities, and to put restriction on such entity /entities from participating in any and all kinds of bidding processes during the period of their blacklisting. Such disapproval will be expressive and widespread requiring the name(s) of the blacklisted entity or entities to be published on PPRA's website along with the names of their Board of Directors, Proprietor(s), or Owner(s) etc.

D2.2 "Licensee"/ eligible bidder means person(s), party or parties, firm(s), company or companies having permission to do business on PBC's property or properties by entering into an agreement with PBC.

D2.3. "Consistent Failure" means repetitive failure by an entity to perform as per its contractual obligations on or after award of contract either at multiple instances in the same job or at multiple jobs undertaken by the same entity (either independently or as joint venture). For the purpose and scope of this document, the word "multiple" shall mean two or more in numbers.

D2.4. "Contract" means an agreement enforceable by law. For the purpose and scope of this document, the word "Contract" shall also include "any mode of PPP agreement", "license agreement", and "purchase order" within its meaning.

D2.5. "Contractor" and "Supplier" mean person(s), party / parties, consultant(s), firm(s), JVs company / companies or successful bidder entering into a contract agreement with PBC for fulfillment / performance / provision of works, services, or supply of goods in favor of the PBC as per the terms and conditions laid down under the contract agreement i.e. duties, responsibilities, the amount and type of work(s) etc.

D2.6. "Controlling Office" means office of the Controller P&D for project execution, & Controller procurement for conduct of procurement of goods & services and any other controlling office of PBC ie M&O, Sales, Admin, Finance, Program & News etc. The concerned controlling office to the particular matter will be called as Office of the Prime Interest (OPI)

D2.7. "List" means the List of Blacklisted Contractors & Suppliers.

D2.8. "Offense" means commission of the ground(s) and violation(s) defined under Clause 4, 5 & 6 of this document.

D2.9. "Penalty" and its derivatives shall mean imposition of restriction on erring Contractors and Suppliers from participating in any and all kinds of bidding processes in the light of PPRA rule 19.

D2.10. "Site engineer/ project office (POS) or procurement officer means, the officer(s), who are directly involved in procurement of works and services, supply of goods, and /or handling of commercial & estates' activities.

D2.11. "**Suspension**" and its derivatives shall mean a temporary restriction imposed on contractor(s), supplier(s), lease (s), licensee(s), person(s), party / parties, consultant(s), firm(s), company / companies from participating in any and all kinds of bidding processes during the period from receipt of "Notice of Decision" (against the entity) to "Finality of the Decision.

D2.12. "Blacklisted" means a bidder that is declared by the Procuring Agency (PA) untrustworthy after establishing the fact that the bidder was found involved in any corrupt and fraudulent practice or practices or if the bidder is declared incapable by the PA due to its established performance, failure during the execution of the contract; or if the bidder deviates from its prior commitment or declaration made regarding the bid or the proposal submitted by the bidder.

D2.13. "Cross debarred" means a bidder debarred by any procuring Agency shall be considered as debarred by all the procuring agencies.

D2.14. "Appellate Authority "means - Authority to Appeal against issuance of Blacklisting Order (DG PBC).

D2.15. "Appeal" means - Right of firm/individual to lodge protest against the issuance of Blacklisting Order.

D2.16. "Procuring Agency" means- Any department involved, for procurement of goods, services, execution of works & all kind of auction proceeding under the respective administrative control of the concerned unit.

D2.17. "Blacklisting Order "means - An administrative penalty disqualifying a firm/individual from participating in procurement for a given period.

D2.18. "Termination of Contract" means- Extinction of contract by reason of resolution or rescission under applicable rules/regulations/laws arising from the default of the firms/individuals.

D2.19. "Delist" means - Removal of supplier/contractor from blacklisting.

D2.20. "Successful Bidder" means – A bidder who has been declared successful after completing procurement process & to whom letter of intent (LOI) is to be issued.

3. SCOPE

3.1. The PBC's Blacklisting policy(BLP) shall be applicable in all such cases wherein blacklisting of a defaulting /erring Contractor, and Supplier [i.e. individual(s), sole-proprietor(s), partnership(s), corporation(s), joint venture(s), company / companies, firm(s), association(s), Bidder or any other legal entity / entities is required.

3.2. The BLP shall also be applicable in all such cases wherein blacklisting of a defaulting/erring, Contractor, supplier, successful bidder. individual(s), sole proprietor(s), partnership(s), corporation(s), joint venture(s), company / companies, firm(s), Association, or any other legal entity / entities] is required.

3.3. The blacklisting of the erring Contractor(s) and Supplier(s) does not meant retributive action but it is a reformative measure, taken in the interest of free, fair, and open competition.

4. CORE RESPONSIBILITIES

- 4.1. End user in case of procurement and Site engineer/ project officer at site (POS) is responsible for reporting all complaints warranting initiation of the blacklisting procedure against the Contractor or Supplier to the Controlling Office' i.e. Controller (Procurement), controller P&D (OPI) if the equipment is delivered, installed and within the warranty period or either contractor is not working normal in case of project work under controller P&D or for any other work that particular OPI.
- 4.2. The respective Controlling Office at PBC HQRs which is called office of prime interest (OPI) is responsible for initiating the case for blacklisting of the erring Contractor or Supplier within twenty (20) working days from the receipt of the complaint(s) from the end user, Site engineer/POS etc. if it finds sufficient grounds warranting initiation of the blacklisting action. OPI will be procurement office if the matter is procurement of goods and services which involve clear specifications and store able items, while OPI will be P&D office and any other controller office that involves execution of a contract under his/her control in their respective domain.
- 4.3. The controlling officer of procurement cell PBC HQRs will directly initiate the case for blacklisting, if the contractor becomes insolvent/ defaulter and fail to deliver, install and commission the equipment as per contract obligations or involve in any of fraudulent practices as defined in PPRA rule 2004 sub clause 1 part 'f' & 'f-a' of clause 2.
- 4.4. Office of Director Engineering shall recommend the cases initiated by the Controlling Office (OPI) for necessary action through DG PBC to the PBC's blacklisting Committee (comprising cross departmental officer in odd numbers) for Blacklisting of the Contractors & Suppliers. DG PBC will be final authority for black listing of a contractor, supplier, bidder etc & DG will be the appellate Authority.
- 4.5. PBC's Committee for Blacklisting (PCB) of the Contractors & Suppliers is responsible for deciding in favour or against the Contractor(s) or Supplier(s) on the merit of the case, and submits it for the approval of DG PBC.
- 4.6. The respective Controlling Office (OPI) shall intimate the decision(s) of the "Committee for Blacklisting of the Contractors & Suppliers" to the concerned Contractor(s) or Supplier(s).
- 4.7. The Chairman of the "Committee for Blacklisting of the Contractors & Suppliers" shall issue a blacklisting order with the approval of DG PBC where by the particulars of the Blacklisted Contractor or Supplier shall be published on the PBC's website in the "List of blacklisted Contractors & Suppliers".
- 4.8. The Head of P& PR department at PBC HQRs shall be responsible for publishing and maintaining the "List of Blacklisted Contractors & Suppliers" ensuring to upload in PBC's website for the entire period of black listing and for conveying the blacklisting order to PPRA, PEC, FBR, SECP and other Government Departments wherever applicable. The head P&PR will circulate the blacklisted bidders to all Directors of PBC.
- 4.9. The concerned OPI shall ensure that blacklisted Contractors or Suppliers whose names appear on the "List of Blacklisted Contractors & Suppliers" are not issued with bidding documents.
- 4.10. The Office of Director engineering shall be responsible to propose any amendments or revisions required in this blacklisting policy prior to put up the matter to competent authority/forum.

SECTION-I**5. SANCTIONS AND GROUNDS FOR BLACKLISTING****5.1 Competitive Bidding Stage:**

5.1.1. During the competitive bidding stage, PBC shall impose following punishment to the erring bidder/suppliers. However, procuring agency shall initiate such blacklisting or debarment proceedings after exhausting the forum of arbitration.

a) In case of the first erring offence of bidder deviating from his offered commitment and violating the terms of tender documents, penalty of the forfeiture of bid security & warning may be issued to the erring bidder.

b) In case of the second offence the erring bidder may be barred from participating in the bidding process for six months along with forfeiture of bid security and warning to the erring bidder.

c) The blacklisting period may be extend to one (1) year for the third offence in the single bid or other bids within a period of two years. The black listing period may be extended to 10 years depending on the magnitude of the offence, solely on the discretion of DG PBC on the recommendation of PBC's Committee for Black listing (PCB), without prejudice to the imposition of additional administrative sanctions and / or further criminal prosecution, as provided by applicable laws, on the following grounds:

5.1.2. "corrupt and fraudulent practices" in respect of procurement, & project process shall be either one or any combination of the practices including-

a) "coercive practices" which means any impairing or harming or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence the actions of a party to achieve a wrongful gain or to cause a wrongful loss to another party.

b) "Collusive practices" which means any arrangement between two or more parties to the procurement & project process designed to stifle open competition for any wrongful gain, and to establish prices at artificial, non- competitive levels.

c) "Corrupt practices" which means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the acts of another party for wrongful gain.

d) "Fraudulent practices" which means any act or omission, including, misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

e) "Obstructive practices" which means harming or threatening to harm, directly or indirectly, persons to influence their participation in a procurement process, or affect the execution of a-contract.

5.1.3. Submission of eligibility requirements containing false information or falsified documents.

5.1.4 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.

5.1.5. Unauthorized use of one's name, or using the name of another for purpose of public bidding.

5.1.6. Misconduct i.e. not responding to at least three (03) written consecutive communications.

5.1.7. Refusal or failure to post the required performance security within the prescribed or extended time without showing cause for inaction for at least three (3) times in a single year.

5.1.8. Any documented unsolicited attempt by a bidder to unduly influence the outcome of the bidding in his/her favour.

5.1.9. All other acts that tend to defeat the purpose of the competitive bidding, such as but not limited to;

5.1.10. An eligible contractor / supplier not buying bidding documents meaning acquiring the bidding documents through unofficial means or in a manner unacceptable to PBC , or An eligible contractor / supplier acquiring the bidding documents by means of internet (downloading from Website) and participating in the bidding process without purchasing the right to bid at least three (3) separate instances within five consecutive years.

5.1.11. Deviations from specifications and terms & conditions of the purchase order/contract.

5.1.12. Withdrawal of a bid, or refusal to accept an award, or enter into contract with PBC without justifiable cause, after he had been judged as having submitted the Lowest Calculated Responsive Bid or Most Advantageous Bid for procurement of equipment or the contractor for other works or Highest Rated Responsive Bid in case of auction, PPP, renting of assets & air time sales etc.

5.1.13. Refusal or failure to deposit the required performance security within the prescribed time.

5.1.14 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 or valid instruction of concerned officer.

5.1.16. In addition to the penalty of blacklisting, the bid security posted by the concerned bidder or prospective bidder shall also be forfeited.

5.1.17. The bid security and performance security found fake.

SECTION- II

6. CONTRACT IMPLEMENTATION STAGE:

6.1. Without prejudice to the imposition of additional administrative sanctions in the light of PPRA Rule 19 sub clauses (1) , (2),(3), (4) & (5) the PBC may initiate further legal action as described by the applicable laws, Which include but not limited to the following:

i). Blacklist and henceforth cross debar for participation in any public procurement or disposal proceedings for the period of not more than ten (10) years, if corrupt and fraudulent practice as defined in these rules is established against the bidder or the bidders in pursuance of blacklisting proceedings.

ii). Blacklist and henceforth cross debar for participation in respective category of public procurement or disposal proceedings for a period of not more than three years, if the bidder fails to perform his contractual obligations during the execution of contract or breaches the contract due to his capacity and capability to perform or otherwise-- However, procuring agency shall initiate, such blacklisting or debarment proceedings after exhausting the forum of arbitration,

provided that such provision exists in the conditions of contract, and if such failure or breach is covered in the respective dispute settlement clauses of the contract.

iii). Blacklist and henceforth cross debar for participation in respective category of public procurement or disposal proceedings for a period of not more than six months, if the bidder fails to abide with a bid securing declaration, however without being indulged in any corrupt and fraudulent practice.

iv). PBC shall impose on Contractors after the termination of the contract the penalty of blacklisting for a period which may extend to one (1) year for the first non-fraudulent offense, and for a period which may extend to two (2) years for the second non fraudulent offense, thus barring them from participating in the public bidding process, for violations committed during the contract implementation stage.

v). Consistent failure of the contractor, solely due to his fault or negligence, to mobilize and start work or to perform within the specified period as per the Work Order.

vi). Consistent failure of the contractor/supplier, solely due to his fault or negligence, to deliver goods within the specified period as per signed agreement.

vii). Consistent failure by the contractor / supplier to fully and faithfully comply with his contractual obligations without valid cause of force majeure, or failure by the contractor / supplier to comply with any written lawful instruction of PBC's respective controlling offices & its representative(s) pursuant to the implementation of the contract.

viii). Willful or deliberate abandonment or non-performance of the project or contract by the contractor /supplier at multiple occasions in different works resulting to substantial breach thereof without lawful and/or just cause.

ix). In addition to the penalty of blacklisting, the bid security and performance guarantee (i.e. Bank Guarantee, or Insurance Guarantee) or security deposit posted by the contractor /supplier shall also be forfeited.

6.2. Other Conditions:

6.2.1 PBC shall impose on bidders or prospective bidders the penalty of blacklisting on participating firms/ bidders in the public bidding process, for committing any of the following violations:

- i). Consistent failure to provide satisfactory performance.
- ii). Existence of judicial decision(s) or verdict(s) against a contractor/supplier for having been found guilty of corrupt, collusive, or fraudulent practice(s) in litigious matters, wherein PBC was involved either as a plaintiff or victim of such act(s).
- iii). Existence of a PAC and or DAC decision against a contractor or supplier requiring blacklisting of the Contractor or Supplier.
- iv). Submission of false and spurious documents, making false statements and allegations against a potential competitor or a PBC Employee to gain undue advantage.
- v). Misbehavior and or threatening of departmental and supervisory officers during execution of work or tendering process. Making false or defamatory allegations (label) against departmental and supervisory officers.
- vi). Involvement in any sort of tender fixing.
- vii). Commission of fraud, embezzlement, criminal breach of trust, theft, cheating, forgery, bribery, falsification or destruction of records, receiving stolen property, false use of trademark, securing fraudulent registration, giving false evidence, furnishing of false information of serious nature, and any other practices deemed or considered unethical.

viii). A blacklisted Contractor or Supplier participating in the bidding process under a new name.

ix). Failure of the contractor, due to solely to his fault or negligence, to mobilize and start work or performance within the specified period in the Notice to Proceed.

x). 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/ concerned PBC officer 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. Stock piling 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 affectivity dates of the performance security after its expiration during the course of contract implementation.
- f. 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.

xi). 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.

7. PROCUREMENT/ HIRING OF CONSULTANCY SERVICES

7.1 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 including but not limited to;

- i) Defective design resulting in substantial corrective works in design and/or construction.
- ii). Failure to deliver critical outputs due to consultant's fault or negligence;
- iii). Specifying materials which are inappropriate, substandard or way above acceptable standards;
- iv). Allowing defective workmanship or works by the contractor being supervised by the consultant; and
- v). 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.
- viii). In addition to the penalty of suspension, the performance security deposited by the consultant firm/contractor/ transaction Adviser could also be forfeited.