



**UPL Policy & Procedure
For
Withholding of Business Dealings
And
Banning of Business Dealings**

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UPL Policy & Procedure for Withholding and Banning of Business Dealings

1. Introduction

- 1.1 Utility Powertech Limited (UPL) deals with Agencies, who are expected to adopt ethics of highest standards and a very high degree of integrity, transparency, commitments and sincerity towards the work undertaken. It is not in the interest of UPL to deal with any Agency who commit deception, fraud or other misconduct of whatsoever nature in the tendering process and/or execution. UPL is committed for timely completion of the assigned jobs by its client within the awarded value without compromising on quality.
- 1.2 Since suspension / banning of business dealings involves civil consequences for an Agency concerned it is incumbent that adequate opportunity of hearing is provided and the explanation, if tendered, is considered before passing any order in this regard keeping in view the facts and circumstances of the case.

2. Scope

- 2.1 UPL reserves its right to withhold or ban business dealings with any Agency, if such Agency is found to have committed misconduct or any of its action(s) fall into any such categories as laid down in this policy.
- 2.2 The procedure for (i) Withholding and (ii) Banning of Business Dealing with any Agency, has been laid down in these guidelines.
- 2.3 The provisions of this Policy supersede and will have overriding effect on all earlier guidelines, procedures & system circulars issued for the similar purpose.
- 2.4 This policy comes into force from the date of its issuance (i.e. w.e.f. 16.05.2016).
- 2.5 The provisions of this policy will be effective on investigations conducted or misconduct / irregularities noticed on the part of any Agency in all contracts awarded on or after the date of implementation of this policy and in the contracts under execution or contracts not yet closed, on the date of the implementation of this policy.

3. Definitions

In these Guidelines, unless the context otherwise requires :

- i) Agency shall mean UPL Enlisted Agencies / Contractor / Supplier / Purchaser / Bidder approved Sub-contractor of a Contractor to whom work has been awarded.
- ii) **Competent Authority** shall mean CEO of UPL.
- iii) **‘Investigating Department’** shall mean any Department or Unit of UPL, investigating into the conduct of the Agency and shall include the UPL Surveillance Department.
- iv) **List of Enlisted Agencies** – shall mean and include list of Enlisted Parties / Contractors / Suppliers / Bidders, etc. of UPL.
- v) **Fraud Prevention Policy** – shall mean the policy related to prevention of fraud implemented by UPL.

- vi) **Suspension/Banning** – In the context of these guidelines, the words suspension and banning are interchangeable and shall have same connotation & meaning.

4. Withholding of business dealings

4.1 Grounds

The business dealing with the Agency may be withheld, if they are found to be in breach of the terms & conditions of the Contract, on account of the reasons attributable to them, which shall include, but not be limited to the following if the Agency :-

- a. Either fails to commence work on the Facilities in terms of contract or suspends the progress of Contract performance.
- b. Fails to achieve ‘Completion of contract’ within time schedule stipulated in the contract.
- c. Suspends / stops work on any unfounded pretext including seeking higher compensation.
- d. Utilizes funds advanced, if any, to the Contractor for purpose other than the Contract.
- e. Does not deploy or withdraws the manpower or equipment considered necessary as per the terms & conditions of contract.
- f. Fails to furnish the required documents / information as required under the terms & conditions of contract.
- g. Does not fulfill the obligations as required under the Contract.
- h. Does not pay wages, PF, ESI & benefits to worker reportedly engaged under contract.
- i. Does not deploy required number of manpower.
- j. Does not provide PPEs to its workers as per terms of contract.
- k. Follows unsafe practice in execution of contract.
- l. Violates terms & conditions of the contract.
- m. Does not Supply material / supplies material of inferior quality with respect to Technical Specifications under the Contract.
- n. On prima-facie scrutiny, work executed its found to be of poor quality below acceptable limits stipulated in the Technical Specifications.
- o. If a disaster / major failure / accident / collapse of a structure / system caused during erection or during defect liability period prima facie appears to be due to negligence of contractor or poor quality of execution.
- p. Assigns, transfers, sublets or attempts to assign, transfer or sublet the entire works or any portion thereof without the prior written approval of the UPL.

- q. Misbehavior or physical manhandling by the Agency or its representative or any person acting on his behalf with any official of the company dealing with the concerned contract.
- r. If UPL prima-facie is of the view that the Agency is guilty of an offence involving corrupt, fraudulent practices including misrepresentation of facts as per UPL's Fraud Prevention Policy, moral turpitude in relation to the business dealings.
- s. Willfully creates unpleasant situation leading to hindrance in tendering process.
- t. If NTPC / other Clients of UPL recommend such a course in respect of a case under their investigation.
- u. If the security consideration, including questions of loyalty of the Agency to NTPC / other clients of UPL so warrants;
- v. The finished work either prematurely fails or fails to give the desired output / service during the defect liability period and the Agency fails to rectify it.
- w. On any ground as per which doing business dealings with the Agency is not as per interest in the opinion of Competent Authority.

4.2 Procedure

(a) For Site / Head Office (HO) one time Packages -

The concerned department at Site / HO shall report the fraud activities to the respective Nodal Officer. The Nodal officer at site shall forward the case to Nodal Officer of UPL's Head Office who shall further forward the case to Surveillance Department. Surveillance Department shall examine the case and recommend the case for action to be taken or drop the case.

The action for withholding of business dealings shall be initiated in those cases where 30% or more shortfalls in work progress is observed with respect to agreed work schedule for the reasons attributable to the Contractor.

- (b)** Surveillance Department will extract noting from the concerned file and a separate file will be opened to process this aspect exclusively also bringing out on the file the relevant facts appearing against the Agency leading to final decision of the Competent Authority.

4.3 Area of Operation

A decision to withhold business dealing with any agency for any site / H.O. awarded contracts shall be restricted to such sites / HO of UPL. For site / HO wise withholding the business dealing of any agency, show cause notice and circular for such withholding shall be issued by HO after vetting by Law Department / Law Officer and approval of Competent Authority under intimation to Surveillance Department. To control the liabilities of UPL against the contractor's / vendor's and to control the liabilities of persistent default in wage payment and/or statutory compliances UPL will encash the Additional performance guarantee (APG) and / or any other guarantee of the agency / vendor available with UPL.

4.4 Effect during the period in which Withholding of Business dealing is contemplated against the vendor / agency by UPL and effect of withholding.

Effect of Withholding

“The Agency, after issue of order of withholding of business dealings, would not be allowed to participate in any future tender enquiry and if the Agency has already participated in any tender process and the price bids are not opened, his techno-commercial bid will be rejected and price bid will be returned unopened. However, where the price bids of Agency have been opened prior to order of withholding, bids of the Agency shall not be rejected. Also in open tender cases, tender enquiry / tender documents shall not be issued to defaulter vendors. In case of E-tendering if a defaulter vendor has purchased the tender documents on line, his bid shall not be considered for opening under this tender.” Effective date of withholding of Business dealing and banning of Business dealing with the agency / bidder / vendor shall be from the date of issue of the banning order / letter for this effect to the agency / bidder / vendor.

4.5 Duration of Withholding

Duration of withholding the Agency shall be for a period of **12 months**. Within this period, if the Agency rectifies the reason / ground on which the Agency has been withheld, to the satisfaction of the Competent Authority, then on written representation of the Agency, the Competent Authority can review and, if satisfied, may revoke the order of withholding of business dealing. Provided further that, even till completion of 12 month of withholding period, if the Agency does not rectify, then the Competent Authority after reviewing the situation may issue order extending the period of withholding for 12 months or more or advise initiation of action for banning of business dealings with Agency in accordance with the procedure prescribed in Para 5.2 below.

4.6 Revocation of Orders

An order for withholding of business dealing passed for a certain specified period, including extension thereof, shall not be revoked automatically. Such withholding shall be revoked only after order in this respect is issued with the approval of Competent Authority.

5. Banning of business dealings

5.1 Grounds on which Banning of business dealings can be initiated

Banning of business dealings can be initiated against Agency, on following grounds:-

- a) If the Agency fails to accept the award of contract or has abandoned or repudiated the Contract.
- b) If the Contractor is found to be non-performing in execution of contract by RM / Engineer-in charge of UPL.
- c) If a disaster / major failure / accident / collapse of a structure / system is caused during execution of contract and defect liability period due to negligence of contractor or poor quality of execution.

- d) Misbehavior or physical manhandling by the Agency or his representative or any person acting on his behalf with any official of the Company and / or its client dealing with the concerned contract is established.
- e) If the Director / Owner of the Agency, proprietor or partner of the Agency, is convicted by a court of law for offences involving corrupt and fraudulent practices including moral turpitude in relation to its business dealings with the government or Client's of UPL during the last five years.
- f) If the proprietor of the Agency have been guilty of malpractices such as bribery, corruption, fraud, substitution of the tenders, interpolations, etc.
- g) If the Agency continuously refuses to return / refund the dues of UPL without showing adequate reason and this is not due to any reasonable dispute which would attract proceedings in arbitration or court of Law.
- h) If the Agency employs a public servant dismissed / removed or employs a person convicted for an offence involving corruption or abetment of such offences.
- i) If business dealings with the Agency have been banned by UPL's Client and the ban is still in force.
- j) If it is established that Agency has resorted to corrupt, fraudulent practices including misrepresentation of facts.
- k) If the Agency uses intimidation / threatening or brings undue outside pressure on the UPL or its official in acceptance / performance of the job under the contract.
- l) If the Agency indulges in repeated and / or deliberate use of delay tactics in complying with contractual stipulations.
- m) If the Agency is found to be involved in cartel formation during bidding.
- n) On willful indulgence by the Agency in supplying sub-standard material with respect to Technical Specifications under the Contract irrespective of whether pre-dispatch inspection was carried out by Company (UPL) or not.
- o) Based on the findings of the investigation report of UPL Client against the Agency for malafide / unlawful acts or improper conduct on his part in matters relating to the Company (UPL) or even otherwise.
- p) If the Agency is declared bankrupt or insolvent or its financial position has become unsound, and in the case of a limited company, it is wound up or liquidated.
- q) Established litigant nature of the Agency to derive undue benefit.
- r) Continued poor performance of the Agency.
- s) If the Agency commits fraud as defined under the Fraud Prevention Policy of UPL.
- t) If the Agency has assigned or transferred the contract or engaged subcontractor(s) without the prior approval of the Competent Authority in violation of the provisions of the contract.

- u) If the Agency misuses the premises or facilities of the UPL/Client forcefully occupies, tampers or damages the Company's properties including land, water resources, forests / trees, etc.
- v) If the security consideration, including questions of loyalty of the Agency to the state, so warrants.
- w) If the agency willfully creates unpleasant situation leading to hindrance in tendering process.

(Note: The examples given above are only illustrative and not exhaustive. The Competent Authority may decide to ban business dealing for any other good and sufficient reason).

5.2 Procedure

(a) For Site Packages where banning is proposed at Site

The concerned department on noticing any non / under performance and/or irregularities and/or misconduct and/or unethical practice as mentioned above, shall refer the case to Nodal officer of site along with relevant details. The Nodal officer of site shall analyze the referred case and put up the case to Nodal officer of Head Office and Nodal Officer of Head Office shall refer the case to Surveillance Department and if the case considered appropriate, Surveillance Department shall put up the proposal for issuing Show Cause Notice for the purpose of banning of business dealings with the Agency for approval of the Competent Authority.

The Show Cause notice to be issued to the Agency should be legally vetted and should clearly indicate the charges based on the facts as can be proved.

In case the Surveillance Department recommends waiver of banning of business dealings with the Agency, the proposal along with reasons thereof shall be put up for approval of the Competent Authority.

(b) For Site Packages where Region wide banning is proposed

For Site cases, if the gravity of the misconduct is such that it would not be in the interest of the concerned Region as a whole to deal with such an Agency, the Surveillance Department may put up the recommendation to Competent Authority.

(c) For Site Packages where Company wide banning is proposed

For Site cases, if the gravity of the misconduct is very serious and it would not be in the interest of UPL as a whole to deal with such an Agency, the Surveillance Department may put up his recommendation to Competent Authority.

Show Cause notice to be issued to the Agency should be legally vetted and should clearly indicate the charges based on the facts as can be proved.

In case the Surveillance Department recommends waiver of banning of business dealings with the Agency, the proposal along with reasons thereof shall be put up for approval of CEO.

All the above proposals shall be routed through Surveillance Department of UPL.

5.3 Show Cause Notice

Once the proposal for issuance of Show Cause Notice is approved by the Competent Authority, a 'Show Cause Notice' duly vetted by legal department shall be issued by Head office. In cases where investigation has been carried out by Surveillance Department / Client, the show cause notice will also be vetted by Surveillance Department before issuance. Statement containing the imputation of misconduct or misbehavior may be appended to the Show Cause Notice.

The Agency shall be asked to submit the reply of Show Cause Notice within 10 days of its issuance.

The purpose of issuing the Show Cause Notice is only that the Agencies concerned shall be given an opportunity to explain their stand before any action is taken. All that is required in such cases is that the grounds on which action is proposed to be taken shall be disclosed to the Agency inviting representation and after considering that representation, orders may be passed. Such orders require only the subjective satisfaction of the authority that passed the final orders.

If the Agency requests for inspection of any relevant document in possession of UPL, necessary facility for inspection of documents may be provided.

In case, no reply to Show Cause Notice is received from the Agency within stipulated time, action for processing ex-parte against the concerned Agency shall be initiated. After submission of written reply to Show Cause Notice by the Agency, UPL shall also give opportunity to hear them in person by fixing a date for oral hearing if desired by Agency.

During the conductance of oral hearing, only the regular employees of Agency will be permitted to represent the Agency and no outsider shall be allowed to represent the Agency on its behalf. Reply to the Show Cause Notice given by the Agency and their submission in oral hearing will be processed by RM site in consultation with Surveillance Department, wherever applicable, for obtaining final decision of the Competent Authority in the matter.

5.4 Speaking Order

The speaking order for banning the business dealing with the Agency shall be issued (after vetting by legal deptt) by the RM site. In cases where investigation has been carried out by Surveillance Department or Client etc., the speaking order will also be vetted by Surveillance Department before issuance.

5.5 Communication to Agencies

The decision regarding banning of business dealings taken after the issue of a Show Cause Notice and consideration of representation, if any, in reply thereto, shall be communicated to the Agency concerned along with a reasoned order. The fact that the representation has been considered shall invariably be mentioned in the communication. Also the fact that if no reply was received to the Show Cause Notice shall invariably be indicated in the final communication to the Agency.

5.6 Period of Banning

The period for which the ban would be operative may be mentioned in the order. The banning shall normally be for a period of **two years** or as decided by client whichever is more.

In case the information / documents submitted by Agency in competing for the tender found to be false / forged then UPL, without prejudice to any other rights or remedies it may possess, shall recover from Agency the cost incurred in carrying out physical assessment for establishing veracity of such information / documents. In case Agency refuses to reimburse such cost to UPL then banning period of Agency shall be extended by another one year.

5.7 Area of Operation

For contracts awarded by Site, banning shall be restricted to such Site only except where approval has been obtained for Region / Company wide banning. For contracts awarded by head office, banning shall be restricted to Head Office only except where approval has been obtained for Company wide banning.

5.8 Effect of Banning

The Agency, after issue of the order of banning of business dealings, would not be allowed to participate in any future tender enquiry and if the Agency has already participated in tender process and the price bids are not opened, his techno-commercial bid will be rejected and price bid will be returned unopened. However, where the price bids of Agency have been opened prior to order of banning, bids of Agency shall not be rejected.

5.9 Process of reply

The Agency shall be separately advised of the decision regarding banning of business, taken in reply to their representation, if any. As regard any further representation from the Agency, business dealings with who have been banned, the same shall be processed by the RM site in consultation with Surveillance Department, wherever applicable. If any reply is considered necessary to be sent to the Agency, the same shall be sent by the concerned RM site.

5.10 Hosting at UPL website

- a) The names of the Agencies with whom Business Dealings have been banned at Site / Head Office level shall be hosted at UPL website by C&M department of UPL.
- b) If Government Departments or a Public Sector Enterprises request for more information about the Agency with whom business dealings have been banned, such additional information, as decided, may be given after due approval of the Competent Authority.

5.11 Dealing with court cases related to banning

The Court cases arising out of the banning orders issued shall be processed by the RM site / C&M department of Project / Head Office, as the case may be, in consultation with the Surveillance and Legal department as required.

5.12 Appeals against the Decision of the Competent Authority.

The Agency may file an appeal against the order of the Competent Authority banning of business dealing before Appellate CEO/UPL. Such an appeal shall be preferred within one month from the date of receipt of the order of banning of business dealing. Appellate Authority (CEO) would consider the appeal and pass appropriate order which shall be communicated to the Agency as well as the Competent Authority.

5.13 Revocation of Orders

- a) The banning under shall not be revoked automatically. Such banning shall be revoked only after re-evaluation of the performance of the Agency by the CEO, UPL.
- b) In all other cases, an order for banning passed for a certain specified period shall be deemed to have been automatically revoked on the expiry of that specified period and it will not be necessary to issue a specific formal orders of revocation, except that an order of banning passed on account of doubtful loyalty or security consideration shall continue to remain in force until it is specifically revoked.
- c) An order of banning for the reasons mentioned at para 5.1(e) above may be revoked if, in respect of the same facts, the accused has been wholly exonerated by a Court of Law.

6.0 Participation of Agency under Different Name

During the banning / withholding period, if it is found at any stage that Agency has participated in tender enquiry under a different name then such Agency would immediately be debarred from the tender / contract and its Bid Security / Performance Security would be forfeited. Payment, if any, made shall also be recovered.

7.0 Further in case of banning / withholding following would also be applicable:

(i) Participation of Agency as an Associate / Collaborator of the Main Contractor

Where Stage-I (Two Stage Bidding) / Envelope-I Techno-Commercial bids (Single Stage Two Envelope Bidding) bids have been opened prior to banning / withholding of Agency and such Agency has been proposed as Associate / Collaborator by any of the bidders, in such cases the tendering process shall not be annulled on this ground and the Agency shall be permitted to continue as Associate / Collaborator for such bidding.

However, where opening of Stage-I bids (Two Stage Bidding) / Envelope-I Techno-Commercial bids (Single Stage Two Envelope Bidding) has not taken place prior to banning / withholding of Agency then in such case Agency shall not be permitted to participate as Associate / Collaborator in such bidding.

(ii) Participation of Agency as an approved Sub-Vendor of the Main Contractor

After banning / withholding order, Agency shall be allowed to participate as Sub-Vendor in the tenders for supplying/manufacturing equipment(s)/component(s), provided banning / withholding has not been done for reasons concerning the acceptance of such equipments/ component(s) on grounds of under performance / inferior quality / use of sub-standard material etc.

However where Stage-I bids (Two Stage Bidding) / Envelope-I Techno Commercial bids (Single Stage Two Envelope Bidding) have been opened or where contracts has been awarded prior to banning / withholding order, participation of Agency in such bidding / contract as an approved Sub-Vendor shall not be affected by such order.

(Note: - In case of contradiction of condition between UPL & its clients, the client's condition shall prevail.)
