

## **Guideline for debarment of firms from Bidding.**

### **Definitions**

- a) Firm: The term 'firm' or 'bidder' has the same meaning for the purpose of these Guidelines, which includes an individual or person, a company, a cooperative society, a Hindu undivided family and an association or body of persons, whether incorporated or not, engaged in trade or business.
- b) Allied firm: All concerns which come within the sphere of effective influence of the debarred firms shall be treated as allied firm. In determining this, the following factors may be taken into consideration:
  - 1. Whether the management is common.
  - 2. Majority interest in the management is held by the partners or directors of banned/ suspended firm;
  - 3. Substantial or majority shares are owned by the banned/ suspended firm and by virtue of this it has a controlling voice.
  - 4. Directly or indirectly controls, or is controlled by or is under common control with another bidder.
  - 5. All successor firms will also be considered as allied firms.
- c) The terms "banning of firm" suspension" Black-Listing" etc. convey the same meaning as of "Debarment".

### **Debarment by Procuring Entity**

Order for Debarment of a firm (s) shall be issued by the Procuring entity, keeping in view of the following:

- a) A bidder or any of its successors may be debarred from participating in any procurement process for a period not exceeding two years.
- b) Firms will be debarred if it is determined that the bidder has breached the code of integrity as per Rule 175 of GFR 2017 (ref para 14.5.3 below for details).
- c) A bidder can also be debarred for any actions or omissions by the bidder other than violation of code of integrity, which in the opinion of the procuring entity, warrants debarment, for the reasons like supply of sub-standard material, non-supply of material, abandonment of works, sub-standard quality of works, failure to abide Bid securing declaration etc.
- d) It shall not be circulated to other Organizations. It will only be applicable to THDCIL and its subsidiaries.
- e) The procuring entity before issuing the debarment order against a firm must ensure that reasonable opportunity has been given to the concerned firm to

represent against such debarment (including personal hearing, if requested by firm).

- f) The competent authority for debarment of a bidder at Project/ Unit/ Corporate Office within THDCIL will be Head of Project/ Unit / Head of Department (in case of Corporate Office) not below the rank of General Manager. The debarment within THDCIL shall be treated as companywide debarment. The concerned approving authority shall be responsible for issue of circular for intimation to Other project/ unit/ Corporate Office within THDCIL and should mark a copy to IT Department for uploading on THDCIL website.
- g) Procurement entity, who has been issued the order of debarment, can also issue an order for revocation of debarment before the period of Debarment is over, if there is adequate justification for the same. Ordinarily, the revocation of the order before expiry of debarred period should be done with the approval of CMD.
- h) The Procuring entity will maintain list of debarred firms, which will also be displayed on THDCIL website.
- i) Debarment is an executive function and should not be allocated to vigilance Department.

**Code of Integrity as contained in Rule 175 of the GFRs is reproduced as under:**

No official of a procuring entity or a bidder shall act in contravention of the codes which includes

**i. Prohibition of**

- a. making offer, solicitation or acceptance of bribe, reward or gift or any material benefit, either directly or indirectly, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process.
- b. any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefit may be obtained or an obligation avoided.
- c. any collusion, bid rigging or anticompetitive behaviour that may impair the transparency; fairness and the progress of the procurement process.
- d. improper use of information provided by the procuring entity to the bidder with an intent to gain unfair advantage in the procurement process or for personal gain
- e. any financial or business transactions between the bidder and any official of the procuring entity related to tender or execution process of contract; which can affect the decision of the procuring entity directly or indirectly.

- f. any coercion or any threat to impair or harm, directly or indirectly any party or its property to influence the procurement process.
  - g. obstruction of any investigation or auditing of a procurement process.
  - h. Making false declaration or providing false information for participation in a tender process or to secure a contract;
- ii. Disclosure of conflict of interest.
- iii. Disclosure by the bidder of any previous transgressions made in respect of the provisions of para 14.5.3(i) (as above), with any entity in any country during the last three years or of being debarred by any other procuring entity.

#### **Revocation of Orders.**

- i. An order for debarment passed 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 order or revocation.
- ii. A debarment order may be revoked before the expiry of the order, by the competent authority, if it is of the opinion that the disability already suffered is adequate in the circumstances of the case or for any other reason.

#### **Other provisions (Common to both types of debarment)**

- i. No contract of any kind whatsoever shall be placed to debarred firm including its allied firms after the issue of a debarment order by the Procuring entity. Bids from only such firms shall be considered for placement of contract, which are neither debarred on the date of opening of tender (first bid, normally called as technical bid, in case of two packet/two stage bidding) nor debarred on the date of contract, even in the cases of risk purchase, no contract should be placed on such debarred firms.
- ii. In case, any debar firms has submitted the bid, the same will be ignored. In case such firm is lowest (L-1), next lowest firm shall be considered as L-1. Bid security submitted by such debarred firms shall be returned to them.
- iii. Contracts concluded before the issue of the debarment order shall, not be affected by the debarment orders.
- iv. The Debarment shall be automatically extended to all its allied firms. In case of joint venture/ consortium is debarred all partners will also stand debarred for the period specified in Debarment order. The names of partners should be clearly specified in the debarment order.

- v. Debarment in any manner does not impact any other contractual or other legal rights of the procuring entities.
- vi. The period of debarment shall start from the date of issue of debarment order.
- vii. The order of debarment will indicate the reason (s) in brief that lead to debarment of the firm.
- viii. Ordinarily, the period of debarment should not be less than six months.
- ix. The above provision should be incorporated in bidding documents.