



**North East
Gas Distribution**
Company Limited

Fuelling dreams for a
sustainable tomorrow

(A Joint Venture of Assam Gas Company Ltd.
& Oil India Ltd.)

DEBARMENT POLICY



**CHOOSE
NATURAL GAS
FOR A CLEANER
FUTURE**

Smart Energy, Sustainable Future: Embrace
Natural Gas for a Cleaner Planet

DEBARMENT POLICY

GUIDELINES FOR DEBARMENT OF ERRING AND DEFAULTING BIDDERS, CONTRACTORS, SUPPLIERS, VENDORS, AND SERVICE PROVIDERS

(Prepared in line with the provisions of Office Memorandum No.
F.1/20/2018-PPD dated 02.11.2021 issued by Department of
Expenditure, Ministry of Finance)

1.0 INTRODUCTION:

1.1 North-East Gas Distribution Company Ltd. (NEGDCL) deals with various Agencies, in the course of various procurement, works and service contracts, who are expected to adopt ethics of highest standard and a very high degree of integrity, transparency, commitments and sincerity towards the work undertaken by them. It is not in the interest of NEGDCL to deal with any agency who commits deception, fraud or other misconduct of whatsoever nature in the tendering process and/or contract/supply execution processes.

1.2 While participating in the tender and performing under a Contract/Purchase Order, the Agencies are required to meet certain standard of integrity and adherence to the terms and conditions of the tender/ contract. In case any agency fails to meet the standard benchmark of integrity, it is prudent to put the agency on holiday/ debarment list for specific period in order to deter the Agencies from committing such defaults. Such decisions shall be taken after following a laid-down procedure. Since holiday listing or debarment from business dealings involves civil consequences for the agency concerned, it is incumbent that adequate opportunity is provided to the erring agency and the written submission, if furnished by such agency, is considered before passing any order in this regard keeping in view the facts and circumstances of the case.

1.3 The debarment policy of NEGDCL covering the guidelines for appropriate action against erring and defaulting bidders, contractors, suppliers, vendors, and service providers has been made based on the “Guidelines on Debarment of firms from bidding” issued by Department of Expenditure, Ministry of Finance vide office memorandum No. F.1/20/2018-PPD dated 02.11.2021.

1.4 This policy shall be applicable to all tenders floated by NEGDCL including the tenders floated through GeM portal and Assam e-tender portal. However, applicability of this policy in GeM tenders shall be in conjunction with the latest Incident Management Policy of GeM.

2.0 DEFINITIONS:

(i) 'Agency' shall mean Bidder / Contractor / Supplier / Consultant / Service Provider/Firm and includes an individual or person, Proprietorship/ Partnership Firm, a company, LLC, a cooperative society, a Hindu undivided family and an association or body of persons, whether incorporated or not, or any other entity, engaged in trade or business.

(ii) Firm: The term 'firm' or 'bidder" has the same meaning with "Agency" for the purpose of these Guidelines.

(iii) "Tender" shall mean all or any tender and shall include Enquiry, Request for Quotation and Notice Inviting Tender.

(iv) "Allied firm" shall mean All concerns which come within the sphere of effective influence of the debarred firms shall be treated as allied firms. In determining this, the following factors may be taken into consideration:

- a. Whether-the management is common;
- b. Majority interest in the management is held by the partners or directors of debarred/banned/suspended firm;
- c. Substantial or majority shares are owned by the debarred/ banned/ suspended firm and by virtue of this it has a controlling voice.
- d. Directly or indirectly controls, or is controlled by or is under common control with another bidder.
- e. All successor firms will also be considered as allied firms.

(v) The terms "Debarment of firm", "Suspension", "Black-Listing", "Holiday" etc. convey the same meaning as of "Debarment".

(vi) "Contract" shall mean all or any contract awarded to an Agency and shall include Purchase Orders/Works Contract/Service Contract.

(vii) "Company" shall mean North-East Gas Distribution Company Ltd.

(viii) Competent Authority: "Competent Authority" shall mean the au-

thority, who is competent to take final decision for Holiday listing/ Debarment/ Debarring of Contractors/ Suppliers. NEGDCL's Competent authority is CEO.

(ix) Appellate Authority: "Appellate Authority" shall mean the Chairman, NEGDCL. The Appellate authority shall be higher than the "Competent Authority".

3.0 GUIDELINES ON DEBARMENT OF FIRMS FROM BIDDING

The Guidelines are classified under following two types:

- (i) Debarment by a Single Ministry/Department: Where debarment is proposed to be limited to the Organization/Department/Single Ministry.
- (ii) Debarment across all Ministries/Departments: Where it is proposed to extend the debarment beyond the jurisdiction of the company i.e. covering to all central Ministries / Departments.

4.0 PROVISIONS FOR ACTION IN CASE OF ERRING / DEFAULTING AGENCIES:

4.1. An Agency can be considered for debarment if it is determined that the bidder has breached the code of integrity as per Rule 175 of General Financial Rules (GFR) 2017.

4.1.1. Code of Integrity as contained in Rule 175 of the GFRs and OM No. F.1/20/2018-PPD dated 02.11.2021 of Department of Expenditure, Ministry of Finance is reproduced as under:

No official of an Agency 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 obli-

gation avoided.

(c) any collusion, bid rigging or anticompetitive behavior 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, 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 sub-clause (i) with any entity in any country during the last three years or of being debarred by any other procuring entity.

4.2 An agency can also be considered for debarment by the Company, for the reasons like supply of sub-standard material, non-supply of material, abandonment of works, sub-standard quality of works, unsatisfactory/ non- performance, failure to abide submission of “Bid Security” or “Bid Securing Declaration” (as the case may be) and any other breach other than violation of code of integrity if found reasonable by NEGDCL etc. Such provision of putting an agency under debarment will mainly include noncompliance/ non- performance in respect of certain provisions of tender document / contract. In addition to above, reasons for considering an agency for debarment broadly includes the following:

i) Has refused to accept LOA/ LOI/ Purchase Order/ Contract after the same is issued by NEGDCL within the period of Bid validity and as per agreed terms & conditions.

ii) Has backed out or failed to commence the work/ supply after acceptance of LOA/ LOI/ Purchase Order/ Contract.

- iii) If an agency fails to commence the work/supply leading to delay OR resulting in termination of the contract/ order.
- iv) Unsatisfactory and/ or non- performance.
- v) Non-submission of performance security.
- vi) The contractor either fails to start the work or stops work under the contract without any valid reason.
- vii) If the contractor does not comply with the conditions of the contract OR violates statutory requirements like labor laws, Employees' Compensation Act, Mines Act or any other statutory obligations.
- viii) The material supplied by the agency is found to be defective/ sub- standard or fails during its use/operation.
- ix) The workmanship and quality of job executed by the agency is found to be of substandard.
- x) Premature failure of the work executed by contractor/ failure of equipment during the operation, and not giving the desired result as per provision of the contract.
- xi) The contractor assigns/ sublets/ transfers the contract without having written permission from the company.
- xii) If a major failure/ accident/ collapse of any structure occurs during operation/ erection or during defect liability period due to negligence of the agency or engineering deficiency or inferior quality of execution.
- xiii) If the agency is found below acceptable limit of the vendor evaluation system as per laid down procedure requiring for putting the vendor on holiday.
- xiv) If an agency commits any misconduct involving any contract and/or tender of NEGDCL.
- xv) If the bidder has withdrawn/modified/amended, impaired or derogated from the tender or his bid during the period of bid validity specified in the form of bid.
- xvi) If the bidder is put on holiday/ debarment by any of the promoter company.

NOTE: Above list is illustrative only, but not exhaustive

4.3 In addition to above, action for suspension shall be initiated by NEGDCL in the following situations:

- i) The Vigilance Department, based on the facts gathered during its internal investigations recommends for taking action against an agency.
- ii) If a communication is received from any Government investigating agency directly or through Vigilance Department for action against a vendor/agency in relation to procurement issue of NEGDCL.
- iii) If action for debarment has commenced against an Agency for reasons as stated in Para 4.1 & 4.2.

Once a communication is received from Vigilance/any Govt. investigating agency for considering any action against a vendor, it is considered that prima facie there exists a case for stopping further business with such vendor pending detailed enquiry for debarment.

While communicating the suspension order, a show-cause notice shall also be issued to the agency giving the brief reason for putting the vendor on suspension. The agency shall further be asked to explain as to why it should not be put on debarment/debarment list for further business. The show cause notice should be legally vetted. The C&P department/ section shall process a proposal along with the show-cause notice for putting the vendor under suspension/debarment.

The concerned agency shall be informed that no future business dealings will be carried out with either with him / her or with all their allied firms during the currency of suspension.

The period of suspension shall be 3 (three) months from the issuance of show-cause notice which can be extended by one month at a time but total suspension period to be limited to 6 (six) months. The above extension for suspension period shall be with due approval of the competent authority.

5.0 ACTION AGAINST ERRING/ DEFAULTING AGENCIES IN RESPECT OF AN ONGOING TENDER/ CONTRACT WHERE THE AGENCY HAS ERRED/ DEFAULTED

5.1 Action against agencies in respect of an ongoing tender/ contract, where the agency has erred/defaulted any of the provisions mentioned above in para 4.1 & 4.2:

(i) The irregularities are prima-facie established during evaluation of bids:

If it is prima-facie established that, bidder has erred/ defaulted any of the provisions mentioned above in para 4.1 & 4.2; the Company shall reject the bid of such bidder and shall not consider for further evaluation/ award. If the bid is rejected after price bid opening and such bidder happens to be the lowest evaluated bidder (L1), Tendering process and/ or Contract award process will continue subject to acceptance of L1 rate by other qualified bidder(s). In case none of the bidders accept the L1 rates, retendering shall be carried out. Further, the Earnest Money Deposit (EMD)/ Bid Security, if applicable and submitted by such bidder shall be forfeited.

(ii) The irregularities are prima-facie established after award of the contract:

(a) During execution of Contract:

If the contractor is found to have erred / defaulted any of the provisions mentioned above in para 4.1 & 4.2, in respect of ongoing contract, such contractor shall be put on debarment/ holiday list of NEGDCL after following the due process. The concerned contract/ order where irregularities have been committed shall be suspended forthwith by the Engineer-in-charge, who is supervising the contract, with the approval of the competent authority.

The work/ services/ supply and payment shall be suspended, after taking into cognizance of provisions under para 5.2 below. The action shall be initiated for putting the vendor on debarment/ holiday list. After following the due process, the order/ contract where it has been concluded that irregularities have been committed shall be terminated. The contract Performance Bank Guarantee submitted by the Contractor shall be forfeited. Any payment due to the contractor for work al-

ready executed and accepted shall be payable after adjustment of any amount due from the contractor as per the provision of the contract.

In this case no Risk and Cost Clause will be applicable.

(b) The irregularities are prima-facie established after execution of the contract during defect liability period:

If it is found after execution of the contract, that the contractor erred / defaulted any of the provisions mentioned above in para 4.1 & 4.2, such agency shall be banned for future business with NEGDCL after following the due process. The contract performance bank guarantee submitted by the contractor shall be forfeited, if the same is in Company custody.

(iii) Irregularities prima-facie established after expiry/completion of contract/supply:

If the contractor is found to have erred / defaulted any of the provisions mentioned above in para 4.1 & 4.2, in respect of expired contract, such contractor shall be put on debarment/ holiday list of NEGDCL after following the due process. However, this clause shall be applicable if the alleged irregularity is noticed and action initiated within 01 (one) year of last payment made under the contract/ supply. The contract performance bank guarantee submitted by the contractor shall be forfeited, if the same is in Company custody.

5.2 Allowing an agency to complete the job in respect of the contract where the agency has erred/defaulted any of the provisions mentioned above in para 4.1 & 4.2:

In exceptional circumstances, the contract where any of the provisions mentioned above in para 4.1 & 4.2 has been erred/ defaulted, the contractor may be allowed to complete the job in case it is considered that the work/ service/ supply is of critical nature and discontinuity of contract shall have adverse effect on operation/ project completion/ revenue generation. The approval for allowing the agency to complete the supply/ service/ works to be obtained from the competent authority. After the approval for continuing with the contractor, job will be executed and payment shall be made as per the provision of contract. The

Performance bank guarantee of such agency shall not be forfeited.

However, the agency shall be put on debarment/ holiday list after following due process.

5.3 In case of any member/ leader of a Consortium or Joint Venture is found to have breached provisions of para 4.1 & 4.2 above in a particular tender/ contract shall be dealt in the same manner as described at para 5.1 and 5.2 above. The action regarding debarment shall be against all members even if irregularity is committed by an individual member against the particular contract.

6.0 EFFECT / CONSEQUENCE OF DEBARMENT INCLUDING SUSPENSION:

- i) An agency which is put on debarment list or suspended, should not be considered for any ongoing as well as future tenders during subsistence of the debarment/ suspension period.
- ii) If an agency is debarred or suspended during the tendering process, the following action are to be taken:
 - (a) The agency is put on debarred/ suspension list after issuance of enquiry and receipt of bids, however, before technical bid opening, the offer of such bidder should be ignored and the EMD/ Bid Security (if applicable) submitted by the bidder to be returned to the agency.
 - (b) The agency is put on debarred/ suspension list after opening of the technical bid but before price bid opening, the technical bid of such bidder shall stand rejected and their price bid need not be opened. The EMD/ Bid Security (if applicable) submitted to be returned to such bidder, in case the cause of debarment/ suspension is with respect to another tender/ contract. However, if the agency has committed default under the instant tender, their submitted EMD/ Bid Security shall be forfeited.
 - (c) If the agency is put on debarred/ suspension list after price-bid opening, the price-bid of such agency shall not be considered for award. However, the price-bid shall be evaluated to know the ranking of the bidder. If it emerges as lowest bid (L1), Tendering process and/ or Contract award process will continue subject to acceptance of L1 rate by other qualified bidder(s). In case none of the bidders accept the L1 rates, retendering shall be carried out. The bid security shall be

returned, if the cause of debarment/ suspension is with respect to another tender/ contract. If the default is committed by the agency against the instant tender, then the EMD/ Bid Security shall be forfeited.

(d) In case of a bid from consortium/ joint venture/ allied firm, if any member of the consortium/ joint venture / allied firm is debarred/suspended during processing of the tender, the bid shall be treated in the same manner as in case of individual bidder at a, b, & c above.

(e) If an agency who is debarred/suspended is already executing other orders / contracts where no irregularities are committed, the agency shall be allowed to continue till completion of the job including any increase in scope of work which are purely incidental to the main scope of work.

(f) Further, in case the agency is Original Equipment Manufacturer (OEM) or the only Supplier or the only Service provider for certain items / spare parts / services, in such cases procurement may be continued with the debarred/ suspended agency for operational reasons to be justified in writing.

7.0 PERIOD / DURATION OF DEBARMENT:

Duration of debarment shall not be less than 6 (six) months and shall not exceed 2 (two) years including suspension period, if any, depending on the severity of default.

8.0 PROCESS FOR DEBARMENT OF AN AGENCY:

i) Once it is prima facie established that an agency has defaulted, and it calls for initiating action for putting the agency on suspension/ debarment list, the department/ section supervising the tender/ contract/ purchase order shall initiate a note for taking action against the defaulting agency giving complete facts and figures. Based on the above, the CEO shall constitute a committee consisting of members from C&P, Finance and Indenting/ User department to examine.

ii) This committee shall examine the case in detail and submit its report.

iii) If the committee, after analyzing the matter in detail comes to the conclusion that there is no substance in the matter and it does not require any further action; shall make a recommendation for closure of the case with due reasoning. Such recommendation shall be submitted

for approval to the authority who constituted the committee.

iv) In case the committee after detailed examination comes to the conclusion that the case requires further action, it shall make a recommendation for debarment and the same shall be put up to the authority who constituted the committee for approval.

v) The above recommendation shall contain a show-cause notice to be issued to the agency. The show-cause notice should contain the alleged breach committed by the agency stating provision of the tender/ contract. The explanation to be sought from the agency as to why action should not be taken as per provisions of the tender / contract. The show-cause notice shall be legally vetted. Therefore, the committee recommendation along with the draft show-cause notice shall be vetted from Legal Department prior to placing before the competent authority to approve. Competent authority for approval of issuance of show-cause notice shall be the CEO of NEGCL.

vi) After obtaining approval from the competent authority, the show-cause notice shall be issued by the C&P Department/ COO/ CPM. The concerned agency shall be given 2 (two) weeks' time from the date of issuance of notice for submission of its response to the show-cause notice.

vii) In case the agency requires some documents in respect of show- cause notice, the same may be provided promptly by NEGDCCL. However, such request should be entertained only once.

viii) In case the agency seeks additional time, reasonable extension for response to Show-Cause Notice may be given.

ix) The Agency shall also be afforded the option of Personal Hearing in the Show-Cause Notice and submission made by the Agency during the hearing should be duly recorded and signed by the Authorized Representative of the Agency. The Personal Hearing should be conducted by the Authority who passes the Order i.e. C&P Department/ COO/ CPM.

x) The response to show-cause notice received from the agency along with details of personal hearing (if any) shall be forwarded to the same committee constituted earlier for analysis of the submissions made by the Agency and for recommendation thereof. The committee shall examine the reply from the agency and make its final recommendation for debarment or otherwise.

xi) If the Committee is satisfied with the submissions made by the alleged agency and recommends for closure of the case without pursu-

ing further for debarment or with a caution letter to the agency depending on merit of the case, such recommendations with findings and reasoning etc. should be put up to the appointing authority i.e. CEO for approval and the matter may be closed accordingly.

xii) Else, a draft speaking order giving complete reason for debarment to be provided along with the recommendation by the committee. The draft speaking order shall require vetting by Legal Department with reference to the show-cause notice before it is put up for approval by the authority who had appointed the committee.

xiii) While recommending debarment, the committee should take into account of any item or service that are proprietary in nature to the defaulted agency or their allied firms, without which the Company operations might be adversely impacted during the debarment period.

xiv) After obtaining the approval of the competent authority, C&P department will issue a speaking order debarring the agency as well as their all-allied firms and intimate the same to the Board. The C&P department/ section will intimate the same to all the GAs/ spheres and simultaneously maintain the list of such debarred agencies on NEGD-CL's website.

xv) The debarment order after expiry of the debarment period shall automatically get revoked and shall not require issuance of any separate order. The name of the agency should be removed from the debarment/ holiday list hosted on NEGDCL's website after expiry of the debarment period. However, record of such agencies shall be maintained in the website with reasons of removal of their name from the debarment list.

xvi) The process and decision regarding debarment should be completed within 4 (four months from the date of constitution of the committee. In exceptional circumstances it may be allowed upto 6 (six) months.

xvii) An agency shall not be debarred unless such agency has been given a reasonable opportunity to represent against such debarment.

9.0 APPEAL AGAINST DECISION OF DEBARMENT:

The banned agency if not satisfied with decision of debarment may file an appeal to the Appellate Authority giving full justification within 30 days from the date of issuance of debarment order.

- ii) The appeal should be disposed off within 45 days from the date of filing. The appellate authority shall pass a suitable order which shall be communicated to the agency by C&P department of the company.
- iii) The appellate authority shall be the Chairman of the Company.
- iv) In case of revocation of debarment order before expiry of the debarred period against an appeal to the appellate authority, approval of Chairman of the company will be required.
- v) Pending order against the appeal, the debarment order shall continue to be in force.

10. 0 OTHER PROVISIONS APPLICABLE FOR DEBARMENT/ SUSPENSION / HOLIDAY:

10.1 The speaking order for debarment will indicate the reason(s) in brief that led to debarment of the firm.

10.2 The debarment shall be automatically extended to all its allied firms. In case of joint venture / consortium, all the partners will stand debarred for the period specified in Debarment Order, even if the irregularity is established against any one member. The names of partners should be clearly specified in the show-cause notice as well as in the “Debarment Order”.

10.3 Competent authority that 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. However, revocation of the debarment orders before expiry of debarred period should be done only with the approval of Chairman of the Company.



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