

OIL INDIA LIMITED
PLOT NO. 19, SECTOR – 16A,
NOIDA

BANNING POLICY

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

(Revised on 17.03.2023 inline 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 Oil India Limited (OIL) 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 OIL 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/banning 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 banning 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 banning policy dated 06th January' 2017 of Oil India Limited covering the guidelines for appropriate action against erring and defaulting bidders, contractors, suppliers, vendors, and service providers stands revised 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 revised policy shall be applicable to all tenders floated by Oil India Limited **w.e.f.** 17.03.2023 including the tenders floated through GeM 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 "Banning 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 Oil India Limited.

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 obligation 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 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 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 OIL 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 OIL 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 OIL.
- 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.

NOTE: Above list is illustrative only, but not exhaustive

4.3 In addition to above, action for suspension shall be initiated by OIL 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 OIL.
- 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 banning.

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 banning/debarment list for further business. The show cause notice shall be duly vetted by the legal department. The C&P department 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, which shall be the concerned Head of Sphere/Fields/Pipeline Headquarter and Head of C&P in case of Corporate office.

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, the tender shall be scrapped and retendered. 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 banning/debarment list of OIL 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 concerned Head of Sphere / Fields / Pipeline Headquarter, as applicable. 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 banning/debarment 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 already 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 OIL 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 banning/debarment list of OIL 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 Head of concerned Sphere/Fields/Pipeline Headquarter/Head of C&P at Corporate Office, as applicable, upon recommendation of a Committee consisting of Head of C&P (in case of Corporate Office, member nominated by Head of C&P), Finance and User/Indenting Department of that unit/sphere.

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 banning/debarment 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 banning 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, the tender shall be scrapped and the requirement may be retendered. 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 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 concerned Head of sphere/fields/Pipeline Headquarter shall constitute a committee consisting of members from C&P, Finance and Indenting/User department to examine. In case of matter related to Corporate Office, the committee shall be constituted by Head of C&P (Corporate).
- 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 require vetting by the legal department. 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 Head of concerned sphere/Fields/Pipeline Headquarter/Head of C&P (in case of Corporate Office).
- vi) After obtaining approval from the competent authority, the show-cause notice shall be issued by the Head of C&P Department of that sphere/unit. 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 OIL. 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. Head of C&P Department.
- x) The response to show-cause notice received from the agency alongwith 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 banning or otherwise.
- xi) If the Committee is satisfied with the submissions made by the alleged agency and recommends for closure of the case without pursuing 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 for approval and the matter may be closed accordingly.
- xii) Else, a draft speaking order giving complete reason for banning 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 banning/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 banning period.
- xiv) After obtaining the approval of the competent authority, Head of concerned C&P department will issue a speaking order debarring the agency as well as their all allied firms and intimate the same to the Corporate C&P. The Corporate C&P will intimate the same to all the spheres and simultaneously maintain the list of such debarred agencies on OIL's website & Central Public Procurement Portal (CPPP).
- xv) The banning order after expiry of the banning period shall automatically get revoked and shall not require issuance of any separate order. The name of the agency should be removed from the banning/debarment list hosted on OIL's website after expiry of the banning period. However, record of such agencies shall be maintained in the website with reasons of removal of their name from the banning 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. If the banning process is not completed within 4 (four) months, such exceptions with due reasoning shall be brought to the notice of the Head of Sphere/Fields/Pipeline Headquarter/ Head of C&P (in case of Corporate Office).

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

9.0 DEBARMENT ACROSS ALL MINISTRIES/ DEPARTMENTS:

- (i) Where competent authority is of the view that business dealings with a particular agency should be banned across all the Ministries / Departments by debarring the agency from taking part in any bidding procedure floated by the Central Government Ministries/ Departments, the company after obtaining approval of the Corporate Business Committee (CBC), forward to DoE a self-contained note setting out all the facts of the case and the justification for the proposed debarment, along with all the relevant papers and documents. As per OM No. F.1/20/2018-PPD dated 02.11.2021 of DoE, Ministry of Finance, DoE will issue the necessary orders after satisfying itself that proposed debarment across all the Ministries/ Departments is in accordance with Rule 151 of GFRs, 2017.
- (ii) Reasons for consideration for banning an agency from taking part in any bidding procedure floated by the Central Government Ministries/ Departments, the Ministry/ Department concerned will include the following:
 - (a) *An agency convicted of an offence under the Prevention of Corruption Act, 1988; or*
 - (b) *An agency convicted of an offence under the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.*
 - (c) *Any other reason recommended by competent authority.*
- (iii) The agency will remain in suspension mode (i.e. debarred) during the interim period till the final decision taken by DoE, only in the Company.
- (iv) Company before forwarding the proposal to DoE will ensure that reasonable opportunity has been given to the concerned agency to represent against such debarment (including personal hearing).
- (v) In case of debarment, DoE will maintain list of such debarred firms, which will be displayed on Central Public Procurement Portal.

10.0 APPEAL AGAINST DECISION OF DEBARMENT:

- i) The banned agency if not satisfied with decision of banning may file an appeal to the competent authority giving full justification within 30 days from the date of issuance of banning 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 sphere/project concerned.
- iii) The appellate authority shall be concerned Functional Director 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 CMD of the company will be required.
- v) Pending order against the appeal, the banning order shall continue to be in force.

11.0 OTHER PROVISIONS APPLICABLE FOR BANNING / SUSPENSION / HOLIDAY:

- 11.1** The speaking order for debarment will indicate the reason(s) in brief that led to debarment of the firm.
- 11.2** 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".
- 11.3** 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 Chief Executive Officer (CMD) of the Company.
- 11.4** The process and decision regarding debarment should be completed within 4 (four) months from the date of constitution of the committee. If the debarment process is not completed within 4 (four) months, such exceptions with due reasoning shall be brought to the notice of the concerned head of sphere/fields/Pipeline Headquarter/Head of Corporate C&P (in case of corporate Office).
- 11.5** OIL will maintain list of debarred agencies, which will also be displayed on its website & CPPP. The Corporate C&P will intimate debarment of any agency to all the spheres and simultaneously maintain the list of such debarred agencies on OIL's website & CPPP. The banning order after expiry of the banning 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 list hosted on OIL's website & CPPP after expiry of the banning period. However, record of such agencies shall be maintained in the website with reasons of removal of their name from

the banning list.

- 11.6** If a communication from Govt of India is received debarring an agency from any business with Govt. departments or PSEs, such agency shall automatically be banned and put on the banning list of OIL, after communicating the Agency in this regard.
- 11.7** If an agency is put on banning list, no contract of any kind whatsoever shall be placed to debarred firm including its allied firms after the issue of a debarment order by Company. Bids from only such firms shall be considered for placement of contract/order, 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.
- 11.8** During the process of debarment including suspension period, Company shall not be responsible for any loss of the agency in terms of any business opportunity.
- 11.9** An agency shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment, except in situation mentioned in Clause-11.6 above.
- 11.10** In case of shortage of suppliers (for goods and/or services) in a particular group, such debarments may also hurt the interest of the Company. In such cases, endeavor should be made to pragmatically analyze the circumstances, try to reform the supplier and may get a written commitment from the supplier that its performance will improve. In such situation, no debarment may be initiated. However, detail reasoning must be recorded while seeking approval from the Competent Authority.

12.0 CONTRACT / TENDER PROVISION:

The tender/contract condition should have relevant operating provision of this guideline in respect of banning and suspension to take care of issues which may lead to putting the vendor on suspension/banning list.
