



Dated Quetta August 29, 2017

BLACKLISTING OF CONTRACTORS, SUPPLIERS AND CONSULTANTS

NOTIFICATION

NO. BPPRA/Pr- Sp(G&S)/19/2016/01/38151. In exercise of the powers conferred by section 5(2) (e) of the Balochistan Public Procurement Regulatory Authority Act, 2009 (*VIII of 2009*), the Authority is pleased to make the following regulations, namely;-

1. These regulations may be called the Public Procurement Regulations, 2017.
2. They shall come into force at once.
3. The Regulation prescribes the procedure for blacklisting of contractors, suppliers and consultants ("contractors" for brevity) involved in government procurement, for offenses or violations committed during competitive bidding process and contract implementation of the Procurement Rules.
4. This Regulation is divided into sections as follows:
 - A. DEFINITIONS
 - B. PRINCIPLES OF THIS REGULATION
 - C. GROUNDS FOR BLACKLISTING
 - D. INITIATION OF BLACKLISTING PROCEEDINGS
 - E. PROCEDURE OF BLACKLISTING
 - F. REVIEW
 - G. APPEAL
 - H. NOTIFICATION & PUBLICATION

A. DEFINITIONS

"Authority" means, - The Balochistan Public Procurement Regulatory Authority

"Blacklisting" means- An administrative penalty disqualifying a person or an entity from participating in any government procurement for a given period.

"BPPR" means, - The Balochistan Public Procurement Rules – 2014

"Consolidated Blacklisting Report" means- A report prepared by the B-PPRA containing names of blacklisted Firms, blacklisting procuring agency name, reason for blacklisting and duration thereof.

"Contractor" includes- suppliers, contractors and consultants

"Debarment" means- state of being legally excluded from participating in all types of procurement proceedings of the procuring department for a given period.

"Procuring Agency" means,-

- (i) Any department, attached department or any office of the Government; and

(ii) Any authority, corporation, body or organization established by or under a Provincial law or which is owned or controlled by the Government;

“Suspension” means- Short-term dismissal of contractor from participating in procurement proceedings of the procuring agency

“Working day” means,- days excluding gazetted holidays

PRINCIPLES OF THIS REGULATION

The Regulation is grounded on a number of important principles, namely:

- i. To lay down effective mechanism for disciplining deviant Contractors against whom, misconduct has been established;
- ii. An opportunity will be available to any contractor alleged to have committed an act of misconduct and to defend itself and has the right to present evidence to prove otherwise;
- iii. The formal hearing be conducted by a single person. Committees are not permissible. The presenter has the sole responsibility for deciding upon the terms of suspension
- iv. Blacklisting will never be permanent
- v. The period of blacklisting / suspension would invariably depend upon the seriousness / nature of offence committed by the erring contractor

B. GROUNDS FOR BLACKLISTING

A procuring agency can suspend / debar / blacklist a suppliers, contractors, or consultants individually or collectively as part of consortium from public bidding process, on following grounds:

- i. Conviction of fraud, corruption, criminal misappropriation, theft, forgery, bribery or any other criminal offence;
- ii. Indulgence in corrupt and fraudulent practices while obtaining or attempting to obtain a procurement contract;
- iii. Final decision by a court or tribunal of competent jurisdiction that the contractor or supplier is guilty of tax evasion;
- iv. Wilful failure or refusal to perform in accordance with the term/s of the contract, including but not limited to following:
 - Sign the contract
 - Accept purchase / work order Terms (issued in accordance with the bidding document)
 - Execute work in accordance with the schedule of requirements detailed in the bidding document
 - Submit Bank Guarantee as per terms
 - Make supply as per specification agreed
 - Fulfil contractual obligations as per the signed contract
 - Or any other non-compliance of obligations important for execution / compliance of contract
- v. Failure to remedy underperforming contracts, as identified by the Procuring Agency, where underperforming is due to the fault of the contractor, supplier or consultant.
- vi. Notified blacklisted / suspended / debarred by any Government office or Public Procurement Regulatory Authority. In this regard the contractor has to submit a certificate that he or his principal is not presently blacklisted / suspended by any Procurement Authority.

C. INITIATION OF BLACKLISTING PROCEEDINGS

- i. Proceeding of blacklisting may be initiated by Procuring Agency on its own motion, if satisfied that such a cause exists, or on a written complaint by a bidder /prospective bidder, submitted to the Procuring Agency on a Non-Judicial stamp paper of Rupees 100-/- .
- ii. Upon initiation of the blacklisting proceedings, the Procuring Agency shall issue a Notice of the proposed blacklisting/ debarment / suspension to the concerned Contractor.
- iii. The Notice will be circulated to other procuring agencies of the department, that during the period for which the matter is under consideration, Proposals from that Firm if received, will not be considered.

D. PROCEDURE OF BLACKLISTING

The procedure shall entail the following sequence of events:

i. Issuance of Notice of initiation of blacklisting proceedings

Upon verification of the existence of grounds for blacklisting, the Procuring Agency shall immediately convey the Contractor concerned in writing, Notice of the proposed blacklisting at-least stating: -

- a. The fact that blacklisting is being considered
- b. The reasons for initiation of blacklisting proceedings
- c. Of the opportunity to show-cause why he should not be blacklisted / debarred / suspended;
- d. The period to be afforded to the firm to present information in its defence, and
- e. The consequences of being blacklisted / debarred

The concerned officer of the Department shall ensure receipt of the said notice by the concerned Contractor, through registered mail, fax or courier mail, immediately from the date of its issuance.

ii. Submission of written Response by the Firm

- a. Within five (5) working days from receipt of written notice, the contractor shall submit its written reply with documentary evidence to the Procuring Agency with a request of hearing, to determine questions of fact, if he so desires.
- b. If no request for personal hearing is made, the Procuring Agency shall process the case based on the documentary evidence, complaint, answer, submitted and facts verified. If the Procuring Agency is convinced that the contractor is at fault, it shall recommend to the head of the department the blacklisting or debarment of the contractor from participating in public procurement process.
- c. No time extension for submission of response shall be allowed.
- d. If the Contractor fails to submit the written response within the stipulated period, the procuring Agency shall issue a resolution recommending to the Head of the Department the immediate suspension of the Contractor from participating in any bidding process for specified duration as recommended by the concerned officer of the Procuring Agency.

iii. Request for hearing from the Firm

- a. If the written request for hearing, along-with written response by Contractor in writing, is received within the stipulated time, the Procuring Agency shall immediately set the date and time for hearing. The hearing shall be non-litigious and shall be concluded within five (5) days from the date of receiving the hearing request.

The Procuring Agency, if deems appropriate, may invite an observer / Technical member from the private sector relevant to the procurement for each hearing.

- b. In case of refusal to attend the hearing by the contractor despite timely serving of notice of hearing request, the hearing will proceed ex-parte without the Contractor.

iv. Announcement of Decision by the Procuring Agency

- a. The Head of the Department shall, within fifteen (15) days from receipt of the recommendation and the records of the blacklisting proceedings, determine whether reasonable cause exists for the blacklisting / debarment of the contractor as proposed by the concerned procurement officer. If the Head of the Department determines that such reasonable cause exists, he shall forfeit the Bid Security and / or Performance Security, in proportion with the extent of loss suffered by the procuring agency due to the misconduct of the contractor (Liquidated Damages are to be clearly mentioned in the bidding documents of the subject case) and issue either of the following decisions:
 - a. Blacklisting the Contractor from participating in any bidding process of the Government for a specified period of time.
 - b. Debar the Contractor from participating in any procurement process of the Government of Balochistan for a specified period of time.
 - c. Debar the Contractor from participating in any procurement process of that Department for a specified period of time.
 - d. Direct the contractor to take immediate remedial measures to be completed within the stipulated time, failing which, the contractor shall stand Blacklisted.
- b. If the Head of the Department determines that such no reasonable cause exists, he shall dismiss the case.
- c. The decision shall clearly and distinctly state the facts, evidence and the law on which it is based, as well as the date of affectivity of the penalty, if any.
- d. The Head of the Department shall ensure receipt of the copy of the decision by the suspended Contractor, through registered mail, fax or courier mail, immediately from its promulgation.
- e. Concurrently, a copy of complete record of the case shall also be submitted to the Authority for examination and publicity within three working days from the date of issuance of the Decision made by the Procuring agency.

v. A Firm is Blacklisted:

- a. From the date of written decision of blacklisting / suspension / debarment and no appeal is filed with the Authority within the stipulated time.
- b. When the Authority upholds the decision of the Procuring Agency in-case an appeal is filed by the Contractor
- c. The suspension shall remain in effect during the period of request for review or appeal and shall terminate only upon a reversal of the decision by the Head of the Department or appellate authority.

vi. When a Firm is suspended:

- a. The same shall be prohibited from participating in the bidding process of all Government Procurement proceedings, for the period specified in the Blacklisting order
- b. The bid security / performance security of said contractor shall be forfeited.

- c. If Blacklisting Order is issued prior to the date of the award of contract, the blacklisted Firm shall not be qualified for award and such contract shall be awarded to the next lowest evaluated bidder pursuant to Rule 43(3) of the BPPR
- d. The Authority shall disseminate the Blacklisting orders to procuring agencies and the Accountant General Balochistan through uploading at the B-PPRA website.
- e. The Authority shall delist from such report those whose sanctions are lifted automatically after serving the given penalty and those whose sanctions are lifted through the issuance of Delisting Orders.

E. REQUEST FOR REVIEW OF DECISION BY THE PROCURING AGENCY

- a. The Contractor shall have the right to request the Procuring Agency to review the initiation of blacklisting proceedings or the blacklisting decision, if the same is convinced that some concrete evidence proves the case otherwise in favour of the Contractor. For this purpose, the same will file a review application within five (5) days from receipt of the notice of decision. The Head of the Department shall resolve with finality the review application within ten (10) days from the filing thereof and furnish suspended contractor a copy of the resolution immediately from its promulgation.
- b. An appeal may be filed by the suspended contractor with the Authority within seven (7) days from receipt of the decision on application of review.
- c. The decision of the Department shall become final and executory after the lapse of fifteen days from the receipt of the notice of decision or decision of review application. If an appeal is filed, the affirmed, modified or reversed decision shall become final and executory upon receipt thereof by the department and person/entity concerned. Upon finality of the decision suspending the contractor, the Head of Department or appellate authority shall issue a Blacklisting Order disqualifying the erring contractor from participating in the bidding of all government projects.

F. APPEAL

The Firm shall have the right to file an appeal with the Authority within ten days from the date of receipt of the decision for either or both of the following causes, provided that only a single review application shall be filed with the Authority:

- a. The decision is not in conformity with the evidence and/or facts presented, hence does not construe grounds for Blacklisting laid down under Rule 23(1) of the BPPR – 2014; and
- b. Newly discovered evidence or facts which could not be discovered and produced at the investigation and which when presented would probably alter the result of the investigation.

G. NOTIFICATION & PUBLICATION

- i. The Blacklisting shall be for a reasonable specified period of time and shall commensurate with the seriousness of the cause. As a general rule, the period shall not exceed three years. In the event blacklisting is preceded by suspension when the matter is under inquiry, consideration shall be given to such period of suspension in the determining the period of for blacklisting. Prior to the expiration of this debarment period for blacklisting, the complainant formation which recommended blacklisting should review all the facts and circumstances relating to the debarment. The blacklisted firm shall stand removed from the penalty at the expiration of specified period.
- ii. In case of blacklisting during the contract implementation stage upon termination of contract due to default of the contractor, the Head of the department shall immediately issue a Blacklisting Order disqualifying the erring contractor from participating in the bidding of all government projects, pursuant to the codal formalities illustrated in this Regulation.

DISCLAIMER

In the implementation of these Regulations, the B-PPRA may introduce modifications thereto through the amendment of its specific provisions as the need arises. Any amendment to these Regulations shall be applicable for bid after the affectivity of the said amendment.
