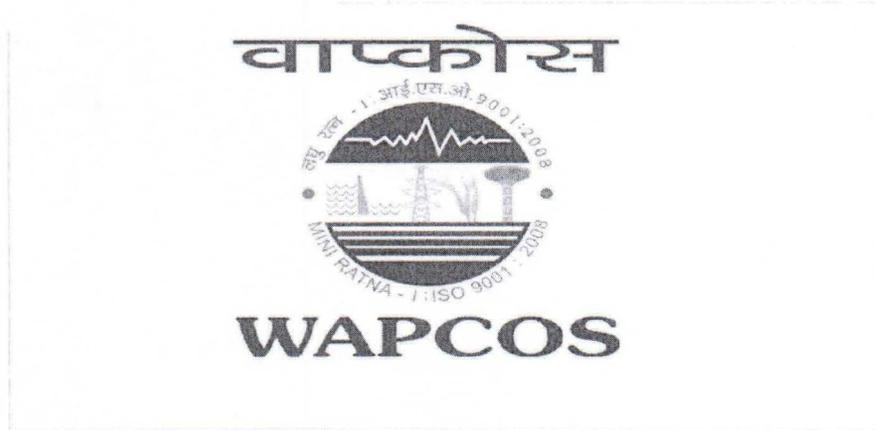


WAPCOS Limited

A Government of India Undertaking

Ministry of Jal Shakti



GUIDELINES FOR BLACKLISTING

2021

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Blacklisting Policy

In endeavour to maintain and foster ethical and corruption free business environment, the Supply Chain/Purchase/Contract & Procurement Procedures are being streamlined to include guidelines for Blacklisting of the Manufacturers/Vendors/Suppliers/ Contracting Agencies/ Contractual Service Providers /Bidders/ Appointed Consultants/Experts (hereinafter severally and collectively referred as 'Agency or Agencies') indulging in Corrupt, Fraudulent, Coercive and Collusive practices including providing Poor Service.

In view of regular requirement of public procurements by WAPCOS Ltd. (hereinafter referred to as 'Company') and complexity of the issues, it has become necessary for the 'Company' to develop present Guidelines for Blacklisting of 'Agency or Agencies'.

1. SCOPE

These guidelines shall govern the procedure, grounds and sanctions thereon for blacklisting of Agency or Agencies involved in Public Procurement for WAPCOS Ltd.

2. DEFINITIONS

- a) "Agency or Agencies" for the purposes of the present blacklisting policy shall mean Manufacturers /Vendors/Suppliers/ Contracting Agencies/ Contractual Service Providers /Bidders/ Appointed Consultants/Experts or any such entity involved in public procurement.
- b) "Blacklisting" means an administrative action/penalty disqualifying an Agency or Agencies, from participating in any public procurement, by the Company for a given period.

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- c) "Company" for the purpose of the present guidelines shall mean WAPCOS Ltd.
- d) "Competent Authority" shall mean the authority, which is competent to take final decision for Blacklisting of business dealings with an 'Agency or Agencies' involved in public procurement. Director (Finance), WAPCOS Ltd. shall be the 'competent authority' for the decisions under this policy.
- e) "Corrupt Practice" means the offering, giving, receiving or soliciting, directly or indirectly, anything of value by the 'Agency or Agencies' to improperly influence the actions in selection process or in contract execution. It shall further include any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefit may be obtained or an obligation avoided.
- f) "Collusive Practice amongst bidders(prior to or after bid submission)" means a scheme or arrangement designed to establish bid prices at artificial non- competitive levels and to deprive the 'Company' of the benefits of free and open competition.
- g) "Coercive practice" means harming or threatening to harm directly or indirectly, any other "Agency or Agencies", or its property to influence the actions of such "Agency or Agencies". It further means causing obstruction of any investigation or auditing in a procurement process done by or for the 'Company'.

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- h) "Fraudulent Practice" means and includes any act or omission committed by "Agency or Agencies" or with his connivance or by his agent by misrepresenting/ submitting false documents and/or false information or concealment of facts or to deceive in order to influence a selection process or during execution of contract/order.
- i) "Poor Services" means services which are not acceptable to the 'Company' in terms of out puts, deliverables specifications, quality, quantity, timeliness spread of misinformation, unprofessional behaviours and not as per the verbal/written advice of dealing Executive/Officers of the 'Company'.
- j) "Procuring Entity" means WAPCOS Ltd. and shall include all the officers/managers/authorised representatives working with the 'Company'

3. PROHIBITION ON BLACKLISTED CONTRACTORS TO PARTICIPATE IN BIDDING OF TENDERS/ENQUIRIES FLOATED BY WAPCOS LTD.

- a) Any "Agency or Agencies" that is blacklisted by 'competent authority' of WAPCOS Ltd. shall not be allowed to participate in the bidding of any tenders/enquiries/appointments for projects floated by the 'Company' during the period of blacklisting unless it is delisted by an order of the 'competent authority'.
- k) A joint venture or consortium which is blacklisted by 'Competent Authority' of the 'Company' or which has blacklisted member/s and/or partner/s as well as a person/entity who is a member of a blacklisted

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joint venture or consortium are, likewise, not allowed to participate in any tenders/enquiries for projects floated by the 'Company' during the period of blacklisting.

4. GROUNDS AND SANCTIONS FOR BLACKLISTING

a) During Competitive Bidding and Pre-Contract Signing Stage

If it is observed during the bidding process/bids evaluation stage that a 'Agency or Agencies' has indulged in corrupt/fraudulent/collusive/coercive practice, the bid of such 'Agency or Agencies' shall be rejected by the 'Company' and its Earnest Money Deposit (EMD) shall be forfeited. Further the 'Competent Authority' shall blacklist such 'Agency or Agencies' from future bidding with the 'Company'.

The 'Agency or Agencies' shall liable to be blacklisted under this head in the following circumstances:

- i. Submission of eligibility requirements containing false information or falsified documents.
- ii. Submission of Bids that contain false information or falsified documents, or the concealment of such information in the bids in order to influence the outcome of eligibility screening or any other stage of the public bidding.
- iii. Unauthorized use of one's name, or using the name of the another for purpose of public bidding.
- iv. Withdrawal of a bid, or refusal to accept an award, or enter into contract with the 'Company'. without justifiable cause, after such 'Agency or Agencies' had been adjudged as having submitted the

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- Lowest Calculated Responsive Bid or Highest Rated Responsive Bid or Letter of Intent has been awarded.
- v. Refusal or failure to submit the required performance security within the prescribed time.
 - vi. Refusal to clarify or validate in writing its bid during post qualification within a period of seven (7) calendar days from receipt of the request for clarification.
 - vii. Any documented unsolicited attempt by a bidder to unduly influence the outcome of the bidding in his/its favour.

The list of grounds under this head is indicative and not exhaustive and shall cover all other acts that tend to defeat the purpose of the competitive bidding and contract execution.

b) *During Execution Of Contract*

If an 'Agency or Agencies' during execution of the contract is found to have indulged in corrupt / fraudulent/ collusive /coercive practices or provides "Poor Services" during execution of contract, such 'Agency or Agencies' shall be blacklisted by 'Competent Authority' from future bidding/ appointment with the 'Company'.

The 'Agency or Agencies' shall liable to be blacklisted under this head in the following circumstances:

- i. Failure of the 'Agency or Agencies' solely due to his fault or negligence, to mobilize and start work or performance within the specified period.
- ii. Failure by the 'Agency or Agencies' to fully and faithfully comply with its contractual obligations without valid cause, or

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failure by the 'Agency or Agencies' to comply with any written lawful instruction of the procuring entity or its representative(s) pursuant to the implementation of the contract. For the procurement of infrastructure projects or consultancy contracts, lawful instructions include but are not limited to the following:

- I. Employment of competent technical personnel, competent engineers and/or work supervisors;
 - II. Provision of warning signs and barricades in accordance with approved plans and specifications and contract provisions;
 - III. Stockpiling in proper places of all materials and removal from the project site of waste and excess materials, including broken pavement and excavated debris in accordance with approved plans and specifications and contract provisions;
 - IV. Deployment of committed equipment, facilities, support staff and manpower; and
 - V. Renewal of the effectively dates of the performance security before and after its expiration during the course of contract implementation.
- iii. Assignment and subcontracting of the contract or any part thereof or substitution of key personnel named in the proposal without prior written approval by the procuring entity.
- iv. For the procurement of goods, unsatisfactory progress in the delivery of the goods by the manufacturer, supplier or

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distributor arising from his fault or negligence and/or unsatisfactory or inferior quality of goods, as may be provided in the contract.

- v. For the procurement of consulting services, poor performance by the Agency of his services arising from his fault or negligence. Any of the following acts by the Agency/ Agencies shall be construed as poor performance:
- I. Defective design resulting in substantial corrective works in design and/or construction;
 - II. Failure to deliver critical outputs affecting the project progress due to the fault or negligence of 'Agency or Agencies'; and
 - III. Specifying materials which are inappropriate, substandard, or way above acceptable standards.
 - IV. Defective workmanship designs or works of the 'Agency or Agencies'.
- vi. Wilful or deliberate abandonment or non-performance of the project or contract by the 'Agency or Agencies' resulting to substantial breach thereof without lawful and/or just cause.

In addition to the penalty of suspension, the performance security posted by the 'Agency or Agencies' shall also be forfeited.

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b) Blacklisting Due to corporate defaults

- i. If the 'Agency or Agencies' has been adjudged as Bankrupt by the competent Court of Law shall be blacklisted.

“bankrupt” means and includes—

- I. a debtor who has been adjudged as bankrupt by a bankruptcy order under Section 126 of the Insolvency and Bankruptcy Code, 2016 along with its amendments.
 - II. each of the partners of a firm, where a bankruptcy order under Section 126 of the Insolvency and Bankruptcy Code, 2016 along with its amendments has been made against the firm.
 - III. any person adjudged as an undischarged insolvent;
- ii. If the liquidation process has been initiated for Corporate Insolvency Resolution Process by the Adjudicating Authority under sections 7, 9 or 10, as the case may be. Whereas “liquidator” means an insolvency professional appointed as a liquidator in accordance with the provisions of Chapter III and Chapter V of this Part of the Insolvency and Bankruptcy Code, 2016 along with its amendments, as the case maybe, unless otherwise approved by way of Corporate Resolution Plans.
 - iii. If the holding company of the ‘Agency or Agencies’ or the company itself is deleted by the 'Registrar of the Companies' due to default of any compliance. Unless and until restored by the competent court of law or authority.

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c) Other Grounds

Apart from the grounds specified above in Clauses 4 (a), (b) and (c) 'Agency or Agencies' shall be blacklisted by 'Competent Authority' from future bidding/ appointment with the 'Company' in the following circumstances:

- i. Some significant stricture(s) is passed against the 'Agency or Agencies' by a court of law and which makes it necessary to blacklist such 'Agency or Agencies', or;
- ii. The 'Agency or Agencies' persistently violates the provisions of Labour Laws, Regulations and Rules, or
- iii. The 'Agency or Agencies' continuously refuses to pay Government dues without showing adequate reasons; or
- iv. The 'Agency or Agencies' or his representative, has shown undesirable manners behaviours etc. in business dealing such as defaming the procuring entity, filing frivolous personal cases against the procuring entity, actions leading to loss of business and market reputation for the procuring entity, or;
- v. Where a 'Agency or Agencies' or his partner or his representative has been convicted or investigation has been initiated by a court of law for offences involving moral turpitude in relation to the business dealings, or
- vi. Where security considerations including suspected disloyalty to the state so warrant the blacklisting order.

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- vii. If the 'Agency or Agencies' who has been involved in anti-national activities as declared by the competent court/government authorities.
- viii. Where the 'Agency or Agencies' by his conduct causes or seeks to cause damage/harm to the interest of the 'Company' or its image/reputation.

5. PERIOD OF BLACKLISTING

Blacklisting period shall be reckoned from the date of blacklisting order and ordinarily the period for which 'Agency or Agencies' is blacklisted should not be less than 6 months and should not exceed 3 years.

In certain cases where maximum penalty of blacklisting has been imposed and the default of the 'Agency or Agencies' was grievous, the 'Competent Authority' may at the end of such period, review the prevailing circumstances and conduct of the 'Agency or Agencies' and further extend the period of blacklisting.

In exceptional cases where the act of 'Agency or Agencies' is a threat to the National Security, the banning shall be for indefinite period.

6. PROCEDURE FOR BLACKLISTING

- a) If a prima-facie, case is made out that the 'Agency or Agencies' is guilty on the above grounds which can result in blacklisting of business dealings a show-cause notice shall be served by the Competent Authority to the errant 'Agency or Agencies'.
- b) The show-cause notice shall indicate the ground on which the 'Agency or Agencies' is proposed to be blacklisted and shall grant the 'Agency

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- or Agencies' a period of ten days to submit its written response to the said blacklisting show-cause notice.
- c) The 'Agency or Agencies' shall be given an opportunity of being personally heard either in physical mode or Virtual Conference ('VC') mode by the competent authority or any officer of designated by the competent authority if a written response is tendered within specified time. Minutes of meeting of the personal hearing shall be prepared.
- d) In case no written response is tendered the competent authority shall proceeded ex-parte.
- e) The competent authority shall take a decision after considering the written response and response given in the personal hearing regarding blacklisting of the 'Agency or Agencies'. Such decision shall be final and binding on the said 'Agency or Agencies'.
- f) The final blacklisting order shall be uploaded on the official website of the 'Company' with a copy of same be forwarded to CMD, WAPCOS Ltd., Ministry of Jal Shakti & the 'Agency or Agencies'.
- g) Once the orders for blacklisting are issued they should not be ordinarily revoked unless:
- i. On a review upon application by the 'Agency or Agencies' the competent authority or the authority higher than it, is of the opinion that the punishment already meted out is adequate in the circumstances of the case or the order so passed was not justified or,
 - ii. In respect of the same facts the accused has been honourably acquitted by a Court of Law.

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- h) An order for blacklisting passed for a certain specified period shall 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 of revocation.
- i) The above process of banning should be completed within 04months from initiation of case by competent authority.

7. MISCELLANEOUS

- a) The above procedures supersede all earlier circular/clarification on the subject.
- b) This Policy on blacklisting shall be made a part of tender documents/ recruitment notices.
- c) In the event of any dispute arising out of the blacklisting orders and implementation thereof, such dispute shall be subject to the jurisdiction of the Courts of Delhi or the Hon'ble High Court of Delhi at New Delhi.