

MAHAVITARAN

MAHARASHTRA STATE ELECTRICITY DISTRIBUTION CO. LTD.

**POWERING OUR
COMMITMENTS**

CONTRACT

**POLICY & PROCEDURE FOR DEBARRING OF
AGENCY FROM BUSINESS DEALINGS WITH MSEDCL**

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POLICY & PROCEDURE FOR DEBARRING OF AGENCY FROM BUSINESS DEALINGS WITH MSEDCL

(...In addition to Tender and other conditions and relevant Law)

1. PREAMBLE

The purpose of this policy and procedure is to develop standard debar policy and procedure in order to ensure participation of reliable and honest bidders/contractors/vendors, etc.

2. PREFACE

In exercise of the power under Section 131, 133 and 134 of the Electricity Act, 2003 the Government of Maharashtra by a Notification dated 4th June 2005, (Ref. No. Reform 1005/CR/9061/NR G-5) formulated a Transfer Scheme where under the Maharashtra State Electricity Board (MSEB) was trifurcated into separate generation, transmission, distribution companies. As per the Transfer Scheme, the Maharashtra State Electricity Distribution Company Limited (MSEDCL) was designated as a Distribution Licensee.

The main functions and duties of Maharashtra State Electricity Distribution Company Limited are to acquire, establish, construct, take over, erect, lay, operate, run, manage, hire, lease, buy, sell, maintain, enlarge, alter, renovate, modernize, work and use projects associated lines and all things connected there to for the purpose of distribution of power including sub-station, civil works distribution centre, cables, wires, lines, accumulators, plant, motors, meters, apparatus, materials and to carry on the business of purchasing, importing, exporting, trading or otherwise dealing in Electric Power, to distribute and supply of electricity.

3. INTRODUCTION

MSEDCL deals with various Agencies like Turnkey Contractors/ Suppliers/ Service providers to execute various projects. These agencies are repeated to perform, in letter and spirit of the conditions of Standard Bidding Documents and deliver in line with best corporate governance practices. Learning from the past experiences, the new initiatives were taken, to avoid delay in execution of works and to achieve further improvement in quality of the material and work.

Timely completion of project, being the essence of any project, the progress with reference to the agreed Milestone is continuously monitored. The quality of material and work is checked at different level by MSEDCL's officers and also by third party/independent agency. Necessary actions as per General Conditions of Contract (GCC) are taken against the contractor if the progress is not achieved as per the agreed Milestone and/or if the quality is not maintained.

It is, however, observed that in spite of all this there are quite a few cases where a contractor/agency either repeatedly failed to complete the projects as per agreed time schedule or failed to rectify some of the major defects notified and failed to maintain quality of material or continued repeating the same defects thereby violating the provisions of tender/contract conditions in letter and spirit.

Although, there is a provision in Standard Bidding Document (SBD) to initiate action of termination against defaulting Contractor/Agency/Vendor, there is no policy in existence for debarring of such Contractor/Agency/Vendor. Due to this, even if a Contractor/Agency/Vendor whose past performance is not satisfactory or whose previous contract was terminated is allowed to participate in new/fresh tenders.

If such a contractor is again awarded a tender then it is possible that the awarded tender is executed in a poor manner once again leading to delay in completion of the project and/or the quality of material and work getting suffered. It would be against interest of MSEDCL to deal with such agency. In order to ensure compliance it requires debaring policy so that the Contractor/Agencies/ Vendor perform the contractual obligations with good quality and complete of the contract in timely manner. A need, therefore, is felt to assess and identify Agencies on the basis of their performance and debar defaulting Agency for a certain time period from taking part in the future tendering process of MSEDCL. Further, as per the Office Order No 18/3/05 dated 24th March, 2005, issued by Central Vigilance Commission (CVC), GOI, the banning of business dealings with Agencies is an administrative matter to be decided by the management of the organization and the CVC does not give its advice in such matters. In view of this, MSEDCL has prepared this Policy and set the procedure for debaring of Agency/Contractor from business dealings with MSEDCL after referring the debar policies adopted by few organizations like NTPC, WBPDC, EIL etc.

4. SHORT TITLE AND COMMENCEMENT

The policy shall be called Policy and Procedure for Debaring of Agencies from business dealings with MSEDCL. This policy and procedure shall have effect from **15/05/2018**

5. APPLICABILITY

The policy shall be called Policy and Procedure for Debaring of Agencies from business dealings with MSEDCL. This policy and procedure shall have effect from **15/05/2018**

6. OBJECTIVES

Various agencies are expected to practice and adopt best governance practices, so that contract and bidding documents conditions are adhered to, in letter and spirit. The purpose of this policy is to formulate a procedure for debaring of business dealing with agencies where they are found to commit lapses /defaults/ offences or anything unethical not expected from an agency.

7. SCOPE

7.1 MSEDCL reserves its right to debar any Agency from any business dealings with it, if such Agency is found to have committed deception, fraud or misconduct or any other act which is not in the interest of MSEDCL in the execution of contracts awarded or any of its action(s) fall into any such categories as laid down in this policy.

7.2 The procedure for Debaring of Business Dealing with any Agency including withholding has been laid down in this policy.

7.3 The provisions of this Policy is in addition and will have overriding effect on all earlier policy, procedures & system circulars issued for the similar purpose from the date of this policy.

7.4 The provisions of this policy will be effective on investigations conducted or misconduct/irregularities noticed on the part of any Agency in all contracts awarded on or after the date of implementation of this policy.

8. DEFINITIONS

In this policy, unless the context otherwise requires :

8.1 Agency shall mean Contractor / Supplier / Purchaser / Bidder/ Vendor/ MSEDCL approved sub-contractor of a Contractor to whom work has been awarded. It shall include, but not limited to, a public limited company or a private limited company, a firm whether registered or not, a proprietorship, any individual, a cooperative society or an association or a group of persons engaged in any commerce, trade, industry, or constituents of an unincorporated Joint Venture Company, etc.

8.2 Bid / Tender shall mean an offer, proposal or quote for goods, services or works in response to solicitation issued for such goods, services or work by MSEDCL.

8.3 Competent Authority' and 'Appellate Authority' shall mean the following :

a) For Contracts awarded from Corporate Office (CE & Above)

For Purchase Order (LOA) value up to & below 10 Cr., the Director (Project) / Director (Operation) shall be the 'Competent Authority' for the purpose of this policy. The Chairman & Managing Director (CMD) shall be 'Appellate Authority' in respect of such cases. For Purchase Order (LOA) value above 10 Cr., the Chairman & Managing Director (CMD) shall be the 'Competent Authority' for the purpose of this policy. The Board of Directors shall be the 'Appellate Authority' in respect of such cases.

b) For Contracts awarded from the Regional offices (RD) and Zonal offices (CE)

For Purchase Order (LOA) value up to & below 10 Cr., the Director (Project) / Director (Operation) shall be the 'Competent Authority' for the purpose of this policy. The Chairman & Managing Director (CMD) shall be 'Appellate Authority' in respect of such cases. For Purchase Order (LOA) value above 10 Cr., the Chairman & Managing Director (CMD) shall be the 'Competent Authority' for the purpose of this policy. The Board of Directors shall be the 'Appellate Authority' in respect of such cases.

c) For Contracts awarded from the Circle offices (SE)

The Regional Director shall be the 'Competent Authority' for the purpose of this policy. The Director (Project) / Director (Operation) shall be 'Appellate Authority' in respect of such cases.

d) For Contracts awarded from the Division offices (upto EE)

The Field Chief Engineer shall be the 'Competent Authority' for the purpose of this policy. The Regional Director shall be 'Appellate Authority' in respect of such cases.

8.4 Enquiring Committee' (EC) shall mean the following :

a) Enquiring Committee at Corporate Office / For Contracts awarded from Corporate Office & Regional offices

The Committee constituted for the purpose of these policy & comprising members from Technical / MMC, Finance / Audit and Legal department. Additional member(s) from any other department/field as considered appropriate may also be co-opted on case to case basis. The level of the committee members shall be Chief Engineer or above. Preferably, the members of Enquiring Committee shall include the CE (Distribution) or CE (Infra) or CE (MMC), CGM (I/A or C/F), Legal Adviser or CLA.

b) Enquiring Committee at Regional Office / For Contracts awarded from the Circle offices

The Committee constituted for the purpose of these policy and comprising members from Technical/Project, Audit and Legal department. Additional member(s) from any other department/field as considered appropriate may also be co-opted on case to case basis. The level of the committee members shall be Superintending Engineer or above. Preferably, the members of Enquiring Committee shall include the SE (Operation) or SE (Infra) at Regional Office, GM (F&A), concern Legal Adviser or Dy LO.

c) Enquiring Committee at Zonal Office / For Contracts awarded from Division offices The Committee constituted for the purpose of these policy and comprising members from Technical/Project, Audit. Additional member(s) from any other department/field as considered appropriate may also be co-opted on case to case basis. The level of the committee members shall be Executive Engineer or above. Preferably, the members of Enquiring Committee shall include the SE (O &M) of other Circle or SE(Infra), AGM (F&A), Dy or Assist. Legal Officer.

8.5 Debarring : Business dealings with an agency may be debarred if it is considered not desirable to continue the business with the agency. It means action taken by the Competent Authority/ Appellate Authority pursuant to this policy prohibiting agency from directly or indirectly performing any work for or otherwise participating in MSEDCL bid/ tender including to prohibit agency from submitting a bid, having a bid considered, or entering into any work/ contract during a specified period of time as set forth in debarment order.

8.6 Purchase Order Issuing Authority(LOA) '&' Vender Approving Authority (VA) : Shall mean the person(s) designated to act for and on behalf of MSEDCL for the discharge of his duties in execution of the Work/ Project/ Job/ Role, and shall include but not limited to the Regional Director(s), Executive Director(s), Chief Engineer(s), Superintending Engineer(s), Executive Engineer(s), etc.

9. GROUNDS FOR DEBARRING

9.1 Debarring from business dealings can be initiated against the Agency if involved or committed any of the following misconduct/irregularities :

a) The Directors, Proprietors, Partners, Employee(s) or owner of the agency have been either jointly or severally guilty of malpractices such as fraud including but not limited to submission of fake or forged documents/ certificates/ guarantees, substitution of tenders, etc. in relation to its business dealings with the Government or MSEDCL, during the last five years.

b) The business dealings with the agency have been debarred by any Ministry of GoI/GoM and still in force.

c) The agency is found to have been in default in paying any dues resulting in incurring financial loss to the MSEDCL by virtue of an order and/or direction of any Statutory Authority or Court or Arbitration, etc for making such payment in respect of the agency concerned.

d) The agency is repeatedly found to be non performing in execution of 3 (three) or more contracts and/ or in rectification of critical/major defects as specified in annexure -C, pointed out by MSEDCL or any person authorized by MSEDCL, in last 5 (five) years.

Competent Authority is expected to proceed with due care and responsibility before debarring any bidders/contractors/vendors as it is a drastic step to be taken against the Firm /Person.

The grounds given above are only illustrative and not exhaustive. The Competent Authority may decide to debar an Agency according to the seriousness of the ground.

9.2

- a) The Competent Authority shall decide depending upon the level of severity in defaults from the agency, the period of debarring. In case of major lapses and a criminal or fraudulent type of issues involved therein, the First Information Report (FIR) to Police Department shall be lodged.
- b) If any one or more Partner/ Directors of any debarred Agency firm promotes or forms a new contracting firm or a sister-concern firm of the said debarred Agency, then it shall also be considered as a debarred firm.

10. COMPETENT AUTHORITY (CA) & APPELLATE AUTHORITY (AA) FOR DEBARMENT

Considering the above mentioned grounds for Debarring from business dealings can be initiated against the Agency, after due scrutiny by the Purchase Order issuing authority (LOA) or Vender Approving Authority (VA) and shall serve upon the 'Show Cause Notice' for Debarring of the Agency after termination of contract is effected. For the purpose of debarment, the powers delegated to the following designated officers of MSEDCL as Competent Authority (CA) and as Appellate Authority (AA) for debarring of business dealings with the accused Agency. The Process Flow Chart of Debarring of Agency is enclosed at Annexure - B

Sr. No.	Purchase Order Issuing Authority (LOA)& Vender Approving Authority (VA)	Enquiring Committee (EC)	Competent Authority for Debarring (CA)	Appellate Authority for Debarring (AA)
1	Upto Executive Engineer (EE)	At Zone Office	Chief Engineer (O&M)	Regional Director (RD)
2	Superintending Engineer (SE)	At Regional Director Office	Regional Director (RD)	Director(Project)/ Director (Operation)
3	Regional Director & Chief Engineer (O&M) /	At Corporate Office (below 10 Cr.)	Director(Project)/ Director (Operation)	Chairman & Managing Director (CMD)
4	And all Orders from Corporate Office	At Corporate Office (above 10 Cr.)	Chairman & Managing Director (CMD)	BOARD OF DIRECTORS

11. POWERS OF COMPETENT AUTHORITY AND APPELLATE AUTHORITY

- a) To investigate the matter in connection with the allegation of corrupt, fraudulent, coercive or collusive practices or illegal practice of agencies.
- b) To ensure timely and expeditious disposal of proceedings of debarment.
- c) Seek advice or opinion on specific issues.

12. PROCEDURE

The Purchase Order Issuing Authority(LOA) or Vendor Approving Authority (VA) of the concerned department on noticing any misconduct and/or irregularities as mentioned in clause 9.1 above, shall serve upon the ' Show Cause Notice for Debarring ' after termination or closing of contract(s) stating therein the facts/ reasons containing the allegation of misconduct or irregularities and the period of 14 days to be afforded to the agency to present their statement/ submission in the form of reply in response to Show Cause Notice.

In the event, non receipt of reply from the agency within the stipulated period, action as proposed will be proceeded with and no representation/submissions thereafter will be accepted. In each case, copy of service return of notice be kept and a confirmatory document through electronic mode is sine qua non.

a) The Purchase Order Issuing Authority (LOA) or Vendor Approving Authority (VA) shall submit the duly recommended detailed proposal of debarring of Agency to the Competent Authority (CA) along with Show cause notice and reply, if any and parawise justification to the reply to the Show Cause Notice submitted by the Agency, if any for consideration and order.

b) The Competent Authority (CA) shall scrutinize, the proposal and depending on merit of the case and after examining the material on record shall decide to proceed for enquiry or to close the case. In the event of exoneration of the Agency from debarring, the decision shall be conveyed to LOA or VA issuing authority and subsequently it shall be informed to Agency.

c) If the Competent Authority (CA) arrives at the decision to proceed in the matter then the complete case shall be handed over to the Enquiring Committee (EC). The Enquiring Committee shall in detail examine the materials on record, conduct the hearing and decide the case as per the principle of natural justice.

During the process of hearing, only the authorized representative of Agency will be permitted to represent the Agency and no Legal practitioner / Advocate shall be allowed to plead the case on its behalf.

d) The Enquiring Committee shall submit its Report along with detailed findings within 30 days to the Competent Authority (CA). The Competent Authority (CA) shall pass an appropriate order after examining the material on record.

e) The decision of the Competent Authority (CA) shall be in the form of Reasoned Order, the period for which the debar would be operative shall be mentioned in the order and the same shall be communicated to the LOA or VA issuing authority.

f) The Purchase Order Issuing Authority (LOA) or Vendor Approving Authority (VA) shall then communicate the decision of debarring of business dealings along with the order of Competent Authority (CA) to the Agency.

g) The procedure for debarring shall be completed within a period of three months from initiation of case by concerned authority.

The Reasoned Order shall be communicated to the agency at its recorded address available with MSEDCL within 15 days of order issued by Registered post. In addition to it, the copy shall preferably be sent on the registered Email address of the Agency.

13. PERIOD OF DEBARMENT

The period for which an agency is debarred shall clearly be mentioned in the order. Period of debarment of business dealings shall be decided by the Competent Authority in exercise of its power delegated and would depend upon the seriousness of the cause. Debarment shall be up to the maximum period of five (5) years. Provided further that in case the information/documents submitted by the agency is found to be false/forged at any point of time, MSEDCL shall have a right to recover from the agency the cost incurred in carrying out physical assessment for establishing veracity of such information/document including a penalty decided by the Enquiring Committee.

If the agency fails to reimburse such cost and penalty to MSEDCL, the debarment period of the agency may be extended by the Enquiring Committee which shall not in any case exceed more than two (2) years but in any cumulative period for debarring the Agency shall not exceed five (5) years, in exceptional cases such period shall be up to five (5) years and the cumulative period for debarring of agency in such cases shall not exceed ten (10) years.

14. CONSEQUENCES OF DEBARMENT

Upon issuance of the order of debarment of an agency from future business dealings with MSEDCL, the debarred agency along with its Joint Venture Partner Firm shall not be allowed to participate in any future tender/s, during the debarred period. Further, in case the agency has already participated in the tender process and the price bid is not opened prior to issuance of the order of debarment of business dealings, its Techno Commercial Bid shall be rejected and Price Bid shall not be opened.

In the event the Price Bid of the participating agencies has been opened and the agency against whom the order of debarment of business dealings has been issued, the bid of the debarred agency shall be rejected even if he is found to be successful bidder, considering the agency as disqualified.

Provided the order of debarment of business dealings issued against any agency shall not override the rights of the debarred agency already engaged in executing any other contract(s) till its completion.

15. WITHHOLDING

The Competent Authority (CA) may, depending on the severity of the case, withhold the business dealing with the agency till the report given by the Enquiring Committee from the date of initiation of proposal of debarring.

16. APPEAL AGAINST THE DEBARMENT ORDER

The Process Flow Chart of Appeal procedure against the Debarment Order is enclosed at Annexure - C

- a) The Agency, aggrieved by the order of debarment, may prefer an appeal before the Appellate Authority (AA), against the order of the Competent Authority (CA) specifying the grounds of appeal along with necessary documents.
- b) Such appeal shall be filed within one month from the date of receipt of the order of debarment of business dealing. The agency shall represent their case through authorized representative of its agency, and no service of legal practitioner shall be adopted.
- c) Purchase Order Issuing Authority (LOA) or Vendor Approving Authority (VA) shall submit all the original papers of the debar case to Appellate Authority (AA), along with the justification on points raised in appeal by debarred Agency.
- d) Appellate Authority shall admit the appeal and decide the appeal within 45 days from the filing of appeal. The agency may file any additional document/evidence before the Appellate Authority, if Appellate Authority permits.

e) Appellate Authority shall pass appropriate Reasoned Order on appeal and communicate decision to the Purchase Order Issuing Authority (LOA) or Vendor Approving Authority (VA) through the Competent Authority (CA). LOA or VA Issuing Authority will then communicate appeal order to the Debarred Agency.

No appeal shall lie to the Appellate Authority against the final order of the competent authority pursuant to the written consent of the agency.

Awaiting the decision of the competent authority, the debarring order passed by the competent authority shall remain effective till Appellate Authority takes a final decision in the matter.

The order of the Appellate Authority is final and binding.

17. REVOCATION OF DEBARMENT ORDER

The order for debarment passed for certain specified period shall be deemed to have been automatically revoked on expiry of the specified period and it will not be necessary to issue a specific formal order of revocation.

An order of debarment for the reasons mentioned above may be revoked if accused has been wholly exonerated by Court of Law.

18. INTERPRETATION

The competent authority shall be responsible for the administration, interpretation, application and revision of this policy. The policy will be reviewed as and when needed.

19. POST DEBARMENT ACTION

The Competent Authority (CA) ensure the following :

- a) Hosting at MSEDCL Website: The name of the Agencies with whom Business Dealings have been debarred shall be hosted at MSEDCL website by HO-IT Department, after confirmation of Debarment of the Agency.
- b) The Competent Authority shall ensure that the names of the debarred agency along with the names of Director, JV Partner, Owner of the debarred Agency is displayed on the MSEDCL website.
- c) The cancellation is activated for Online Login for e-Tendering website of MSEDCL for the debarred Agency Firm during the period of debarment.
- d) Copy of the order of debarring of the Agency shall be conveyed to all Utilities in India and Financial Institutions viz; REC, PFC, etc. and Ministry of Power of both GOM and GOI.

20. AMENDMENTS

MSEDCL may introduce modification here to through the amendment of its specific provision as the need arises and the amendment to this policy shall be applicable to the ongoing contract as well future contract.

ANNEXURE : A

QUALITY OF INSTALLATION (WORKMANSHIP)

DEFINITION OF DEFECT CATEGORIES

Defects shall be categorized into broad three types. All types of defects reported in the field shall fall in one of these categories.

- 1) Critical defects
- 2) Major defects
- 3) Minor defects

CRITICAL DEFECTS :

These defects must be rectified before charging. Critical defects are those which endanger life and property. Dangerous deficiencies on safety, ground clearances, equipment earthing and protection would come this category. These are defects in presence of which the Electrical Inspector would not allow charging of the electrical installation. That is, if equipment are already energized, it should be de-energized and rectified without delay. If critical equipment like distribution transformer HT and LT line have been installed dangerously, the defect type would fall under critical category of defect.

Example : LA is not connected, DT neutral earth is missing, Earth electrodes not installed, Ground clearance not as per IE rule, Oil level low in transformer.

MAJOR DEFECTS :

These defects must be rectified before operational handover (to Operation and Maintenance wing). These are major deviations from drawing and specification. These are serious deviation with respect to contract. The electrical installation can be charged temporarily. However, the defects should preferably be rectified before charging.

Example : Pole not pitched at proper depth, Brick-bats / foundation inadequate, use of undersized earth wire, precariously loose electrical connections and mechanical fitting.

MINOR DEFECTS :

These defects are very minor in nature. Such defects in electrical installations keep surfacing during operation and maintenance. The installation may be charged with these defects. However they must be rectified

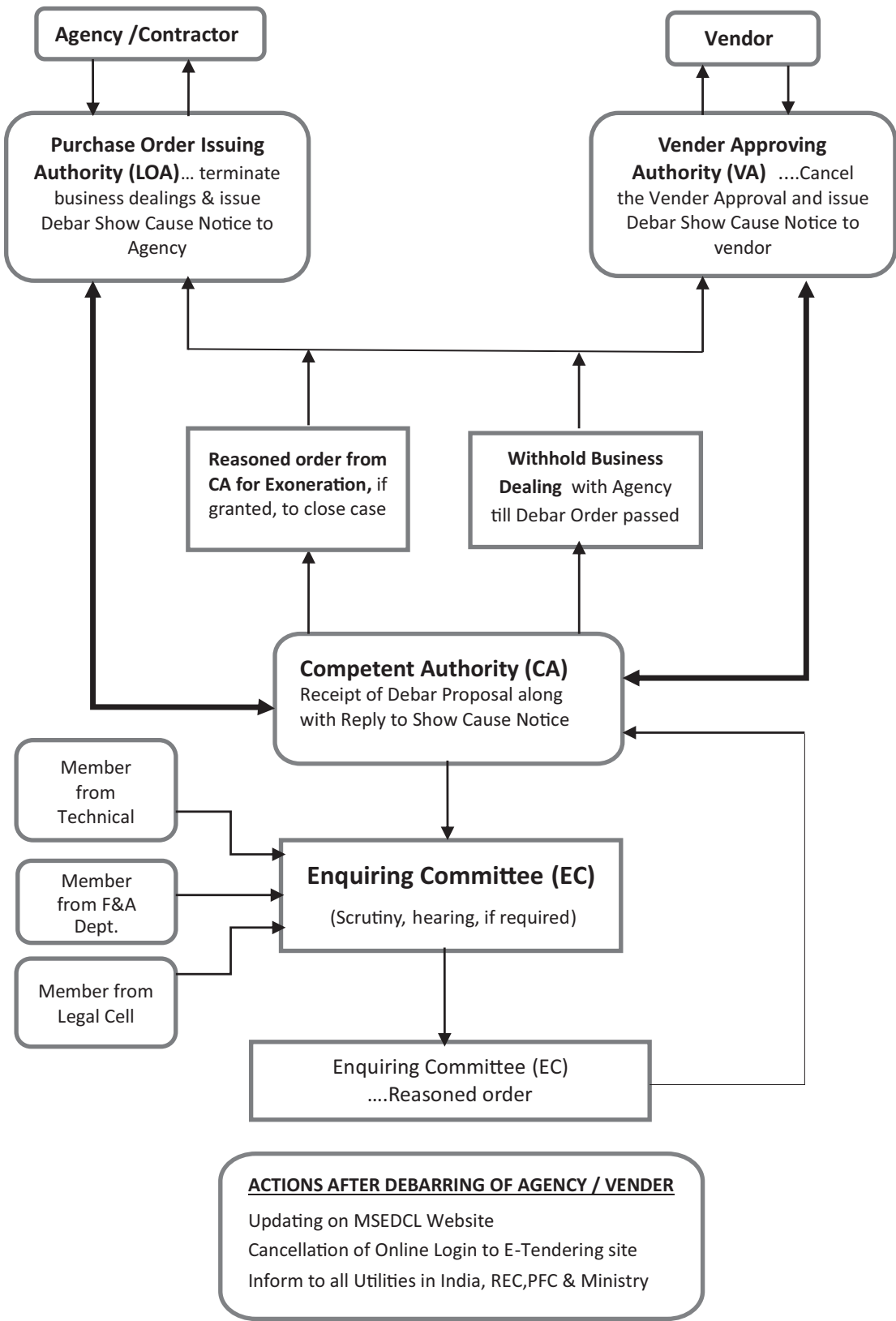
Example : Danger board not proper, energy meter not installed before contractual handover (before final payment is released and contract is closed), missing barbed wire, stay wire loose, loose fasteners, vegetation too close to HT / Lt line.

Note :

- 1) These defects are broad in nature. Actual field defects need to be defined more accurately by inspectors.
- 2) All pictures depicting defects should be numbered. Their number mentioned in the report shown in the table
- 3) A village infrastructure schematic (single line diagram) showing DTRs, HT and LT poles duly numbered by the inspector shall be submitted along with the report. Their number shall be used to describe location of defects for PIA to rectify.

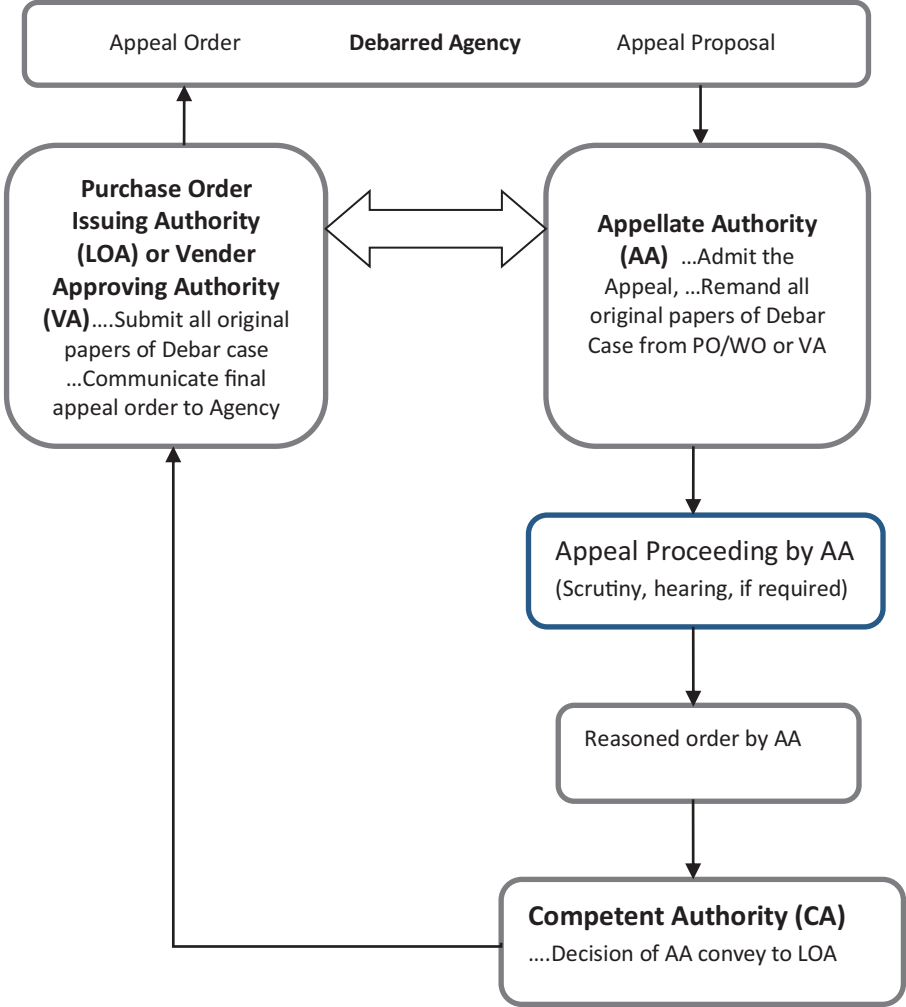
ANNEXURE : B

PROCESS FLOW CHART OF DEBARRING OF AGENCY / VENDOR



ANNEXURE : C

PROCESS FLOW CHART OF APPEAL AGAINST DEBARMENT ORDER OF AGENCY / VENDOR





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