

MAHAVITARAN

MAHARASHTRA STATE ELECTRICITY DISTRIBUTION CO. LTD.

**POWERING OUR
COMMITMENTS**

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

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Policy & Procedure for Debarring /Blacklisting 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/blacklisting 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 thereto for the purpose of distribution of power including sub- station, civil works distribution center, 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.

There is a provision in Standard Bidding Document (SBD) to initiate action of termination or partial termination against defaulting contractor/agency/Vendor. There is policy in existence for debarring of such Contractor/Agency/ Vendor. Due to lacuna in existing policy , even if a Contractor/Agency/ Vendor whose past performance is not satisfactory or whose previous contract was terminated or partial 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 debarring / blacklisting policy so that the Contractor/Agencies/ Vendor perform the contractual obligations with good quality and completion 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 or permanently 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 with some modifications in previous policy and set the procedure for debarring / blacklisting of Agency/Contractor from business dealings with MSEDCL after referring the debar policies adopted by few organizations like NTPC, WBPDC, EIL, MCGM, etc.

4. SHORT TITLE AND COMMENCEMENT

The policy shall be called Revised Policy and Procedure for Debarring/Blacklisting of Agencies from business dealings with MSEDCL.

5. APPLICABILITY

The policy shall be called Revised Policy and Procedure for Debarring / Blacklisting of Agencies from business dealing with MSEDCL. This revised policy and procedure will come in force with immediate effect .

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 debarring 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 initiate the actions such as penal actions Viz, Warning, fine, banning, deregistration & debarring / blacklisting on any Agency from 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 Debarring/ blacklisting of Business Dealing with any Agency 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** The “**Employer**” shall mean the MSEDCL and shall include all Purchase Order Issuing Authority (LOA)/ Competent Authority/ Appellate Authority as specified in this policy document.
- 8.2** **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.

8.3 The **Contract** shall mean the tender and acceptance thereof and the formal agreement if any , executed between the agency and the MSEDCL together with the documents referred to therein including these conditions and appendices and any special conditions, the specifications, designs, drawings, price schedules, bills of quantities and schedule of rates. All these documents taken together shall be deemed to form one contract and shall be complementary to one another.

8.4 **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.

8.5 **‘Competent Authority’ and ‘Appellate Authority’** shall mean the following :-

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

For Purchase Order (LOA) value upto & 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 upto & 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. The review of same will be done by Board of Directors.

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.

8.6 Warning: Warning shall mean to give penal notice, advice, or intimation to Agency / Supplier of impending work , possible harm, or anything else unfavorable to MSEDCL.

8.7 Fine: Fine shall mean Agency / Supplier to make **pay** an amount of money as a punishment for not obeying a law or rule of MSEDCL.

8.8 Ban : Ban shall mean to prohibit or forbid Agency /Supplier by legal means (as by statute or order) for participating in any tender.

8.9 Deregistration: Deregistration shall mean any Agency/Supplier will cease to exist as a legal entity and is no longer able to trade with MSEDCL.

8.10 Debarring/Blacklisting:- Business dealings with an agency may be debarred/blacklisted 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 for the debarment/ blacklisting order.

8.11 Purchase Order Issuing Authority(LOA) ;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. INITIATION OF THE PENAL ACTIONS AGAINST THE NON-PERFORMING AGENCY

Agency shall be liable for the penal actions in addition to the general conditions of individual contracts for the non-performance in works or supply and for the minor lapses / misconducts from the agency during execution of contracts.

9.1 Penalties:

Agency or Supplier/s may be liable under these provisions to one or more of the following penalties:

- a. Warning / Fine
- b. Banning / De-registration
- c. Suspension of Registration pending inquiry
- d. Debarring/ Blacklisting

9.1.1 Warning/ Fine :

A Agency / Supplier/s will be liable to a warning and / or fine for –

- a. Non-compliance of any provisions of this policy, or failure to comply with any condition of tenders / contracts and
- b. Inadequate progress / performance under a contractor quality in such works,
- c. Deterioration in financial or technical ability / capacity and
- d. Repeated failure to properly fill in tender document/s, fully and correctly or delay in execution of formal contract documents,

For each subsequent default of the types mentioned as above, the minimum penalty / fine will be imposed to the agency, the amount of fine may be levied as decided by the competent authority i.e. defined under Table-I (Section 9.2), for the reasons to be recorded.

9.1.2 Banning / De-Registration

Banning/ Deregistration will be for a specific period or permanent banning /Deregistration.

A Agency/s is liable to be Banned / De-registered on one or more of the following grounds: -

- a) If security considerations including question of loyalty to the MSEDCL so warrant,
- b) If the proprietor of the firm, its employee, partner or representative is convicted by a court of law following of investigation or under normal process of law for offences involving moral turpitude in relation to business dealings viz. Conviction by court of law,
- c) If there is strong justification for believing that the proprietor or employee, or representative of the firm has been guilty of malpractices such as bribery, corruption, fraud substitution of tenders, interpolation, misrepresentation, evasion or habitual default in payment of any tax levied by law,

- d) If the firm continuously refuses to return MSEDCL or State Govt. dues without showing adequate cause, and MSEDCL is satisfied that this is not due to a reasonable dispute which would attract proceedings in arbitration or court of law,
- e) If the firm employs a MSEDCL or State Govt. servant, dismissed/removed on account of corruption, or employs a non-official convicted for an offence involving corruption or abetment of such an offence, in a position where he could corrupt Govt. Servants,
- f) Persistent and intentional violation of important conditions of contract. Not attaining required quality of work and non-execution of works as per terms and conditions of contract. Constant non-achievement of milestone on insufficient and imaginary grounds and non-adherence to quality specifications despite being pointed out,
- g) An attempt to cheat MSEDCL , an attempt to secure a contract through unfair means Or bringing to bear outside influence, an attempt to secure unauthorized copies of MSEDCL records and documents in relation to any tender / contract or any other official matter, an attempt to tamper with MSEDCL record and documents, threatening, misbehaving with or physical attack on any MSEDCL employee/ Officer,
- h) An attempt to instigate or collude with other contractor/s with a view to securing undue advantage,

Show Cause Notice shall be issued separately or along with termination to the Agency/s, by the competent authority, calling for the explanation on the alleged lapses by him and the registration of Agency/s may be banned or initiate the process for suspension up to the arrival of final outcome.

9.1.3 Suspension of Registration pending enquiry:

Whenever any Show Cause Notice is issued to the Agency/s calling for the explanation on the alleged lapses by him, the registration of Agency/s may be banned / suspended up to the arrival of final outcome of the said Show cause notice, depending on the seriousness of the reasons for which show cause notice is issued.

Show cause notice shall be issued by the competent authority i.e. as per Table-I, to ban / suspend the registration pending inquiry in such cases.

The final decision of Banning / suspension of registration till further orders, shall be circulated to all departments of MSEDCL.

The registration of the contractor/s will be restored depending on the final outcome of the process of the said Show Cause Notice and circular to that effect shall be issued by Concerned Competent Authority.

9.1.4 Debarring / Blacklisting

Business dealings with an agency may be debarred/ blacklisted from MSEDCL, if it is considered not desirable to continue the business with the agency.

Penal Actions as mentioned above at section 9.1, if repeated by agency one time or more then Agency shall also be liable for debarring/blacklisting.

Debarring /Blacklisting is the penal action to be initiated against the Agency/s who are carrying out works for MSEDCL and/ or registered as MSEDCL approved Vendors.

The criteria and procedure of this penal action of debarring /blacklisting , is mentioned in section 10.

9.2 Procedure for penal action

Before initiating action for Warning /Fine / banning / suspension / de-registration, the Competent authority of the concerned work/project of MSEDCL, shall issue a Show Cause Notice to the Agency/s, as to why penal action should not be taken against the said Agency/s. The notice period shall not be less than 14 days and shall be counted from the date of receipt of the notice by the Agency/s and can be extended, for adequate reasons (to be recorded), by the officer who issued the said notice, up to a period of 30 days (Including the initial period).

If the Agency /s fails to give satisfactory clarification within the period stipulated in the show cause notice (or, the extended period, if any), the Authority shall take a decision regarding specific time period and make detailed report with recommendation for penal actions to competent authority.

The competent authority shall give personal hearing to Agency/s or his/their authorized representative on his request in writing along with his/their letter of clarification, before taking final decision on banning / de-registration of the Agency/s with specific time period or permanently. As far as practicable, the competent authority, shall take final decision regarding banning / de-registration within 15 days of completion of hearing of the Agency/s.

The decision regarding banning / de-registration shall be communicated to Agency/s immediately with directions to submit the original registration /vendor approval letter / certificate/s to the Competent Authority within 15 days from the date of receipt of the order for taking necessary endorsement on the same. If any contractor/s does not comply with this requirement within the period of 15 days mentioned above, He / they shall be deemed to have been de-registered automatically at the expiry of the above mentioned period.

For the purpose of execution of Penal Actions, the powers delegated to the following Designated officers of MSEDCL as Competent Authority (CA),

Table -I

Sr. No.	Purchase Order Issuing Authority (LOA)	Penal Actions at	Competent Authority for Penal actions(CA)
1	Up to Executive Engineer (EE)	Zone office	Chief Engineer (O&M)
2	Superintending Engineer (SE)	Regional Office	Regional Director (RD)
3.	Regional Director & Chief Engineer (O&M) / and All Orders from Corporate Office	Corporate Office (below 10 Cr.)	Director(Project) / Director (Operation)
4.		Corporate Office (above 10 Cr.)	Chairman & Managing Director (CMD)

10. GROUNDS FOR DEBARRING / BLACKLISTING

10.1 Debarring /Black listing 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/ blacklisted 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 1 (one) or more terminated or partial terminated contracts and/ or in rectification of critical/major defects as specified in annexure -A, pointed out by MSEDCL or any person authorized by MSEDCL, in last 5 (five) years.
- e) Penal Actions as mentioned above at section 9.1, if repeated by agency one time or more, then Agency shall be liable for debarring/blacklisting.

Competent Authority is expected to proceed with due care and responsibility before Debarring/blacklisting 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 /blacklist an Agency according to the seriousness of the ground.

10.2 a) The Competent Authority shall decide depending upon the level of severity in defaults from the agency, the period of debarring/blacklisting i.e permanent or a specific period. 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 / blacklisted Agency firm promotes or forms a new contracting firm or a sister-concern firm of the said debarred/blacklisted Agency, then it shall also be considered as a debarred /blacklisted firm.

11. COMPETENT AUTHORITY (CA) & APPELLATE AUTHORITY (AA) FOR DEBARMENT / BLACK LISTING

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

Table -II

Sr. No.	Purchase Order Issuing Authority (LOA)	Competent Authority for Penal actions/Debarring /Blacklisting (CA)	Appellate Authority for Penal actions/Debarring / Black listing(AA)
1	Up to Executive Engineer (EE)	Chief Engineer (O&M)	Regional Director (RD)
2	Superintending Engineer (SE)	Regional Director (RD)	Director(Project)/ Director (Operation)
3.	Regional Director & Chief Engineer(O&M) And at Corporate Office (below 10 Cr.)	Director(Project)/ Director (Operation)	Chairman & Managing Director (CMD)
4	All Orders from Corporate Office (above 10 Crs)	Chairman & Managing Director (CMD)	Board of Directors

*Competent Authority will form Enquiry committee (if required on case to case basis) while debarring/blacklisting *

12. 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/blacklisting;
- c) Seek advice or opinion on specific issues.

13. PROCEDURE

The LOA Issuing Authority of the concerned department on noticing any misconduct and/or irregularities as mentioned in clause 10.1 above, shall serve upon the ' Show Cause Notice for Debarring/Blacklisting' during 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 LOA Issuing Authority shall submit the duly recommended detailed proposal of debarring/Blacklisting 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/blacklisting, the decision shall be conveyed to LOA 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 (if required) shall be handed over to the Enquiring Committee (EC) on case to case basis. 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 competent authority can take appropriate–decision on the proposal even without forming Enquiry Committee (EC).
- e. The decision of the Competent Authority (CA) shall be in the form of Reasoned Order, the period for which the debar/ blacklist would be operative shall be mentioned in the order and the same shall be communicated to the LOA issuing authority.

- f. The LOA Issuing Authority shall then communicate the decision of debarring/blacklisting of business dealings along with the order of Competent Authority (CA) to the Agency.
- g. The procedure for debarring/blacklisting shall be completed within a period of one month 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.

In case of, debarring /blacklisting of Agency, the order shall also specify the name(s) of the proprietor /partner(s) / directors / power of attorney holder of the contractor/s firm/ partnership /company as well as the period of Debarring/blacklisting in his/their order, and shall intimate the contractor/s accordingly.

14. PERIOD OF DEBARMENT / BLACKLISTING

The period for which an agency is debarred/ Blacklisted shall clearly be mentioned in the order. Period of debarment/ Blacklisted 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/Blacklisting shall be permanently or for the period specified as per sanction of Competent Authority. 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 competent authority.

15. CONSEQUENCES OF BANNING / SUSPENSION / DE- REGISTRATION / / DEBARMENT / BLACKLISTING

Upon issuance of the order of banning/suspension/deregistration/debarment/ Blacklisting of an agency from future business dealings with MSEDCL, the banned/suspended/deregistered/debarred/blacklisted agency along with its Joint Venture Partner Firm shall not be allowed to participate in any future tender/s, during the baned/suspended/deregistered/debarred/blacklisted 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 banned/suspended/deregistered/ debarment/blacklisting 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 banned/suspended/deregistered/debarment/blacklisting of business dealings has been issued, the bid of the banned/suspended/deregistered /debarred/blacklisted agency shall be rejected even if he is found to be successful bidder, considering the agency as disqualified. Provided the order of banned/suspended/deregistered/ debarment/blacklisting of business dealings issued against

any agency shall not override the rights of the banned/suspended/deregistered /debarred/blacklisted agency already engaged in executing any other contract(s) till its completion.

If registered agency/s (a firm partnership or company) is deregistered /banned/suspended/ debarred/blacklisted, then any other registered agency/s (a firm, partnership or company), with any partner or power of attorney holder of the deregistered/banned/suspended agency/s, shall also stand automatically deregistered/banned/suspended/debarred/blacklisted.

Proprietor/ Partner/s Director/s Power of Attorney Holder/s of banned /suspended / deregistered / debarred/blacklisted firm shall not be allowed in Joint ventures.

Debarred Agency/s (in case of Firms with outside registration) and/or agency who are penalized by any other Govt./ Semi Govt. agency such as PWD /CPWD /MJP /MHADA /MES/CIDCO etc shall not be entitled to be issued any tender document/s or quotations/s for any MSEDCL works during the period of debarring/blacklisting. Further for bids in process, the agency/s will not be considered for award of works/contract , even if the said debarred/blacklisted agency/s is having registration of MSEDCL or any other Govt./ semi Govt. agency such as PWD/CPWD/MJP/MHADA/MES/CIDCO etc

16. PAYMENT UPON BANNING/SUSPENSION/DEREGISTRATION OF FIRM

If the agency/s is banned/suspended/deregistered for the appropriate reasons because of a fundamental breach of contract by the agency/s, LOA issuing authority shall issue a certificate for value of the work done and materials ordered. Any excess expenditure incurred or to be incurred by MSEDCL in completing the works or part of works or excess loss or damages suffered or may be suffered by the MSEDCL due to substandard work shall be recovered from any money due to the agency on any account and if such moneys are not sufficient , the agency shall be called upon in writing to pay the same within 30 days. if the agency fails to pay required sum within the aforesaid period of 30 days, the LOA issuing authority shall have right for recovery by way of encashing the available PBG and /or by way of getting work done at Risk & Cost of agency in accordance with provision of the contract.

17. REFUND OF FEES

Banned /Suspended or deregistered agency/s shall not be entitled for refund of Registration / Up-gradation/ renewal fees.

18. 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/blacklisting.

19. APPEAL AGAINST THE DEBARMENT /BLACKLISTING ORDER

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

- a. The Agency, aggrieved by the order of debarment/Blacklisting, 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/Blacklisting 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. LOA Issuing Authority 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/blacklisted 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 LOA Issuing Authority through the Competent Authority (CA). The LOA Issuing Authority will then communicate appeal order to the Debarred/blacklisted 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 Appellate Authority, the debarring/blacklisting 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.

20. REVOCATION OF SUSPENSION / BANNING / DEREGISTRATION / DEBARMENT / BLACKLISTING ORDER

The order for suspension/banning/deregistration/debarment/ blacklisting 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, except that an order of suspension/banning/ deregistration/debarment/blacklisting passed on account of doubtful loyalty or security consideration shall continue to remain in force until it is specifically revoked.

An order of suspension/banning/deregistration/debarment/blacklisting for the reasons mentioned at may be revoked if accused has been wholly exonerated by Court of Law.

21. 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.

22. POST SUSPENSION/ BANNING/ DEREGISTRATION/ DEBARMENT / BLACKLISTING ACTION

The Competent Authority (CA) will ensure the following;

- a) Hosting at MSEDCL Website: The name of the Agencies with whom Business Dealings have been debarred/blacklisted shall be hosted at MSEDCL website by HO-IT Department, after confirmation of Debarment /blacklisting of the Agency.
- b) The Competent Authority shall ensure that the names of the debarred/blacklisted agency along with the names of Director, JV Partner, Owner of the debarred/blacklisted Agency is displayed on the MSEDCL website.
- c) The cancellation is activated for Online Login for e-Tendering website of MSEDCL for the debarred/blacklisted Agency Firm during the period of debarment/blacklist.
- d) Copy of the order of debarring/blacklisting 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.

23. AMENDMENTS

MSEDCL may introduce modification thereto through the amendment of its specific provision as the need arises and the amendment to this policy shall be applicable to the ongoing tenders/ vendors as well future tenders/ vendors. This policy shall be a part of General Conditions of contract (GCC) of all upcoming tenders/ supply orders. This Debar /Blacklist policy bearing document no. MSEDCL/ Debar Blacklist Policy/Revision/001 will be in force.

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

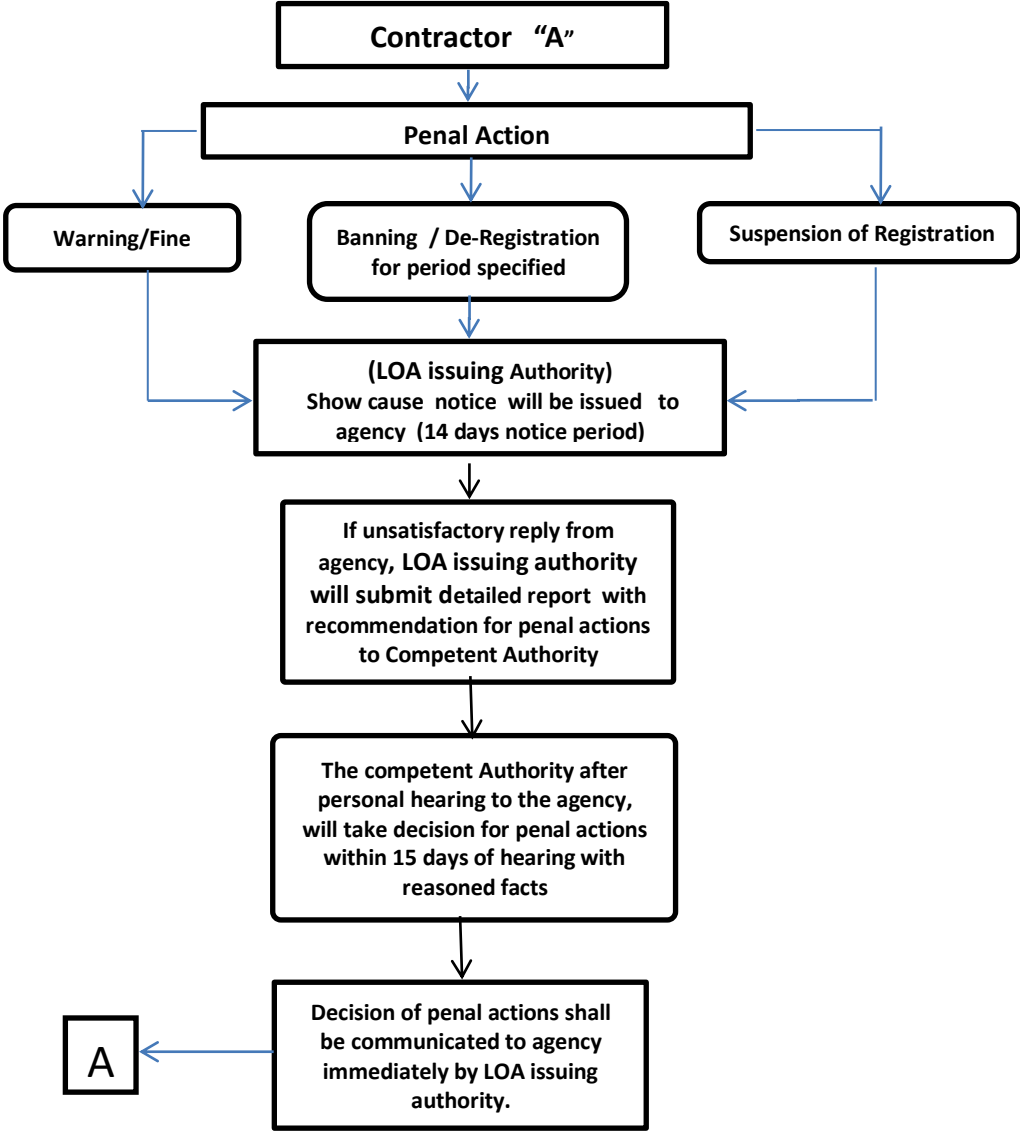
Example : Danger board not proper, energy meter not installed before contractual handover (before final payment is released and contract is closed), missing barbed wire, stay wire loose, loose fasteners, vegetation too close to HT / Lt line.

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 of Penal Actions for Agency in MSEDCL

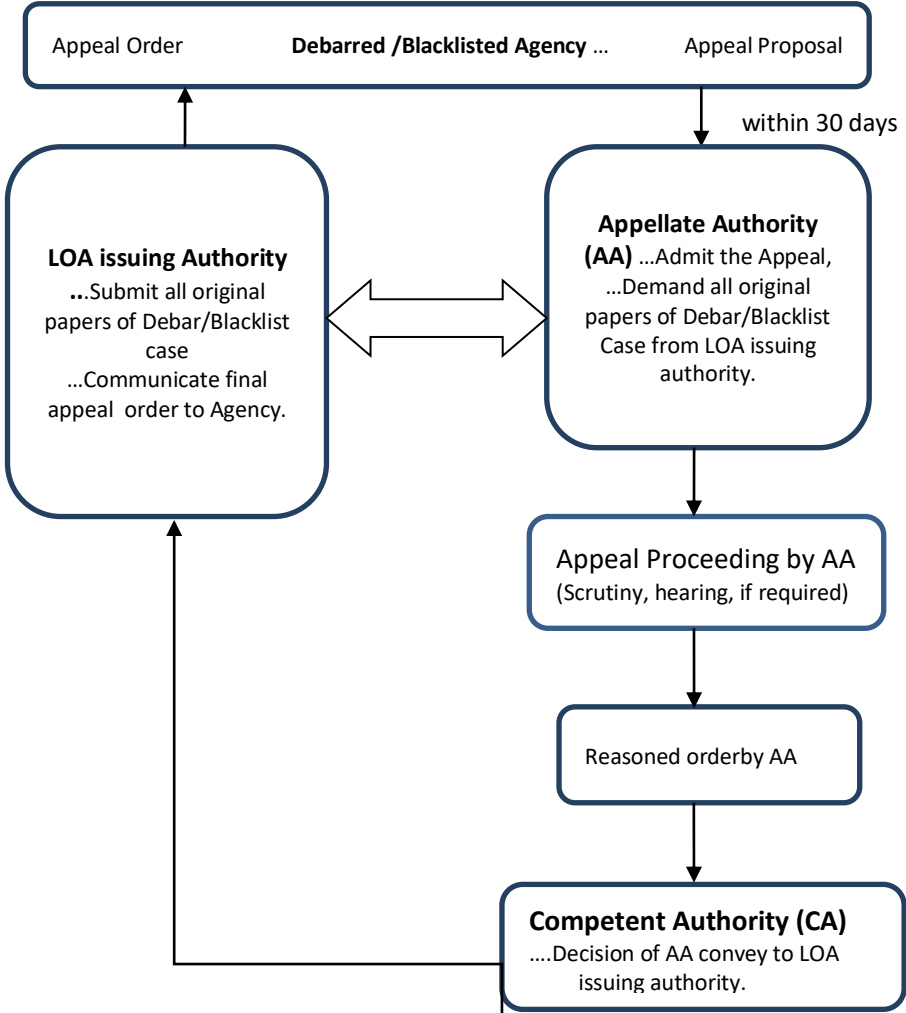


Process flow of Debarring/Blacklisting of Agency /Contractor with modification in policy



ANNEXURE:C

Process Flow Chart of Appeal against Debarment/Blacklisting Order of Agency/Vendor





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