NMDC POLICY
ON
BANNING
OF
BUSINESS DEALINGS
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NMDC POLICY ON BANNING OF BUSINESS DEALINGS

1. INTRODUCTION

1.1 NMDC is a Central Public Sector Enterprise under the Ministry of Steel, Government of India. NMDC, therefore, comes under the definition of ‘State’ within the meaning of Article 12 of the Constitution of India.

1.2 NMDC’s core activity has been mining. In addition to mining of iron ore and diamonds, it is now expanding into other minerals like coal etc. On diversification front, NMDC is now putting up an integrated steel plant at Nagarnar in the State of Chhattisgarh.

1.3 NMDC has adopted the mode of contracting for setting up the infrastructural needs of its projects. The sales of its products are also through contracts, viz., long-term contracts, short-term contracts, e-sales, etc.

1.4 NMDC considers it essential, in the interest of safeguarding its commercial interests, that it deals with Agencies who have a very high degree of integrity, commitments and sincerity, on the one hand; and, on the other, protect itself against fraud and transgressions on the part of the Agencies.

1.5 At the same time, banning of Business Dealings has civil consequences upon the Agency involved.
1.6 NMDC has, in this context, signed a Memorandum of Understanding with the Transparency International, and has introduced the Integrity Pact as part of its major contracts.

1.7 Besides, in furtherance of the objective as envisaged at para 1.4 above, and considering that the Agency banned for Business Dealings is likely to suffer civil consequences, NMDC regards it as an equitable requirement that a Policy is put in place for suspension and banning business dealings with the Agency that commits fraud and/or transgressions in the dealings with NMDC.

2 SCOPE

2.1 This Policy, known as ‘NMDC Policy on Banning of Business Dealings with Agencies’, covers both suspension and banning of business dealings with the Agency that commits fraud and/or transgression in the dealings with NMDC. It also includes:

2.1.1 Banning of an Agency who has been Banned by Government Departments and/or other CPSUs; and

2.1.2 Banning of an Agency for poor performance in the Business Dealing with NMDC.

2.2 The Policy provides for the procedure for NMDC to Suspend or Ban business dealings with an Agency. The procedure includes, as a measure of affording natural justice to the affected, provisions such as notice to the Agency, opportunity for the Agency to be heard, reasoned decision on Suspension
and/or Ban, communication of the decision to Suspend or Ban Business Dealings or otherwise, and appeal against the Ban.

3 DEFINITIONS

3.1 ‘Agency’ means and includes party, bidder, tenderer, contractor, supplier, purchaser, customer, consultant, member concerned of a consortium (not other members of the consortium).
Explanation: ‘Agency’ and ‘Inter-connected Agency’, wherever they are independent legal entities, are to be treated as separate entities; and, in the context of this Policy, can be linked together for banning only if the complicity of the Inter-connected Agency in the Case is established beyond doubt.

3.2 ‘Appeal’ means the Appeal to the Appellate Authority that an Agency may file against the decision of the Competent Authority.

3.3 ‘Appellate Authority’ means the Chairman-cum-Managing Director (CMD, for short) of NMDC.

3.4 ‘Ban’ means prohibition or cessation of Business Dealings with the Agency, in terms of the Policy, for a specified period mentioned therein, including removal of the Agency from the List of Approved Agencies. It is clarified that Ban is in respect of Business Dealings as defined in the Policy, not for concluded contracts. It is also clarified that Ban does not include termination of a concluded contract, but can include disqualification of an agency in the tender before its acceptance,
ie, issue of Letter of Intent, Work Order, Acceptance of Tender, Signing of the Agreement, as the case may be. It is further clarified that a Concluded Contract can be terminated only in accordance with the conditions of the relevant contract, not in terms of the Policy.

3.5 ‘Banning Committee’ or ‘the Committee’ means the Committee constituted by the CMD, NMDC, under the provisions of the Policy.

3.6 ‘Business dealings’, for the purpose of the Policy, means and include dealings of NMDC with the Agency in relation to tender, contract, sale, purchase, work, etc, before the conclusion of a contract, ie, before issue of work order, letter of acceptance of contract, signing of an agreement or any other instrument that signifies acceptance of a contract by NMDC.

3.7 ‘Case’ means an instance of Fraud or Transgression or Poor Performance as the case may be, by an Agency that has come to the notice of NMDC official(s) and taken note as such in terms of the Policy.

3.8 ‘Competent Authority’ means the Director concerned of NMDC, ie, the functional Director in whose jurisdiction the case falls or to whom the case is referred by Chairman-cum-Managing Director of NMDC.

3.9 ‘Fraud’ means a willful act committed by an Agency – such as deception, suppression, cheating, and other illegal acts in relation to dealings with NMDC – with the intent to obtain wrongful gain(s) to the Agency or any other individual(s) and thereby to cause wrongful loss to NMDC.
3.10 ‘Inter-connected Agency’ means two or more companies having any of the following features:

3.10.1 If one is a subsidiary of the other;

3.10.2 If the Director(s), Partner(s), Manager(s) or Representative(s) are common;

3.10.3 If management is common;

3.10.4 If one owns or controls the other in any manner.

3.11 ‘Investigation’ means the inquiry that the Investigating Department may conduct into the alleged Case in order to ascertain the facts of the case and decide whether there is a prima facie Case for formulation of a self-contained Case.

3.12 ‘Investigating Department’ means any Department or Unit investigating into the conduct of the Agency and shall include the Vigilance Department, Central Bureau of Investigation, the State Police or any other department set up by the Central or State Government having powers to investigate.

3.13 ‘Jurisdiction’ means to cover the areas over which the functional Director has control in relation to the works, duties, etc., assigned to him from time to time.

3.14 ‘List of Approved Agencies’ means the list of parties, bidders, tenderers, contractors, suppliers, purchasers, customers, as approved by NMDC from time to time and maintained by the Department concerned.

3.15 ‘Poor performance’ means the act(s) of the Agency which directly results in abandoning the work, not completing the work even within the extended period of completion, not meeting the agreed conditions in the contract agreement, etc.
3.16 ‘Speaking Order’ means that the Order should contain the facts of the case, findings of the Committee, and reasons for the conclusions the Committee has reached.’

3.17 ‘Suspension’ means ‘Suspension of Business Dealing’ or ‘Suspension of Contract’.

3.18 ‘Suspension of Business Dealing’ means a temporary stoppage of Business Dealing of NMDC with the Agency concerned before a Ban is enforced on the Agency in terms of the Policy for such specific period as the Competent Authority may consider it reasonable but not more than six months while investigation is going on by the Investigating Department against the Agency.

3.19 ‘Suspension of Contract’ means a temporary stoppage of the concluded contract, between NMDC and the Agency concerned, before a Ban is enforced on the Agency in terms of the Policy for such specific period as the Competent Authority may consider it reasonable but not more than six months while investigation is going on by the Investigating Department against the Agency. It is clarified that if a Concluded Contract is to be suspended, under extreme circumstances, for the purpose of conducting Investigation under the Policy, it has to be done in accordance with the terms of the contract.

3.20 ‘Transgression’ means and includes such acts of the Agency/Inter-connected Agency as intimidation, threatening, bringing undue outside pressure on NMDC officials for gaining undue benefits, deliberate delay tactics, fudging/ forging/ tampering with documents, etc.
4 GROUNDS FOR BANNING BUSINESS DEALINGS

4.1 For the sake of clarity, the grounds on which banning of business dealings can be considered are given below. These are only illustrative, not exhaustive. The Competent Authority may decide to ban Business Dealings with an Agency for any good and sufficient reason.

4.2 Security considerations, including questions of loyalty of the Agency to the State.

4.3 Conviction of the Director/owner/proprietor/partner of the Agency by a Court of Law for offences involving moral turpitude in relation to its business dealings with the Government or any other public sector enterprises or NMDC during the last five years.

4.4 Evidence/strong justification for believing that the Director/owner/proprietor/partner of the Agency has/have been guilty of malpractices such as bribery, corruption, fraud, substitution of tenders, interpolation in tenders, etc.

4.5 The Agency’s continuous refusal to return/refund the dues to NMDC without showing adequate reason and this is not due to any reasonable dispute which would attract proceedings in arbitration or Court of Law.

4.6 The Agency employs an employee who was dismissed / removed by NMDC for an offence involving corruption or abetment of such an offence.
4.7 The banning of business dealings with the Agency by the Government or any other public sector enterprise.

4.8 The Agency resorted to corrupt or fraudulent practices that may include misrepresentation of facts and/or fudging/forging/tampering of documents.

4.9 The Agency used intimidation/threatening or brings undue outside pressure on NMDC/its officials in relation to a Business Dealing.

4.10 The Agency resorts to repeated and/or deliberate use of delay tactics in complying with contractual stipulations.

4.11 Willful act of the Agency to supply sub-standard material irrespective of whether pre-despatch inspection was carried out by NMDC or not.

4.12 The findings of CBI/Police about the Agency’s involvement in fraud and/or transgressions in relation to the Business Dealings with NMDC.

4.13 Established litigant nature of the Agency to derive undue benefit.

4.14 Continued poor performance of the Agency in at least three preceding contracts with NMDC.

4.15 The Agency misuses the premises or facilities of NMDC and/or forcefully occupies, tampers or damages NMDC’s properties including land, water resources, forests/trees, etc.

4.16 False allegation on NMDC officials by the Agency if found proved by the Investigating Department including Independent External Monitor.
5 BANNING PERIOD

5.1 The Banning Period may range from six months to three years depending on the gravity of the case as decided by the Competent Authority. While deciding the Banning Period, the Suspension Period, if any, shall also be taken into account.

6 BANNING COMMITTEE

6.1 CMD may constitute a Banning Committee (the Committee, for short) for consideration of the Case as per the Policy.

6.2 The Committee shall consist of one Chairman and two members chosen out of Officers of the rank of Executive Director / General Manager / Joint General Manager.

7 PROCEDURE

7.1 Upon noticing an instance of fraud or transgression, the official concerned is to report it to the Head of the Department concerned.

7.2 If the instance has come to the notice through the word of mouth, the Head of the Department would cause a fact-finding enquiry conducted and a preliminary report obtained. If the instance has documentary evidence, the Head of the Department would get a preliminary report made.
7.3 The Head of the Department would send the preliminary report, supported with relevant documentary evidence, to the CVO.

7.4 Upon receipt of the HoD’s report or any information from any source on an alleged Case, the CVO may order Investigation by the Vigilance Department and obtain a report.

7.5 Simultaneously, if the situation so demands for the purpose of a proper Investigation, the CVO may recommend to the Competent Authority for Suspension of the Business Dealing with the Agency or Suspension of Contract with the Agency, as the case may be. In case of Suspension of Contract, under extreme circumstances, the recommendation should specifically bring out the necessity of suspension since it will have impact on NMDC in terms of delay in the progress of contract and additional financial implications. The Competent Authority, after considering the CVO’s recommendations and other relevant factors, may pass orders as deemed fit. If the order is for Suspension of Business Dealing with the Agency, the Head of Department concerned may communicate the order to all concerned. If the order is for Suspension of Contract, the Head of Department concerned may take necessary action in terms of the contract.

7.6 Upon receipt of the report of the Investigation by the Vigilance Department, the CVO will examine it to see whether there is a prima-facie case. If there is a prima-facie case, the CVO will formulate a self-contained Case against the Agency and send it to the Competent Authority, through the CMD.
7.6.1 The CVO may also give recommendations on the complicity of Inter-connected Agencies, if any.

7.6.2 The Competent Authority will examine the Case. If he is not satisfied that there is a prima-facie Case, he will send his comments to the CVO through the CMD. If he is satisfied that there exists a prima-facie Case, he will pass an order that he is satisfied that there exists a prima-facie case against the Agency and that the Head of the Department concerned should issue a show cause notice to the Agency, giving reasonable time for the Agency to submit its reply.

7.6.3 The Competent Authority may also decide on any other relevant aspects of the Case.

7.6.4 He will send a copy of the order to the Head of the Department concerned and the CVO through the CMD.

7.7 Upon receipt of the order from the Competent Authority, the Head of the Department will issue the show cause notice. The notice shall contain a brief narration of the case, with due references to evidence, and the charge(s) that is/are framed against the Agency, and the reasonable time given for the Agency to reply.

7.8 If the Agency requests for inspection of any relevant document in possession of NMDC, the Department concerned will provide necessary facility for the Agency to inspect documents.

7.9 Upon receipt of the reply from the Agency, the Head of the Department will send the reply, along with his comments thereon and also all the relevant reports, documents, etc, to the Competent Authority for his consideration.
7.10 The Competent Authority will consider the Case. If the reply is satisfactory, the Competent Authority may record the same and send it through the CMD to the CVO for closing the case. If the reply is not satisfactory, the Competent Authority may record the same and send it to the Committee.

7.11 The Committee will consider the Case as per the guideline given hereunder.

7.11.1 The Committee will examine the Case in the context of this Policy. For this purpose, the Committee will call for a meeting. The Committee may, considering the nature of the case, co-opt any NMDC official to be on the Committee. It may also call any NMDC official(s) who, in the opinion of the Committee, can help the Committee examine the Case. The official(s) may include the Head of the Department, a representative of the Vigilance Department, or any other official(s) of NMDC.

7.11.2 The Committee shall demand the presence of the person(s) concerned of the Agency, who shall be given opportunity to present the case on behalf of the Agency. The Committee will conduct the proceedings in the presence of all concerned, record the proceedings of the meeting and get it signed by all concerned. If anyone concerned refuses to sign or delay the signature for more than a reasonable time, the Committee may record the fact on the proceedings.

7.11.3 The Committee, after considering all the relevant facts, documents, evidence, depositions made before it, preliminary report, investigation report of the Vigilance Department, etc, as may be available before it, shall make its report. The report
shall consist of a narration of the Case, the findings of the Committee from the examination of the Case, an analysis of the Case, and the reasons and conclusions thereby reached as to whether the charge(s) is/are based on the Grounds for Banning of Business Dealings and whether the charge(s) is/are proved. In short, the Committee shall give a Speaking Order. As the case demands, the Committee may include in its report any other matter that it may consider relevant.

7.11.4 All the documents that have evidentiary value shall be made part of the report.

7.11.5 The Committee shall submit its report to the Competent Authority.

7.12 The Competent Authority, after carefully considering the report of the Committee, shall pass a speaking order rejecting or accepting the report.

7.12.1 If the report is rejected, for reasons to be recorded in writing, the Competent Authority may pass a speaking order, which may include that the Agency is exonerated of the Charge(s); that the Head of Department may communicate the order to the Agency. The Competent Authority may send a copy of the order to the CVO, through the CMD, for formal closing of the Case.

7.13 If the report is accepted, the Competent Authority may pass an order indicating –

7.13.1 the tentative decision to Ban the Agency;

7.13.2 the period for which the Ban should be effective.
7.13.3 a show cause notice be issued to the Agency by the Head of the Department concerned giving the details of the conclusions of the Committee and the tentative decision of the Competent Authority;

7.13.4 the Agency be given such specified period as the Competent Authority may consider it reasonable to submit reply to the show cause notice.

7.14 The Competent Authority, for reasons to be recorded in writing, may also pass any other order that he considers it just and reasonable in the circumstances of the Case and in the overall interests of NMDC.

7.15 The Head of the Department, upon receipt of the order as communicated by the Competent Authority, shall issue the show cause notice to the Agency. Upon receipt of reply from the Agency, he shall put it up the Competent Authority for his consideration and final orders.

7.16 The Competent Authority, after carefully considering the reply of the Agency, may pass the final order, which may include –

7.16.1 Confirmation of the tentative decision to Ban the Agency for the period already specified or modifying it to shorter period, for reasons to be recorded in writing; and

7.16.2 whether the order on the Ban of the Agency is applicable for any particular Mine/Project/Unit of NMDC or all through the Company.

7.17 The Head of the Department will convey the final orders of the Competent Authority to the Agency and all concerned.

7.18 The Competent Authority may send a copy of the order to the
CVO through the CMD.

8  ENABLING POWERS OF THE COMPETENT AUTHORITY

8.1 All enabling powers vest with the Competent Authority to decide on any matter that is not specifically provided for in this Policy but is necessary for effective implementation of this Policy.

9  APPEAL

9.1 The Agency, if not satisfied with the order of the Competent Authority, may submit, within 30 days, its Appeal in writing directly to the Appellate Authority against the final orders of the Competent Authority.

9.2 The Appellate Authority may carefully consider the appeal and pass such Speaking Order as he considers it just and reasonable, which may include -

9.2.1 confirm the order of the Competent Authority, or
9.2.2 modify the order of the Competent Authority, or
9.2.3 exonerate the Agency, or
9.2.4 refer the case back to the Competent Authority to get it examined by the Committee in case the Agency has brought out substantial facts not considered by the Committee/Competent Authority.
9.3 The Appellate Authority may pass such other order as he considers it just and reasonable based on the facts of the case and the interest of the Company.

9.4 The Head of the Department will convey the final orders of the Appellate Authority to the Agency and all concerned.

9.5 Upon receipt of the order of the Appellate Authority, the Head of the Department concerned may convey the order of the Appellate Authority to the Agency, the Competent Authority and the CVO.

9.6 The CVO will arrange to host the order on the NMDC website.

10 EFFECTIVE DATE OF THE BAN

10.1 The Ban comes into effect from the date of the letter by which the Competent Authority’s final order of Ban is communicated to the Agency and will remain in force for the period mentioned therein subject to the order of the Appellate Authority, if any.

11 CONSEQUENTIAL EFFECT ON THE CONTRACT

11.1 The Policy is for internal use of NMDC. No Agency derives any right whatsoever from the Policy or the actions taken by NMDC under the Policy. Any claim by the Agency on NMDC in relation to the concluded contract will be governed only by the terms and conditions of the contract.

11.2 The Suspension of the Agency and/or Ban of Business Dealings with the Agency, as the case may be, may have impact on the
performance of the contract by the Agency. All concerned shall take due care at all stages. Suitable clauses may be incorporated in the contract documents.

12 DELEGATION OF POWERS

12.1 The proceedings of the Banning of Business Dealings being quasi judicial in nature, CMD may delegate necessary powers to the Competent Authority for the effective implementation of the Policy.