

CENTRAL U.P. GAS LIMITED

**B) PROCEDURE FOR ACTION IN CASE
CORRUPT/FRAUDULENT/COLLUSIVE/COERCIVE PRACTICES**

This banning procedure contains provision for putting a Vendor/ Supplier/Contractor/ Consultant on banning list if such agency indulged in corrupt/fraudulent /collusive /coercive practice.

A Definitions:

A.1 "Corrupt Practice" means the offering, giving, receiving or soliciting, directly or indirectly, anything of value to improperly influence the actions in selection process or in contract execution.

"Corrupt Practice" also includes any omission for misrepresentation that may mislead or attempt to mislead so that financial or other benefit may be obtained or an obligation avoided.

A2 "Fraudulent Practice" means and include any act or omission committed by a agency 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.

A3 "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 Employer of the benefits of free and open competition.

A.4 "Coercive practice" means impairing or harming or threatening to impair or harm directly or indirectly, any agency or its property to influence the improperly actions of an agency, obstruction of any investigation or auditing of a procurement process.

A.5 "Vendor/Supplier/Contractor/Consultant/Bidder" is herein after referred as "Agency"

A.6 "Competent Authority" shall mean the authority, who is competent to take final decision for Banning of business dealings with Agency/ iesand shall be the "DC/MD".

B Actions against bidder(s) indulging in corrupt /fraudulent/ collusive/ coercive practice

B.1 Irregularities noticed during the evaluation of the bids:

If it is observed during bidding process/ bids evaluation stage that a bidder has indulged in corrupt/fraudulent /collusive/coercive practice, the bid of such Bidder (s) shall be rejected and its Earnest Money Deposit (EMD) shall be forfeited.

Further, such agency shall be banned for future business with CUGL for a period specified in para B 2.2 below from the date of issue of banning order.

B.2 Irregularities noticed after award of contract

(i) During execution of contract:

If an agency is found to have indulged in corrupt/fraudulent/ collusive/coercive practices, during execution of contract, the agency shall be banned for future business with CUGL for a period specified in para B 2.2 below from the date of issue of banning order.

The concerned order (s)/ contract(s) where corrupt/fraudulent/collusive practices is observed, shall be suspended with immediate effect by Engineer-in-Charge (EIC)/ Employer whereby the supply/ work/ service and payment etc. will be suspended. The action shall be initiated for putting the agency on banning.

After conclusion of process, the order (s)/ contract (s) where it is concluded that such irregularities have been committed shall be terminated and Contract cum Performance Bank Guarantee (CPBG) submitted by agency against such order (s)/ contract (s) shall also be forfeited. The amount that may have become due to the contractor on account of work already executed by him shall be payable to the contractor and this amount shall be subject to adjustment against any amounts due from the contractor under the terms of the contract.

No risk and cost provision will be enforced in such cases.

(ii) After execution of contract and during Defect liability period (DLP)/ Warranty/Guarantee Period:

If an agency is found to have indulged in corrupt/fraudulent/ collusive/coercive practices, after execution of contract and during DLP/ Warranty/Guarantee Period, the agency shall be banned for future

business with CUGL for a period specified in para B 2.2 below from the date of issue of banning order.

Further, the Contract cum Performance Bank Guarantee (CPBG) submitted by agency against such order (s)/ contract (s) shall be forfeited.

(iii) After expiry of Defect liability period (DLP)/ Warranty/Guarantee Period

If an agency is found to have indulged in corrupt/fraudulent/collusive/coercive practices, after expiry of Defect liability period (DLP)/ Warranty/Guarantee Period, the agency shall be banned for future business with CUGL for a period specified in para B 2.2 below from the date of issue of banning order.

B.2.2 Period of Banning

Banning period shall be reckoned from the date of banning order and shall be 3 (three) years.

In exceptional cases where the act of vendor /contractor is a threat to the National Security, the banning shall be for indefinite period.

B.2.3 Exceptional Cases:

B.2.3.1 However as an exception, the ongoing order (s)/contract where corrupt/fraudulent /collusive /coercive practice has been observed, the agency may be allowed to complete the supply /job in case of following situations:

- a) No adverse performance of the job as per scope of work (performance to be reviewed on quarterly basis) and :
- b) The supply/job is of critical nature in terms of adverse impact on the project completion schedule and/or prospective revenue generation.

B.2.3.2 The approval for allowing the agency to complete the supply/job is to be obtained from DC/MD based on the detailed deliberation/recommendation of the committee consisting of HOD's of C&P, F&A and Indenting department (routed through OIC in case of site). Such recommendation shall be put up to DC/MD through C&P department and Law Department.

Further, all such cases shall also be put to Board of Directors for their information.

After approval of competent Authority (i.e. DC/MD) to allow the agency to complete the supply/job, the agency will be allowed to execute the order /contract and payment shall also be made as per provisions of order/contract.

- B.2.3.3 The contract cum performance Bank Guarantee (CPBG) , of such agency against the order (s)/contract(s) where the agency is allowed to complete the supply/job in above exceptional case shall not be en-cashed on this ground.

The contract shall be executed as per terms and conditions of the contract. However, the agency shall be put on Banning List from the date of banning order.

C Effect of banning on other ongoing contracts/ tenders

- C.1 If an agency is put on Banning, such agency should not be considered in ongoing tenders/future tenders.
- C.2 However, if such an agency is already executing other order (s)/ contract (s) where no corrupt/fraudulent/ collusive/coercive practice is found, the agency should be allowed to continue till its completion without any further increase in scope except those incidental to original scope mentioned in the contract.
- C.3 If an agency is put on the Banning List during tendering and no irregularity is found in the case under process:
- C.3.1 after issue of the enquiry /bid/tender but before opening of Technical bid, the bid submitted by the agency shall be ignored.
- C.3.2 after opening Technical bid but before opening the Price bid, the Price bid of the agency shall not be opened and BG/EMD submitted by the agency shall be returned to the agency.
- C.3.3 after opening of price, BG/EMD made by the agency shall be returned; the offer of the agency shall be ignored & will not be further evaluated. If the agency is put on banning list for fraud/ mis-appropriation of facts committed in the same tender/other tender where errant agency emerges as the lowest (L1), then such tender shall also be cancelled and re-invited.

D Procedure to be followed in case of corrupt/fraudulent/collusive/coercive practice

- (i) If Project Manager /EIC /HOD/ Dealing Purchase office or any other authority of CUGL, receive/ acquire conclusive evidence of any corrupt/fraudulent/

collusive/coercive practice/ activity, the concerned should immediately initiate action for putting vendor on banning list as per extant procedure.

- (ii) In case of a corrupt, fraudulent, collusive and coercive practices, a committee consisting of Head of C&P, F&A and Project/ Indenting department will examine the case in detail.
- (iii) In case committee recommends for banning an agency, the committee will put up its recommendation to the DC/MD through C&P department along with a draft show cause notice providing a final opportunity to alleged defaulter to defend his case. Wherever such recommendation is forwarded from the site, the same will be routed through concerned OIC. The draft show cause notice should be vetted by the Law department.

The show cause notice should contain all the allegations towards the breach committed by agency including mentioning the provisions of the tender so breached and seeking explanation as to why the action should not be taken against the agency as per provisions of tender. All the supporting documents also need to be provided to the agency along with show cause notice.

If the agency desires for personal hearing, the same can also be given.

However, the above provision for personal hearing shall not be made a part of Show cause notice.

- (iv) After obtaining approval from the DC/MD, C&P Department will issue the show cause notice to the concerned agency giving an opportunity to respond within 15 days.
- (v) On receipt of reply in response to show cause notice, C&P Department will forward the same to concerned department who after taking opinion from legal department will prepare a proposal for keeping the vendor on banning list through committee members for obtaining the approval from DC/MD. In case the committee recommends for putting the party on banning list, the draft speaking order to be issued to the party with reasons for putting on banning list will also be submitted along with the recommendation.

In case Law Department makes any contrary observation, the file may be referred back for further deliberation and recommendation.

In case the Competent Authority (DC /MD) does not agree with recommendation of the committee, it will record the reasons for the same. The decision of competent authority will be final.

- (vi) After obtaining approval from the DC/MD, C&P department will issue a letter in form of speaking order to the agency conveying the decision of putting the agency on the banning list along with reasons.
- (vii) A list of all parties put on banning list will be communicated to all concerned department

Further, if a communication has been received from the Ministry of Petroleum & Natural Gas to ban the agency from dealing with the company, the agency shall be automatically put in the banned list.

- (viii) After issuance of banning order, action for termination of order (s)/ contract (s) where it has been concluded that such irregularities have been committed and for forfeiture of Performance Bank Guarantee (PBG) against such order(s)/ Contract(s), will be taken by concerned Project/O&M site as per extant DoP. The amount that may have become due to the contractor on account of work already executed by him shall be payable to the contractor and this amount shall be subject to adjustment against any amounts due from the contract under the terms of the contract.

No risk and cost provision will be enforced in such cases.

- (ix) An order for banning 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.
- (x) While putting the bidder on banning list as per the procedure, the holding company, subsidiary, joint venture, sister concerns, group/division of the errant agency shall not be considered for putting on banning list.
- (xi) In case of contract (s) on consortium/ JV, if any of the member of consortium is put on banning list, in that case other ongoing contract(s)/ order (s) on Consortium/JV shall continue subject to satisfactory performance. Further, contract(s)/ order (s) where such fraudulent/ corrupt / collusive/ coercive practice have been noticed shall be terminated and Contract cum performance Bank Guarantee (CPBG) submitted by agency against such contract(s)/ order (s) shall also forfeited. No risk and cost provision will be enforced in such cases. However, in exceptional cases as mentioned at Para B 2.3 herein above, the agency may continue after approval from competent authority as mentioned therein.

In case of fraudulent / corrupt / collusive/coercive practice by any member or leader itself, consortium including errant member & leader will be put on banning list and shall not be allowed to participate in the ongoing/future tenders in either as an individual bidder or as a member of consortium/ JV.

- (xii) In case any PMC detect the fraudulent / corrupt / collusive/coercive practice during evaluation and execution of any contract and recommendations made to CUGL, the procedure mentioned herein above is to be followed after obtaining the documents from PMC for putting the agency on banning list.
- (xiii) The banning shall be with prospective effect i.e. future business dealings.
- (xiv) Tenders invited for procurement of goods, works, services and consultancy services shall have provision that the bidder shall submit a undertaking to the effect that (i) neither the bidder themselves nor their allied agency/(ies) are on banning list of CUGL or the Ministry of Petroleum and Natural Gas and (ii) bidder is not banned by any Government department/ Public Sector.

