

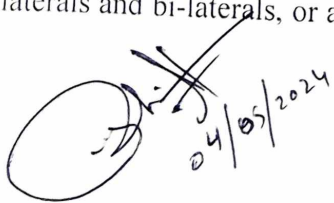
BLACKLISTING POLICY 2023

Introduction:

- 1) The main objectives of any procurement process are transparency, economy, fairness and efficiency so that value for money is achieved. Blacklisting is one of the most effective tools used in the struggle against inefficiencies and Corrupt and Fraudulent Practices in connection with public procurement. In addition, it serves as a major deterrent against any material breach of contract and further ensures the timely execution of projects by holding delinquent persons accountable.
- 2) Rule 19 of the Public Procurement Rules, 2004 requires that procuring agencies shall devise a comprehensive mechanism for blacklisting and debarment for a specified time of bidders from participating in respective procurement proceedings who either consistently fail to provide satisfactory performance or are found to be indulging in corrupt or fraudulent practices. Such barring action shall be duly communicated to the Authority and publicized: Provided that any supplier or contractor who is to be blacklisted shall be accorded adequate opportunity of being heard.

Scope:

- 3) In the light of the above, this Blacklisting Policy of SMEDA has been drafted for procurements made by the Small and Medium Enterprises Development Authority (hereinafter "SMEDA") and projects executed by SMEDA. Any capitalized terms and abbreviations used in this Policy which are not defined herein shall have the meanings given to them in Public Procurement Regulatory Authority Ordinance, 2002 (hereinafter "PPRA Ordinance") and Public Procurement Rules, 2004 (hereinafter "PPRA Rules").
- 4) This Blacklisting Policy shall be applicable and remain in force along with any amendments thereto, within SMEDA and Projects executed by SMEDA until any clear instructions, regulations or guidelines are imparted by the Government through Public Procurement Regulatory Authority (hereinafter "PPRA") or any other competent forum.
- 5) This Blacklisting Policy shall be applicable on the Bidders, Contractors and Suppliers pre-qualified or not which for the purpose of this Blacklisting Policy shall inter alia include sole-proprietors/AoPs/companies/consultants/retainers/joint ventures/any other legal entity transacting business with SMEDA or projects executed by SMEDA.
- 6) Wherever any provisions of this Policy shall be conflict with provisions of any applicable guidelines of donor agencies/International Development Partners including multi-laterals and bi-laterals, or any other applicable Statute/Law or Rules enforced at



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the time in Pakistan, the provisions of such applicable laws, rules, guidelines shall prevail.

- 7) This Policy shall become a part of the future Bidding Documents and Bidders/Contractors/Suppliers will submit an Undertaking on judicial paper along-with their bid that they have read and accept the provisions of this Blacklisting Policy. Non-submission of an Undertaking may result in rejection of their bid. The said Undertaking will subsequently become part of the Contract/work order as well.

Grounds for Blacklisting

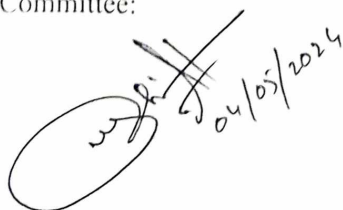
8. Bidders, Contractors or Suppliers individually or collectively may be Blacklisted and hence forth Cross Debarred under this Blacklisting Policy at any stage of bidding on the following grounds:
- I. Indulgence in Corrupt and Fraudulent Practice or Practices;
 - II. Fails to perform contractual obligations during the execution of contract/work order or breaches the contract/terms of work order due to his capacity and capability to perform or otherwise. For this purpose blacklisting or debarment proceeding shall be initiated after exhausting the forum of arbitration, provided that such provisions exists in the conditions of contract, and if such failure or breach is covered in the respective dispute settlement clauses of the contract/work order
 - III. Fails to abide with a bid securing declaration, however without being indulged in any Corrupt and Fraudulent Practice or Practices.
 - IV. Any other cause or consequential causes deemed just and appropriate by SMEDA or Project executed by SMEDA on willful default of the Bidder, Contractor or Supplier from the terms of the bid documents/contract/work order in the given circumstances.

Note: Blacklisted or debarred by a foreign country, international organization or other foreign institution shall be treated as blacklisted and debarred from participating in procurement process in SMEDA or projects executed by SMEDA or entering into any contract for such period as declared by that foreign country, international organizations or other foreign institutions: Provided that in case of public sector entities, the Board shall have the power to review and examine the case on the basis of evaluations made by the Authority and decide the case accordingly. by International Financial Institutions (donor agencies)/ will be liable to be Blacklisted after receipt of confirmation from the donor agencies without any further proceedings.

If above mentioned grounds occur either on part of the principal bidder or the local agent/JV partner both may be considered for blacklisting/debarment.

Notwithstanding anything contained in this Blacklisting Policy, SMEDA or project executed by SMEDA will have the option to bound the blacklisted or debarred bidder, Contractor or Supplier to perform its contractual obligations in on-going contracts/work orders or contracts/work orders in which such bidder, Contractor or Supplier is already engaged.

Adjudication Committee:

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9. The CEO SMEDA shall constitute an adjudication committee (hereinafter “ the Committee”) to adjudicate the cases related to blacklisting of Bidders, Contractors or Suppliers. The adjudication committee shall be notified by the HR department of SMEDA.

The Committee may consult or appoint/nominate additional members of the Committee from within SMEDA or Project executed by SMEDA with the approval of CEO SMEDA, provided that for decisions the quorum of the Committee will consists of an odd number of members. Independence of any additional members shall be ensured while making the selection of such additional members. Furthermore, the Committee shall also be authorized to seek external expert advice as and when required.

Blacklisting Proceedings

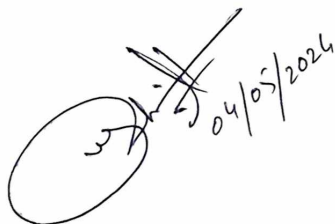
10. Initiation of Blacklisting Proceedings

- i. Blacklisting and onward cross debarring of Bidder, Contractor or Supplier may be initiated in SMEDA or Project executed by SMEDA as follows:
 - a. If satisfied on the complaint of the procuring department of SMEDA or project director/project manager of the concerned project executed by SMEDA that there exist ground(s) of blacklisting as per clause 8 of this Blacklisting Policy against a Bidder/Contractor/Supplier.
 - b. Proceeding of blacklisting may also be initiated on a written complaint against a Bidder/ Contractor/Supplier by a bidder /prospective bidder, submitted to the CEO SMEDA along with necessary documents in support of the allegation(s).
 - c. Blacklisting proceedings will not be initiated on an anonymous complaint.
- ii. A complaint with supporting documents may be submitted to the CEO SMEDA either manually or written indelibly on a piece of paper or electronically via an email address prescribed for such purpose by SMEDA.
- iii. Upon satisfaction, CEO SMEDA will forward the complaint to the Committee for initiating proceedings of Blacklisting and hence forth cross debarring of Bidder, Contractor or Supplier as per procedure provided in this Blacklisting Policy.

11. Procedure of Blacklisting:

i. Issuance of Notice to respondent

For verification of the existence of grounds for blacklisting, the Committee shall cause notice to be issued to the concerned Bidder/Contractor/Supplier (hereinafter “Respondent), such notice shall contain the following information: -

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- a) Nature of the complaint.
- b) The reasons for initiation of blacklisting proceedings.
- c) The direction to show cause as to why the Respondent should not be Blacklisted / Debarred.
- d) The time period within which the Respondent is to submit reply to show cause notice along with the consequences of failure to submit the response within the given time period.

The said notice to the Respondent may be sent through registered mail, fax or courier mail, immediately from the date of its issuance.

ii. Submission of written Response by the Respondent

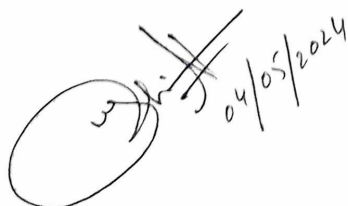
- a. Within seven (7) working days from receipt of written notice, the Respondent shall submit its written reply with documentary evidence in support of its defense.
- b. If no response is received within the given time, the Committee shall process the case based on the available documentary evidence, complaint and facts independently verified by it.
- c. No time extension for submission of response shall be allowed, unless it is proved by the Respondent that it did not get the notice at least 5 days before the given date.

iii. Personal Hearing

- a. If the written response by the Respondent is received within the stipulated time, or where no response is received from the Respondent, the committee shall immediately set the date and time for personal hearing of the Respondent.
- b. The notice of hearing shall be given to the respondent at least 07 days prior to the date for hearing.
- c. In case of refusal or failure to attend the hearing by the Respondent despite timely serving of notice, the committee will proceed to adjudicate the matter ex-parte on the basis of available material / record.

iv. Announcement of Decision

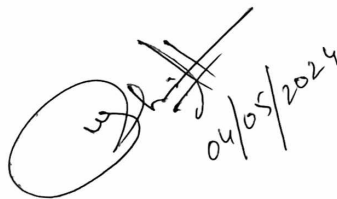
- a. The Committee shall, within fifteen (15) days from the date of conducting the hearing proceedings as above, determine whether reasonable cause exists for the blacklisting /cross-debarment of the contractor as proposed in the complaint. If the committee determines that such reasonable cause exists, it may issue either of the following decisions:
 - i. Blacklisted and henceforth Cross Debarred for participation in any public procurement or disposal proceedings for the period of not more than ten years if ground mentioned at clause 8(I) of this Blacklisting Policy are established.
 - ii. Blacklisted and hence forth Cross Debarred for participation in respective category of public procurement or disposal proceedings for a period of not more than three years, if grounds mentioned at 8(II) of this Blacklisting Policy are established.

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- iii. Blacklisted and henceforth Cross Debarred for participation in respective category of public procurement or disposal proceedings for a period of not more than six months, if grounds mentioned at clause 8(III) of this Blacklisting Policy are established.
 - iv. In the light of Para 8(IV), directions may be issued to the Respondent to take immediate remedial measures, if any, to be completed within the stipulated time and in case of failure of the contractor to do the needful within the stipulated time actions stipulated at clause (i), (ii) or (iii) shall ensue, as the case may be.
- b. If the Committee determines that no such reasonable cause exists, it shall dismiss the case.
 - c. The decision shall clearly and distinctly state the grounds on which it is based, as well as the date of effectivity of the penalty, if any.
 - d. The committee shall forward its decision to CEO SMEDA for approval.
 - e. The Admin department of SMEDA shall ensure receipt of the copy of the decision by the Blacklisted/Debarred Respondent, through registered mail, fax or courier mail, immediately from its approval date and same blacklisting or debarring action shall be communicated to PPRA for publication after examining the record whether the procedure defined in Blacklisting Policy has been adhered to by SMEDA.

12. Review:

- f. The Respondent may file a review petition before PPRA within thirty days of communication of such blacklisting or barring action after depositing the prescribed fee and in accordance with prescribed procedure of PPRA.
- g. PPRA shall evaluate the case and decide within time prescribed in the PPRA Rules and decision of the Authority shall be considered as final.

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