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TRADING CORPORATION OF PAKISTAN (PVT) LIMITED
FINANCE & TRADE CENTRE, SHAREA FAISAL,
KARACHI

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PROCEDURE / POLICY/INSTRUCTIONS FOR SUSPENSION / BLACK LISTING OF MANUFACTURERS, SERVICE PROVIDERS, SUPPLIERS, DISTRIBUTORS, CONTRACTORS AND CONSULTANTS DEALING WITH TCP.

In order to regulate and rationalize the process of suspension / blacklisting of suppliers, contractors and other agents dealing with the Trading Corporation of Pakistan (Pvt) Ltd., the following instructions / guidelines are notified for the information of all concerned:

(1) SCOPE

1.1 These procedures/policy/instructions and guidelines (hereinafter referred to as the "instructions") shall relate to the black listing of manufacturers, service providers, suppliers, distributors, contractors and consultants ("contractors") dealing with the Trading Corporation of Pakistan (Pvt) Ltd. ("TCP") for their involvement, during the course of competitive bidding or implementation of the contracts/ projects issued by or signed with TCP in connection with the offences and/or violations of the Public Procurement Rules, 2004 & the Public Procurement Regulations, 2008 (PPRA Rules & Regulations), and any other applicable law / rules / regulations, terms and conditions of the tender, tender documents, contracts, etc.

1.2 These instructions shall be strictly observed by all the Departments / Divisions / Sections / Cells / Centres of TCP and shall be deemed to be as terms and conditions of the tender/bid documents.

(2) PROHIBITION ON SUSPENDED / BLACKLISTED PERSONS / ENTITIES TO PARTICIPATE IN THE BIDDING OF TCP PROJECT / CONTRACTS.

2.1 A person / entity / corporate body when suspended / blacklisted by TCP shall not be eligible to participate in the bidding of any TCP contract(s) / project(s) for a period as determined by TCP unless his name is de-listed as willful defaulter from the consolidated black listing report.

2.2 A sole proprietor, partnership, joint venture or consortium which is suspended/blacklisted or any member of suspended / blacklisted person, shall not be eligible to participate in any procurement of TCP during the period of disqualification / suspension.

(3) DEFINITION OF TERMS:

- 3.1 'Adjudicating Officer' means an Officer or a panel of Officers authorized by TCP to conduct the proceedings for suspension and/or blacklisting of a bidder/prospective bidder and/or contractor and to prepare the consolidated black listing report.
- 3.2 'Authorized Officer' means an Officer authorized by TCP to examine and monitor implementation of contract/bids.
- 3.3 'Award' means a written letter/notice from TCP accepting a bid or proposal.
- 3.4 'Bid Evaluation Committee' means the committee constituted by TCP for evaluation of bids/proposals/offers.
- 3.5 'Blacklisted Person' means a person who has been disqualified by TCP as willful defaulter.
- 3.6 'Blacklisting' means administrative penalty disqualifying a person as willful defaulter from participating in any TCP procurement.
- 3.7 'Consolidated Blacklisting Report' means a report prepared by the TCP containing the list of contractors blacklisted by TCP.
- 3.8 'Contract Implementation' means a process of undertaking a project or contract in accordance with the contract/bidding documents.
- 3.9 'Delist' means removal of a person/entity from the Consolidated Blacklisting Report.
- 3.10 'Person' includes an individual, firm, body corporate, partnership, associations, corporations and their legal representatives.
- 3.11 'Redressal Committee' means the Committee constituted by TCP through valid resolution with all powers and authority to address the complaint/s of aggrieved person regarding their suspension / blacklisting as willful defaulter/s.
- 3.12 'Suspension' means the administrative penalty imposed for infractions committed by a contractor during the competitive bidding stage, whereby such contractor is prohibited from further participation in the bidding process of TCP; or temporary prohibition pending the outcome of proceedings for blacklisting.
- 3.13 'Willful Defaulter' means a person who is said to commit his contractual obligations of contract awarded to him by TCP without any reasonable legal excuse and who knowingly furnishes false and fabricated information to TCP.

(4) 'SANCTIONS AND GROUNDS FOR SUSPENSION/BLACKLISTING'

4.1 'Competitive Bidding Stage'

During the competitive bidding stage, the Adjudicating Officer may impose on bidders or prospective bidders/contractors the penalty of suspension firstly for a period upto one (1) year and second time suspension for a period upto two (2) years and/or blacklisting as willful defaulter for the period as may be determined by the Adjudicating Officer when the bidder/contractor is willful defaulter and either consistently failed to provide satisfactory performances or is found to be indulging in corrupt or fraudulent practices. This would be without prejudice to the imposition of such others fine / penalties / actions / proceedings as the TCP may considers expedient to safeguard the interest of TCP, inter alia, as follows: -

- i. Submission of eligibility requirements containing false information or falsified documents;
- ii. Submission of Bids that contain false information or falsified documents, or the concealment of such information in the Bids in order to influence the outcome of eligibility screening or any other stage of the public bidding;
- iii. Unauthorized use of one's name, or using the name of another for purpose of public bidding;
- iv. Withdrawal of a bid, or refusal to accept an award;
- v. Refusal or failure to furnish the required performance security within the prescribed time or failure to take any required action within the prescribed period;
- vi. Any illegal attempt by a bidder to unduly influence the outcome of the bidding in his favour; and
- vii. All other acts that may defeat the purpose of the competitive bidding, such as but not limited to; an eligible contractor not buying bid documents or not complying with the requirements during bid evaluation and contractors habitually withdrawing from bidding or submitting letters of non-participation for at least three (3) times within a year, except for valid reasons.

In addition to the penalty of suspension, the bid money/security deposit/performance bank guarantee deposited/furnished by the concerned bidder/ prospective bidder/contractor may be forfeited/encashed by TCP which shall not in any case be challenged/disputed in any manner of whatsoever nature by the bidder/prospective bidder/contractor except by way of written complaint concerning his grievance within 15 days to the Redressal Committee for redressal of grievance, if any, in respect thereto and the said Committee's decisions shall be final and binding without any question or dispute.

4.2

'Contract Implementation'

Pursuant to the integrity pact (part of the tender documents) and without prejudice thereto and the conditions contained in Clause 4.1 hereinabove, the contract implementation may also include the following:

- i. Failure of the contractor due to his solely fault or negligence, to mobilize and start work or performance within the specified period;
- ii. Failure by the contractor to fully and faithfully comply with its contractual obligations without valid cause, or, failure by the contractor to comply with any written lawful instructions of the TCP or its representative (s) pursuant to the implementation of the contract.
- iii. Assignment and subcontracting of the contract or any part thereof or substitution of key personnel named in the proposal without prior written approval by the TCP.
- iv. For the procurement of goods, unsatisfactory progress in the delivery of the goods by the contractor arising from his fault or negligence and/or upon supply of unsatisfactory or inferior quality of goods, as may be provided in the contract;
- v. For the procurement of consulting services, poor performance by the consultant / contractor, of his services arising from his fault or negligence. Any of the following acts by the consultant shall be construed as poor performance:
 - a. Defective design resulting in substantial corrective works in design and/or construction;
 - b. Failure to deliver critical outputs within the specified time due to consultant's fault or negligence; and
 - c. Specifying materials which are inappropriate, substandard, or way above acceptable standards; and
 - d. Allowing defective workmanship or works by the contractor being supervised by the consultant.
- vi. For the procurement of infrastructural projects/contracts, poor performance by the contractor or unsatisfactory quality and/or progress of work arising from his fault or negligence as reflected in the Constructor's Performance Evaluation System ("CPES") rating sheet. In the absence of the CPES rating sheet, the existing performance monitoring system of TCP shall be applied. Any of the following acts by the constructor shall be construed as poor performance:

- a. Negative slippage of 15% and above within the critical path of the project or contract due entirely to fault or negligence of the contractor or its employees;
- b. Quality of materials and workmanship not complying with the approved specifications arising from the contractor's fault or negligence; and
- c. Willful or deliberate abandonment or non-performance of the project or contract by the contractor resulting to substantial breach thereof without lawful and/or just cause.

4.4 In addition to the penalty of suspension/blacklisting, the performance guarantee / security furnished/deposited by the contractor may also be forfeited, if not forfeited earlier.

(5) **PROCEDURE FOR SUSPENSION AND BLACKLISTING**

5.1 'Initiation of Action'

At the time of opening of the bids, the bidder/prospective bidder or the duly authorized observer may request the Bid Evaluation Committee ("BEC") to initiate the action of suspension/blacklisting of the bidders who were not qualified/eligible having submitted false/fabricated documents and failed/neglected to meet the criteria. The BEC may also take suo-moto action and commence the proceedings upon, prima facie, determination that the contractor as a bidder or prospective bidder has committed any of the aforementioned grounds for suspension/blacklisting during the competitive bidding stage.

5.2 In case a contractor erring or defaulting during the course or implementation of a contract, the 'Authorized Officer' ("AO") may initiate action for suspension or blacklisting of such contractor/bidder and shall include his name in the list/report prepared of willful defaulter/s.

5.3 'Notification'

i. Upon verification of the existence of the aforesaid grounds for suspension or blacklisting, the BEC/AO shall immediately notify the contractor concerned in writing advising him that:

a. a complaint for suspension and blacklisting has been filed against him for suspension and blacklisting, stating the grounds to such effect;

b. he has the opportunity to show cause why he should not be suspended, and/or blacklisted along with its consequences; and

ii. Within five (5) calendar days from receipt of notification, the contractor shall submit its written reply with documentary evidence to

determine questions of fact, if he so desires. No time extension shall be allowed.

- iii. Should the bidder / contractor fail to reply within the prescribed period, the BEC or AO, as the case may be, shall issue a resolution recommending to the Adjudicating Officer for immediate suspension/blacklisting of the contractor from participating in any bidding process of TCP and the forfeiture of his bid money/security.

5.4 'Hearings'

If a hearing is required, the Adjudicating Officer and/or Redressal Committee shall immediately set the date and time for hearing. The hearing shall be non-litigious and shall be completed as soon as possible but not later than five (5) days and if desired by the contractor/bidder, personal hearing may be afforded to him/them. If no request/complaint is made, the Adjudicating Officer and/or Redressal Committee would decide the case on the basis of available documentary evidence. If the Adjudicating Officer and/or the Redressal Committee is convinced/satisfied that the contractor/bidder have committed willful default, their request/complaint shall be dismissed. In other case, the name of contractor/bidder may be de-listed from the list /report of willful defaulter/s.

5.5 'Decision'

The decision of the Adjudicating Officer and/or Redressal Committee shall be communicated to the contractor/bidder within two (2) days of passing of the decision/order.

5.6 'Effect of Decision'

A contractor/bidder when suspended or blacklisted from participating in the bidding process of TCP, the suspension/black listing shall become final unless reviewed. If no request/complaint for review/reconsideration is made, the decision of suspension/black listing shall become final and absolute.

5.7 'Redressal of Grievance/s'

The complaint for redressal by the aggrieved person regarding his suspension/black listing may be filed within fifteen (15) days from the receipt of the decision of suspension/black listing on the following causes:

- a. That the decision is not in conformity with the evidence available and/or facts presented; and
- b. Newly discovered evidence or facts which could not be discovered and produced at the initial stage and which when presented would probably alter the result of the investigation.
- c. The Committee shall investigate and decide upon the complaint within fifteen (15) days from the date of filing thereof and communicate to the suspended / blacklisted contractor a copy of

the decision/order. The aggrieved person may, however, be permitted to make only one complaint.

- (6) **'DELISTING'**
A suspended/blacklisting person shall be automatically delisted from the blacklist after the period of disqualification has expired and the Contractor/Bidder shall be eligible to participate in TCP's future procurement/s.
- (7) **'BLACKLISTING ORDER ON NOTICE BOARD/WEBSITE'**
The up-to-date suspension/blacklisting report / list / decision shall be displayed on TCP's Notice Board and Website as soon as it is issued.
- (8) **'APPLICATION OF INSTRUCTIONS, PUBLIC PROCUREMENT RULES, 2004 & PUBLIC PROCUREMENT REGULATIONS, 2008'**
The provisions of the above instructions shall have effect and binding force on the parties subject to the provisions of the Public Procurement Rules, 2004 and the Public Procurement Regulations, 2008, which provisions shall Mutatis mutandis apply.
- (9) **'INDEMNITY'**
No suit, prosecution or any other legal action/proceedings before any Forum or Court shall lie against the TCP including its Chairman, Authorized Officer and/or any member of BEC and Redressal Committee for any act or thing which has been done in good faith or is intended to be done under the above instructions, which shall be deemed to be an integral part of the Contract/Bid between TCP as Procuring Agency and the Contractor/Bidder.
- (10) **'REMOVAL OF DIFFICULTY'**
The Executive Committee of the Board of Directors of TCP for the purpose of removing any difficulty in the enforcement of the "instructions" may make appropriate modification, address or omission therein as may be deemed necessary or expedient for the purpose.
2. This public notice takes effect immediately.


(S. Anjum Bashir)
Chairman

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