

Contract.



# MANUAL FOR CONTRACTS & MATERIALS SOURCING

A PROCUREMENT  
POLICY GUIDE  
BY OPGC



## **12.0. BANNING/SUSPENSION/WITHHOLDING:**

### **12.1. Banning of business with a vendor:**

Banning of Business with a vendor shall generally be done in following cases:

- a. If the Proprietor or Partner or Director of the Firm/Bidder/Vendor is convicted by a Court of Law, following prosecution under the normal process of Law for an offence involving moral turpitude in relations to business dealings with OPGC.
- b. If security considerations including the question of loyalty to the State warrant as per recommendations of Ministry of Home Affairs.
- c. If there are adequate basis for believing that the Proprietor or Partner or Director of the Vendor has been guilty of malpractices such as bribery, corruption, cheating, fraud, substitution of tender etc. in dealings with OPGC even if there is no conviction by any Court in India.
- d. If the Vendor refuses / fails to pay the Company's dues without adequate cause.
- e. If the Vendor is blacklisted by Ministry of Power of the Central Government/ Government of Odisha.
- f. If the Vendor is a confirmed repetitive violator of Safety Rules and Norms of the OPGC.
- g. If the Vendor resort to unfair means during tendering process or thereafter during execution of Works at OPGC.
- h. If the performance of the Vendor does not satisfy OPGC expectations e.g. repetitive quality issues, late deliveries, unsafe behaviour of their employees, contractors in the field etc.

Banning of business dealings can be for a period of three (3) year as may be specified. A list of vendors banned for business dealings shall be published on the website of the Company. List shall be categorized as per the reasons of the banning/suspension/withholding.

Particular care shall be taken to see that the same Firm is not permitted to transact business with the Company in the guise of another name or through any of its agents, employees or subsidiaries whatsoever.

### **12.2. Procedure for banning of business dealing:**

Sourcing Department on coming to know themselves or on complaint by any other Dept or external agency shall proceed to identify the defaulting party. Subsequent to identification and establishing the case of banning of business, the case shall be referred to a Standing Committee (this Committee shall be set up by MD by nominating senior level representatives from various Departments) consisting members from Finance, Sourcing and User Departments to look in to allegations. The Vendor shall be given a show cause notice for explaining, why it shall not be banned for business dealings on account of the reason specified therein. The show cause notice shall be vetted by legal department. Response to the Notice shall be carefully evaluated and duly considered. Enough opportunity should be given to the vendor to explain their position through written statements and also through oral submissions before the Committee.

After due consideration of facts, evidences and written and oral submission of the vendor, the Committee shall submit their recommendation to ban the business dealings with vendor or otherwise. Recommendation of the Committee, after legal vetting shall be put up to Managing Director through D(O) and D(F) for approval.

The Managing Director shall be the Competent Authority to approve banning of business dealings with vendor

- Banned vendor should be given enough opportunity to represent against the banning order. Committee of Directors shall be appellate authority to look in to representation of banned vendor. Decision of appellate authority shall be final.
- Termination of contract shall be guided by termination clause provided in the individual contracts and considering over all interest of OPGC in timely completion of job.

- In case the banned vendor has participated in any tender and price bid has not been opened, their offer will be rejected and price bid will not be opened.
- In case price bid has been opened and banned vendor is L1, the offer will not be rejected.

**12.3. Revocation of Banning Order:**

- A banning order shall ordinarily not be revoked unless;
- The period specified therein, if any, has expired; or
- Appellate authority had revoked banning order.

**12.4. Suspension of business dealings:**

Suspension of business may be ordered, where full enquiry into the allegations is pending, which, if proved, may entail the banning of business dealing with the Vendor. The committee formed to look in to banning of business dealing with vendor shall recommend for suspension of business through D(O) and D(F), which shall be approved by MD. Suspension of Business Dealings shall be for a period of three months extendable maximum to six (6) months and all care must be taken to ensure that the Banning proceedings during this period of suspension and the decision to ban or otherwise is finalised during suspension period. During the period of suspension such party would not be allowed to participate in any of the tendering activity.

**12.5. Withholding of business dealing with Vendor:**

In case where the conduct, which includes any offense or failure to execute a sourcing contract satisfactorily, of the Vendor is not serious enough to merit banning of the business dealing, but at the same time is of such a nature that removing the name of the Vendor from the list of registered Vendor is justified in the interest of the Company, withholding of business with the Vendor shall be done.

Withholding of business with a firm for failure to execute a contract satisfactorily can normally be done for a period not exceeding one year. A standing committee (this committee shall be nominated by D(O) with representation from User, Planning and Finance Department) shall be formed to examine such failures by contractors. The concerned department shall forward the case of such poor performance to the standing committee who shall review the case and recommend for withholding of business through D(O) with approval of MD. No new work order shall be awarded to such vendor. However, any existing work order maybe completed subject to performance of the Vendor.

**12.6. Banning/Suspension/Withholding of Business Dealings:**

An order of banning / suspension / withholding business, passed in respect of banned / suspended/withheld Vendor shall be extended to allied Firms, Affiliates/Subsidiaries etc. In determining this, the following factors shall be taken into consideration:

- a) Where the Management is common (same authority);
- b) Where majority shareholding in such allied firms is held by the Partners or Directors of the banned / suspended /withheld Vendor;

**13.0. TERMINATION / CANCELLATION OF ORDER:**

A contract may be terminated or an Order may be cancelled on the following circumstances.

- a) When the contractor fails to honour any part of the contract including failure to deliver the contracted stores / materials / services in time.
- b) When the contractor is found to have made any false or fraudulent declaration or statement to get the contract or he is found to be indulging in unethical or unfair trade practices.

- c) When both the parties mutually agree to terminate the contract.
- d) When the contractor is not in a position to either rectify the defects of supplied items or supply items conforming to the ordered quality standards.
- e) Any special circumstances which must be recorded to justify the cancellation or termination of the order / contract.
- f) When the work is not required anymore.
- g) When the contractor fails to deposit the Performance Bank Guarantee / Security Deposit within the stipulated time period.

## Odisha Power Generation Corporation Ltd

