



**KAMARAJAR PORT LIMITED**  
(A MINI RATNA Govt. of India Undertaking)

**POLICY & PROCEDURE  
FOR  
SUSPENSION AND BANNING OF BUSINESS  
DEALINGS AGAINST ERRING AND DEFAULTING  
AGENCY IN KPL**

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**Policy and Procedure for holiday listing and banning of business dealing against erring and defaulting Agency in KPL**

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## **1. PREAMBLE:**

- 1.1** Kamarajar Port Limited (KPL) deals with Agencies, who are expected to adopt ethics of highest standards and a very high degree of integrity, transparency, commitments and sincerity towards the work undertaken. In order to protect the commercial interests of KPL, it becomes necessary to take action against Agency /ies by way of holiday listing and or banning of business dealings, who either fail to perform or are in default without any reasonable cause, cause loss of business/ money/ reputation, indulge in malpractices, cheating, bribery, fraud or any other misconduct etc. KPL is not interested to deal with any Agency who commits deception, fraud or other misconduct of whatsoever nature in the tendering process and/or contract execution process. KPL is committed for timely completion of the projects within the awarded value without compromising on quality.
- 1.2** Since suspension/banning from business dealings involves civil consequences for an Agency concerned, it is incumbent that adequate opportunity of hearing is provided and the explanation, if submitted by Agency, is considered before passing any order in this regard keeping in view the facts and circumstances of the case.

## **2. SCOPE:**

- 2.1** The procedure for Banning of Business Dealing with any Agency has been laid down in these guidelines.
- 2.2** The provisions of this policy will be applicable to all tenders floated and all Purchase orders / contracts placed by KPL. It may be during the evaluation of the bids, during execution of contract, during the Defect liability period or after the Defect liability period.
- 2.3** KPL reserves its right to ban business dealings with any Agency, if such, Agency is found to have committed misconduct or any of its action(s) fall into any such categories as laid down in this policy.
- 2.4** The provisions of this Policy supersede and will have overriding effect on all earlier guidelines, procedures & system circulars issued for the similar purpose if any.
- 2.5** This policy comes into force with effect from the date of its issuance.

### 3. DEFINITION:

In these Guidelines, unless the context otherwise requires:

- 1.1. **“KPL”** shall mean Kamarajar Port Limited with its registered office as No: 17, Jawahar Building, Rajaji Salai, Chennai – 600001.
- 1.2. **“Procuring Entity”** shall mean the organization which floated tender, placed Purchase orders / contracts, as named in tender/ contract document.
- 1.3. **“Agency”** shall mean Contractor / Supplier / Consultant / Bidder/ Licensor/ service provider / Vendors / KPL approved Sub-contractor of a Contractor’ to which work has been awarded.  
It shall include, but not limited to, a public limited company or a private limited company, a firm whether registered or not, any individual, a cooperative society or an association or a group of persons engaged in any commerce, trade industry, or constituents of an unincorporated Joint Venture Company, etc.
- 1.4. **“Contract”** shall mean all or any contract awarded to an Agency and shall include Purchase Orders/Works Contract/Service Contract/ consultancy contract.
- 1.5. **“Moral Turpitude”** means any act or behavior that gravely violates the moral sentiment or accepted moral standards of the community and is considered contrary to community standards of justice, honesty, modesty and good morals.
- 1.6. **“Misconduct”** means any act or omission by the Agency, making it liable for action for Holiday Listing and or banning as per these guidelines
- 1.7. an act or wrongful, improper, or unlawful conduct motivated by premeditated or intentional purpose or by obstinate indifference to the consequences of one's acts.
- 1.8. **“Poor Services”** means services which are not acceptable to KPL in terms of specifications, quality, quantity, timeliness and not as per the written advice of dealing Executive/Officer of KPL
- 1.9. **“Holiday listing” and “Banning”** shall mean officially debarring or forbidding an Agency from participating as Vendor/Supplier with KPL, for its requirement related to procurement.
- 1.10. **“Investigating Department”** shall mean any Department or Unit of KPL, investigating into the conduct of the Agency and shall include the KPL

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.

**1.11. "Standing Committee"** shall mean Committee constituted for the purpose of these guidelines, nominated by CMD, from Operations, Finance and concerned department. Additional member(s) from any other deptt as considered appropriate may also be co-opted on case to case basis.

**1.12. "Competent Authority" and "Appellate Authority"** shall mean the authority, who is competent to take final decision for Banning of business dealings with Agency/ ies in accordance with these guidelines.

The functional Director /H.O.D shall be the 'Competent Authority' for the purpose of these guidelines.

The CMD of KPL or any other authority nominated by the CMD shall be the 'Appellate Authority' in respect of such cases. The Appellate authority should be higher than the "Competent Authority".

**1.13. "CMD"** means Chairman-cum-Managing Director of Kamarajar Port Limited.

**1.14. GeM** means Government e-Marketing.

#### **4. Provision for action in case of misconduct/erring /defaulting agencies :-**

- i. **Holiday Listing** : - The provision of putting an agency on holiday listing is mainly related to noncompliance/ nonperformance, less frequent and less serious misdemeanors in respect of certain provisions of tender document/contract. An agency can be considered for holiday listing in case of the issues listed in 5 (i) below:
- ii. **Banning** :- An Agency may be placed in Banning of business dealing for any one or more circumstances/ grounds mention in clause 5 (ii). The banning of Agency are generally carried out under following two heads:
  - a. **Country – wide Banning** : Banning from participating in a procurement process of any Procuring Entity of Government of India, if the proprietor of the Agency, its employee, partner or representative has been guilty of violations of the code of integrity for public procurement and/or grounds attributable to them as listed in 5 (ii)- A below
  - b. **Banning from KPL** : Banning from participating in any procurement

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process undertaken by the KPL, if there is strong justification for believing that the proprietor or employee or representative of the Agency has been guilty of violation of the Code of Integrity for Public Procurement or Integrity Pact, evasion or habitual default in payment of any tax levied by law; misconduct and moral turpitude etc. and/or grounds attributable to them as listed in 5 (ii)-B below

**5. Grounds on which Holiday Listing and Banning of business dealings of Agency can be initiated :-**

**i) Holiday Listing :-**

- a) Agency who have not responded to requests for quotation/tenders consecutively three times without furnishing valid reasons or decided by the functional manager with the approval of competent authority;
- b) If the Agency uses intimidation / threatening or brings undue outside pressure on KPL or its official for acceptance / performances of the job under the contract;
- c) If the firm ceases to exist or is acquired by or merged with another firm, or ceases to operate in the category of requirements for which it is registered;
- d) Withdrawal of bid after price opening /refusal to accept order.
- e) Breach of contract/dishonor of LOA/LOI etc.
- f) Withdrawal of bid after becoming L1.
- g) The Agency fails to abide by the terms and conditions or to maintain the required technical/operational staff/equipment or there is change in its production/service line affecting its performance adversely, or fails to cooperate or qualify in the review for registration;
- h) Fails to furnish the required documents / information as required under the terms & conditions of contract;
- i) Other than in situations of force majeure, after opening of financial bids, the supplier withdraws from the procurement process or after being declared as successful bidder: (1) withdraws from the process; (2) fails to enter into a procurement contract; or (3) fails to provide performance security or any other document or security required in terms of the bidding documents;
- j) Repeated non-performance or performance below specified standards(Including after services and maintenance services)
- k) Violation of confidentiality clause by the Agency.
- l) Violation of Laws/Rules/ Regulations related to Labour Matters, safety

Norms and other Statutory related to contract

- m) If the Central Bureau of Investigation/CVC/C&AG or Vigilance Department of Procuring Entity or any other investigating agency recommends such a course in respect of a case under investigation;
- n) Agency undergoing process for banning may also be put on a holiday listing during such proceedings, if so recommended by the competent authority.
- o) Any other ground, based on which the registering authority considers, that continuation of registration is not in public interest.

**ii) Banning of Business Dealings**

**A) Country-wide Banning:**

- a) is convicted of any offence by a court under the Prevention of Corruption Act,1988;
- b) is convicted of any offence by a court under the Indian Penal Code or any other law for the time being in force for causing any loss of life or property or causing a threat to public health or to any other legal liability to the Procuring Entity as part of execution of a public procurement contract;
- c) is suspected to have doubtful loyalty to the country or national security considerations as determined by appropriate agencies of GoI;
- d) any other ground, based on which the GoI, considers that banning is in public interest;

**B) Banning from KPL:**

- a) Agency is found to be responsible for submitting fake/ false/ forged documents, certificates, or information or misrepresentation/ wilful suppression of facts, or has resorted to unethical, illegal means.
- b) Bankruptcy or insolvency on the part of the supplier as declared by a court of law;
- c) After placement of order, Agency fails to execute the contract
- d) If an Agency is found to be non-performing in execution of contract by the contract executing authority.
- e) The Agency has indulged in malpractices or misconduct such as bribery, corruption and fraud, pilferage, coercion etc.
- f) Does not fulfill the obligations as required under the contract.
- g) The irregularities noticed after execution of contract during defect liability

period.

- h) On prima-facie scrutiny, work executed found to be of poor quality beyond acceptable limits stipulated in the Technical Specifications under the Contract
- i) If a disaster / major failure / accident / collapse of a structure / system is caused during erection or during defect liability period due to negligence of contractor or design deficiency or poor services or poor quality of execution.
- j) If the Director / Owner of the Agency, proprietor or partner of the Agency, is convicted by a court of law for offences involving corrupt and fraudulent practices include moral turpitude in relation to its business dealings with the government or KPL, during the last five years.
- k) Based on the findings of the investigation report of KPL Vigilance department /CBI/Police against the Agency for malaise/unlawful acts or improper conduct on his part in matters relating to KPL or even otherwise;
- l) If the Agency violates the provisions of the Integrity Pact provided in the Contract.
- m) If the Central Vigilance Commission, Central Bureau of Investigation or any other Central Government investigation Agency or any other Central Government Department recommends such a course in respect of a case under investigation;
- p) Employs a Government servant within two years of his retirement, who has had business dealings with him in an official capacity before retirement; or
- n) If the Agency has deliberately violated and circumvented the provisions of Labour Law/regulations/rules, safety norms or other statutory requirements.
- o) Banning by Ministry/Department or any other Government agency;
- q) Any other ground, based on which the registering authority considers, that continuation of registration is not in public interest.

(Note: The examples given above are only illustrative and not exhaustive. The Competent Authority may decide to ban business dealing for any good and sufficient reason).

## **6. Procedure for holiday listing and banning**

- i. Once it is prima facie established that an agency has defaulted, and it calls for initiating action for putting the agency on holiday listing and or

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- banning, the concerned department shall initiate a note for taking action against the defaulting agency giving complete facts and figures.
- ii. Based on the above, requested to competent authority to constitute a “Standing Committee” consisting of members from Operations, Finance and concerned department to examine. Chief Manager level in case of holiday listing; HOD in case of banning.
  - iii. The Standing Committee shall analyze the referred case and if considered appropriate, shall put up the proposal for issuing Show Cause Notice for the purpose of banning of business dealings with the Agency for approval of the Competent Authority
  - iv. The standing committee may also order an interim Banning (Holiday listing) during the banning process considering the severity of demeanor.
  - v. The standing committee should give adequate opportunity to agency (including an oral hearing by the competent authority) to make representation.
  - vi. In case, the Standing Committee recommends waiver of holiday listing and /or banning of business dealings with the Agency, the proposal along with reasons thereof shall be put up for approval of the Competent Authority.
  - vii. The banning process should be completed within 6 (six) months from the date of initiation by concerned department/sphere.

All the above proposals shall be routed through Vigilance department.

Besides the Standing Committee, Vigilance Department may also be competent to initiate the proposal for banning.

#### **7. Show Cause Notice**

Once the proposal for issuance of Show Cause Notice is approved by the Competent Authority, a ‘Show Cause Notice’ (as per format at Annexure - I of these guidelines) duly vetted by legal department shall be issued by the Competent Authority himself or by a person authorized for the said purpose to the delinquent Agency.

In cases where investigation has been carried out by Vigilance Department or CBI etc., the show cause notice will also be vetted by Vigilance Department before issuance. Statement containing the imputation of misconduct or misbehavior may be appended to the Show Cause Notice.

The Agency shall be asked to submit the reply of Show Cause Notice within 15 days of its issuance. In case the agency requires some documents in respect of show cause notice, the same may be provided promptly by KPL. However, such request should be entertained only once. In case the agency seeks additional time, reasonable extension can be given.

If the response to the show cause notice is not satisfactory or not acceptable, such Agency should be put on suitable grade of Banning, depending on the severity of the misdemeanor.

The purpose of issuing the Show Cause Notice is only that the Agencies concerned shall be given an opportunity to explain their stand before any action is taken. All that is required in such cases is that the grounds on which action is proposed to be taken shall be disclosed to the Agency inviting representation and after considering that representation, orders may be passed. Such orders require only the subjective satisfaction of the authority that passed the final orders.

In case, no reply to Show Cause Notice is received from the Agency within stipulated time, action for processing ex-parte against the concerned Agency shall be initiated. After submission of written reply to Show Cause Notice by the Agency, the Standing Committee shall also give opportunity to hear them in person by fixing a date for oral hearing if desired by Agency.

In cases processed by Vigilance deptt, oral hearing shall be conducted by a separate committee (constituted on case to case basis) comprising members from Concerned deptt and Vigilance deptt. Additional member(s) from any other deptt/site as considered appropriate may also be co-opted on case to case basis.

Reply to the Show Cause Notice given by the Agency and their submission in oral hearing will be processed by the above committee in consultation with Vigilance Department, wherever applicable, for obtaining final decision of the Competent Authority in the matter.

### **8. Speaking Order**

The speaking order for banning the business dealing with the Agency shall be issued (after vetting by legal deptt) by the Competent Authority himself or by a person authorized for the said purpose. In cases where investigation has been carried out by Vigilance Department or CBI etc., the speaking order will also

be vetted by Vigilance Department before issuance.

### **9. Communication to Agency**

The decision regarding holiday listing and banning of business dealings taken after the issue of a Show Cause Notice and consideration of representation, if any, in reply thereto, shall be communicated to the Agency concerned along with a reasoned order. The fact that the representation has been considered shall invariably be mentioned in the communication. Also the fact that if no reply was received to the Show Cause Notice shall invariably be indicated in the final communication to the Agency.

### **10. Period of holiday listing /banning of business dealing**

The period for which the ban would be operative may be mentioned in the order. The period of holiday listing should be 6 months to 36 months depending upon the gravity of the default which shall be recommended by the committee. The period of banning should not be less than 3 (three) years and should not exceed 7 (seven) years.

In case of country-wide Banning, banning period should not be less than 5 (Five) years.

The holiday listing and /or banning order shall become effective from the date of issuance banning order.

### **11. Effect of Banning**

The Agency, after issue of the order of holiday listing and/ or banning of business dealings, would not be allowed to participate in any ongoing and future tenders, till completion of period of holiday listing and /or banning.

- i. If an agency is banned during the tendering process the following action to be taken :
  - a) The agency is put on banning list after issuance of enquiry and receipt of bids, however, before technical bid opening, the offer of such bidder should be ignored and the EMD/Bid Security submitted by the bidder to be returned to the agency.
  - b) The agency is put on banning list after opening of the technical bid but before price bid opening, the price bid of such bidder need not be opened. The EMD/Bid Security submitted to be returned to such bidder.
  - c) If the agency is put on banning list after price-bid opening, the price-bid

of such agency shall not be considered for award. However, the price-bid shall be evaluated to know the ranking of the bidder. If it emerges as lowest bid, the tender to be scrapped and retendered. The bid security shall be returned.

- d) In case of a consortium bid, if any member of the consortium is banned during processing of the tender, the bid shall be treated in the same manner as in case of individual bidder at a, b, & c above.
- ii. If an agency is banned during the currency of a contract, following action to be taken :
- a) The existing contract(s) with the Agency shall continue unless the “Competent Authority” having regard to the circumstances of the case, decides otherwise with appropriate justification.
- b) If an agency is put on banning list and the same agency is a member of a consortium which is already executing an ongoing contract, the consortium shall be allowed to complete the work as per provision of the contract.
- c) In case the agency is Original Equipment Manufacturer (OEM) / Supplier / Service provider the procurement of spare parts and certain services may be continued with the banned agency for operational reason to be recorded in writing.

Tenders invited for procurement of goods, works and services shall have provision that the bidder shall submit an undertaking to the effect that (i) neither the bidder themselves nor their allied agency/(ies) are on banning list of KPL and (ii) bidder is not banned by any Government department/ Public Sector Enterprise. This shall be part of NIT.

## **12. Process of reply**

The Agency shall be separately advised of the decision regarding banning of business, taken in reply to their representation, if any. As regard any further representation from the Agency, business dealings with whom have been banned, the same shall be processed by the concerned department in consultation with Vigilance department, wherever applicable. If any reply is considered necessary to be sent to the Agency, the same shall be sent by the concerned Department.

**13. Hosting at KPL website and intimation of ministries**

The name of the agency with whom Holiday listing and/ or Banning from concerned Procuring Entity, have been approved by competent authority, should be hosted on KPL website and a copy of the order should also be sent to the concerned Ministries / Departments.

In case of county-wide banning, all Ministries/ Departments of Government of India must be informed and **GeM** will maintain such list which will also be displayed on the website of **GeM** as well as Central Public Procurement Portal.

**14. Appeal against the Decision of the Competent Authority.**

In all cases, the Agency may file an appeal against the order of the Competent Authority banning of business dealing before Appellate Authority. Such an appeal shall be preferred within one month from the date of receipt of the order of banning of business dealing.

Any appeal filed after expiry of the above period shall not be considered by the Appellate Authority;

Appellate Authority would consider the appeal and disposed off within 45 calendar days of filing of appeal. The appellate authority shall pass appropriate order which shall be communicated to the Agency as well as the Competent Authority.

Even if an appeal is filed against the decision of Competent Authority, the Banning order passed by Competent Authority shall remain effective till Appellate Authority takes a final decision in the matter.

No Appeal is permitted in case an Agency is Holiday Listed (Banning of business dealing) based on Ministry's advice.

**15. Revocation of Orders.**

An order for holiday listing and banning passed for a certain specified period shall be deemed to have been automatically revoked on the expiry of that specified period and it will not be necessary to issue a specific formal orders of revocation, except that an order of banning passed on account of doubtful loyalty or security consideration shall continue to remain in force until it is specifically revoked.

After the banning period, the status of the agency may be submitted to the standing committee for review and recommendation of the revocation.

In Banning cases, where the proprietor of the Agency, its employee, partner or representative is convicted by a court of law of offences involving moral turpitude in relations to business dealings, may be revoked if, in respect of the same facts, accused has been wholly exonerated by court of law.

A Holiday Listing and banning order may, on a review during its currency of operation, be revoked by the competent authority if it is of the opinion that the disability already suffered is adequate in the circumstances of the case, and the Agency has taken appropriate action to avoid recurrence.

**16. Participation of Agency under Different name**

During the holiday listing/ banning period, if it is found at any stage that Agency has participated in tendering process under a different name then such Agency would immediately be debarred from the tender/contract and its Bid Security/Performance Security would be forfeited. Payment, if any, made shall also be recovered.

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**Annexure - I**

(Performa of Show Cause Notice)

BY REGD. POST/SPEED POST/COURIER

No. ....

Date.....

To M/s .....

.....

Attn.: Shri .....

**Sub: Show Cause Notice**

Ref :

Dear Sir,

You are hereby required to show cause in writing within 15 days from the date hereof why you should not be placed on Holiday List and be banning from entering into any contracts with KPL for the following reasons:

(Give Reasons)

Your reply (if any) should be supported by documents and documentary evidence which you wish to rely in support of your reply should you fail to reply to this Show Cause Notice within the time and manner aforesaid, it will be presumed that you have nothing to say and we shall proceed accordingly.

Your reply, if any, and the documents / documentary evidence given in support shall; be taken into consideration prior to arriving at a decision.

Yours faithfully,

For & On behalf of KPL.

**Annexure - II**

(Performa for Intimation of Holiday Listing)

BY REGD. POST/SPEED POST/COURIER

No.....  
Date.....  
To M/s .....  
.....  
Attn.: Shri .....

**Sub: Intimation of Banning of Business Dealings / Holiday Listing**

Dear Sir,

WHEREAS our Show Cause Notice served to you dated      WHEREAS, in spite of the opportunity given to you, you have failed to show cause as required / your reply to the show cause notice \*(and documents and documentary evidence submitted in support of your reply) has / have been duly considered;

(Speaking Order either to agree or rebut the reply furnished by Agency- allegation wise)

After considering the allegations made in the show cause notice/your reply to the show cause notice\*(and documents and documentary evidence furnished in support thereof) as cited above, it has been decided that business dealings with you will be banned and you are hereby debarred from entering into contracts with KPL for      Years/months, effective from the date hereof.

This order shall have the following effects:

1. No enquiry / bid / tender shall be issued to you nor will the bids submitted by you be entertained;
2. In cases where tenders have already been issued to you and price bids are yet to be opened, the price bid submitted by you shall not be opened and BG/EMD, if any, submitted by you shall be returned.
3. In cases where tenders have already been issued to you and price bids have already been opened , but final decision is pending, your quote will not be considered for further evaluation and finalization of the tender, and BG/EMD, if any, submitted by you shall be returned.
4. In case of ongoing contracts between you & KPL, (including cases where contract has already been awarded before .....) you will be required to continue with the execution and perform as per terms of the contract.

In case you are aggrieved by this order, you may file an Appeal before (Indicate here



the relevant Appellate Authority), within a maximum of 30 days from the date of receipt of this order. You may represent your case before the Appellate Authority, along with necessary justification.

On expiry of the above period of holiday listing, you may approach.....(indicate the concerned procurement department), with request for revocation of the order mentioning inter-alia the steps taken by you to avoid recurrence of misconduct which has led to the Holiday Listing. (Give Reasons)

Yours faithfully,  
For & On behalf of KPL

**Annexure – III**

(Performa for communication of Appellate Decision)

BY REGD. POST/SPEED POST/COURIER

No. ....

Date .....

To M/s .....

.....

Attn.: Shri .....

**Sub: Banning of Business Dealings / Holiday Listing- Intimation of decision of Appellate Authority**

Ref: 1. Order dated ..... placing M/s on Holiday List by KPL;

2. Your Appeal reference ..... Dt.....

Dear Sir,

This has reference to the order dt... placing you on Holiday List and your appeal petition reference .... dt.... on the same.

After considering the findings of the Original Authority in order dt... , submissions made by you in your appeal , and the documents/documentary evidences available on record, it has been decided finally that :

1. There is no infirmity in the order of the Original Authority, and the allegations stand substantiated and the Holiday Listing for the period of ..... years/month from the date of order, as ordered by the original Authority is upheld,
2. Considering your submissions, the order of Holiday Listing passed by the original authority is upheld , but with a reduction in period of holiday listing for ..... years/months from the date of order of original authority;
3. Considering your submissions and the evidence available on record, there is enough justification to annul the order of the original authority.

(\*\*\* Incorporate any one of the above as applicable)

Yours faithfully,

For & On behalf of KPL.

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**Policy and Procedure for holiday listing and banning of business dealing against erring and defaulting Agency in KPL**

**Annexure - IV**

(Performa for Intimation of Holiday Listing/banning - based on Ministry's Advice)

BY REGD. POST/SPEED POST/COURIER

No. ....

Date .....

To M/s .....

.....

Attn.: Shri .....

**Sub : Intimation of Banning of Business Dealings / Holiday Listing**

Ref: ..... letter ref ..... dt....., advising banning of business dealings with M/s.....

Dear Sir,

WHEREAS we have been advised by ..... that all business dealings with you are to be banned and you should be placed on Holiday List and or banning for a period of .....yrs/months from...;

You are hereby informed that the business dealings with you would be banned and you are hereby debarred from entering into contracts with KPL for.....Years/months, effective from the date hereof.

On expiry of the above period of holiday listing, you may approach.....(indicate the concerned procurement department) , with request for revocation of the order mentioning inter-alia the steps taken by you to avoid recurrence of misconduct which has led to the Holiday Listing

Yours faithfully,

For & On behalf of KPL.