

Punjab Skills Development Fund

Blacklisting & Debarring Policy



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1. Introduction

Punjab Skills Development Fund (PSDF), also referred as “the Fund” is the largest skills development fund in Pakistan. PSDF was established in 2010 as a not-for-profit company set up under the Companies Ordinance 1984 by the Government of Punjab (GoPb) in collaboration with its donors. Fund is committed to operate with the highest standards of integrity and transparency in order to ensure the proper utilization of the funds. It has adopted a zero-tolerance approach to unethical activities including those of third parties receiving the fund directly or indirectly. The same includes Bidders and Contractors and other parties in the delivery chain.

In its endeavor to ensure transparency in the use of resources, Fund is entitled under the procurement laws and the PSDF Procurement Rules to blacklist and debar the Bidders and/or Contractors, if they have deviated from good practices, acted in a manner detrimental to public interest or failed to perform under their contract in a satisfactory manner. This Policy enunciates the principles and procedure for blacklisting or debarring the Bidders and/or Contractors in accordance with the applicable laws and considering the principles of due process and fairness.

2. Scope

This policy shall govern the blacklisting or debarring of the Bidders and/or Contractors, engaged or to be engaged by the Fund in the ordinary course of the business, as a consequence of the offenses or violations committed during competitive bidding and/or during the execution of obligations under the contract.

Where permissible under the law, those Bidders and/or Contractors that have been blacklisted or debarred and who have re-organized themselves as new entities for bidding or bid through their associated, holding or subsidiary companies/organizations shall be disqualified, blacklisted or debarred depending on the terms of this Policy.

This Policy shall complement the procedure prescribed under the PSDF Procurement Rules and shall not affect the rights of the Bidders and/or Contractors under the relevant procurement laws.

Any instance or matter related to a violation of the business rules for fake and ghost trainees or a complaint received under the Whistleblowing policy shall fall outside the scope and ambit of this Policy and shall be regulated separately as per relevant rules and policy.

3. Purpose of the Policy

This Policy has been formulated to broadly govern the blacklisting or debarring of Bidders and/or Contractors for undertaking acts that have been prohibited herein.

This Policy shall form an integral part of the procurement cycle and the contracts executed pursuant to the procurement cycle.

4. Definitions

- a. **‘Authority’** means the board of PSDF.
- b. **‘Bidder’** means a person who submits a bid in response to invitation from PSDF;
- c. **‘Breach/violation’** means failure to perform the duties or failure to perform them to the standard in terms of specifications, quality, quantity, timeliness etc., as agreed in the purchase order and signed contract with the Fund.

- d. **‘Contractor’** means a person, firm, company, or an organization who or which undertakes to supply goods, services or works after having won the bid and includes consultancy and training service providers;
- e. **‘Competent Authority’** means the Chief Executive Officer of the fund or any other officer authorized to act as competent authority by the authority;
- f. **‘Corrupt and Fraudulent Practice’** means the offering, giving, receiving, or soliciting of anything of value to influence the action of an official of the fund or the Contractor in the procurement process or in contract execution to the detriment of the fund; or misrepresentation of facts in order to influence a procurement process or the execution of a contract, collusive practices among Bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the fund of the benefits of free and open competition and any request for, or solicitation of anything of value by any official of the fund in the course of the exercise of his/her duty; it may include any of the following practices:
 - g. **‘Coercive Practice’** by impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence the actions of a party to achieve a wrongful gain or to cause a wrongful loss to another party;
 - h. **‘Collusive Practice’** by arrangement between two or more parties to the procurement process or contract execution, designed to achieve with or without the knowledge of the fund to establish prices at artificial, non-competitive levels for any wrongful gain;
 - i. **‘Corrupt Practice’** by offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the acts of another party for wrongful gain;
 - j. **‘Fraudulent Practice’** by any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation and by defrauding the fund by organizing under different legal entities once blacklisted and not disclosing the same;
 - k. **‘Gross Misrepresentation’**, for the purpose of the Policy, means untrue or misleading statement of fact made during the bidding process or during the implementation period of the contract. In context of this policy, examples of such misrepresentations include but are not limited to misstatements about experience or projects; falsely quoting their experience or qualifications or their personnel, misstatements about premises, plant & equipment, registration, affiliation etc.
 - l. **‘Obstructive Practice’** by harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract or deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements before investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or acts intended to materially impede the exercise of inspection and audit right
- m. **‘PDPC’** means Programme Design & Procurement Committee, sub-committee of the Board

5. Roles and Responsibilities

a. Board of Directors

Apart from the responsibilities of the Board stated in the Board Charter, the Board is responsible for the review and approval of this Policy

b. Program Design and Procurement Committee (PDPC)

Apart from the responsibilities of the Committee as stated in its Charter, PDPC shall review the decision made under this Policy by the Competent Authority of the Fund.

c. Competent Authority

The responsibilities of the Competent Authority, along with other responsibilities stated in the Board Charter, includes, but not limited to the following:

- i. To implement the Policy for all procurements undertaken by the Fund;
- ii. Notify the members of the Inquiry Committee through internal notification;
- iii. Taking decision to blacklist or debar the Bidder and/or Contractor on the recommendations of the Inquiry Committee under this Policy

d. Inquiry Committee

An Inquiry Committee constituted by the Competent Authority for Bidder and/or Contractor related decision shall be responsible:

- i. To register the reported matter relating to blacklisting or debarring of the Bidder and/or Contractor and to initiate proceedings, if considered necessary;
- ii. To identify the grounds of blacklist or debar a Bidder and/or Contractor, in accordance with the Policy;
- iii. To send show cause notices to the Bidder and/or Contractor and to receive replies from the Bidder and/or Contractor to conduct inquiries and proceedings of the case and make recommendations to the Competent Authority.
- iv. To recommend to the Competent Authority the time period for the blacklisting and/or debarment;

6. Grounds for Blacklisting and Debarring

a. The Fund may blacklist and/or debar a Bidder individually or collectively as part of consortium **during bidding process**, on the grounds including, but not limited to the following:

- i. Conviction of fraud, corruption, criminal misappropriation, misrepresentation, theft, forgery, bribery or any other criminal offence at any time before or during the bidding;
- ii. Indulgence in corrupt, fraudulent, collusive and/or coercive practices while obtaining or attempting to obtain a contract;
- iii. Declaration of the final decision by a court or tribunal of competent jurisdiction that the Bidder and/or Contractor is guilty of tax evasion, default or has been convicted of any crime or civil wrong;
- iv. Failure to disclose blacklisting or debarment by any Government office or Public Procurement Regulatory Authority or any Organization;
- v. Unauthorized use of one's name or using the name of another for the purpose of bidding;
- vi. Any attempt by the Bidder to unduly influence the outcome of the bidding in its favor or to act in a manner detrimental to the public interest or good practices;
- vii. If the Bidder and/or Contractor is at any point identified to be involved in money laundering or financial terrorism, they shall be blacklisted immediately;

- viii. Obstructing the access of Third-Party evaluators authorized by the Fund by either threatening or physically obstructing;
 - ix. All other acts that tend to defeat the purpose of competitive bidding.
- b. The Fund may blacklist and/or debar a Contractor individually or collectively as part of consortium **during the execution of contract**, on the grounds including, but not limited to the following:
- i. If any of the instances mentioned above in clause 6 (a) are discovered during the contract implementation stage;
 - ii. Failure to remedy a breach or violation of a contract, and/or consistent breach or violation as identified by the Fund;
 - iii. Making a gross misrepresentation at the time of executing a contract or continuing to make a gross misrepresentation when performing the contract;
 - iv. Willful failure or refusal to perform in accordance with the term/s of the contract, including but not limited to following:
 - Signing of the contract;
 - Acceptance of purchase / service order terms;
 - Execution of work in accordance with the schedule of requirements detailed in the bidding document;
 - Submission of a Bank Guarantee as per terms, if any;
 - Execution of the contract as per TORs/Scope of work or specification agreed;
 - Consistent failure or unsatisfactory performance of the obligations under a contract;
 - Failure of a Contractor to provide goods/ services for which it has received payment from the Fund;
 - Obstructing the access of Third-Party Monitor authorized by the Fund by either threatening or physically obstructing a monitor;
 - Any other non-compliance of obligations important for execution / compliance of contract.

7. Procedure for Blacklisting or Debarring the Bidder during the Bidding Stage

A Bidder shall be blacklisted or debarred in accordance with the procedure stated in Annexure-1 of the Policy.

8. Procedure for Blacklisting or Debarring the Contractor during the Contract Execution Stage

Upon establishing the grounds, the procedure in Annexure-1 of the Policy, the Inquiry Committee shall inform the Competent Authority who will blacklist and/or debar the Contractor for a specified time or suspend and terminate all existing contracts with the Contractor.

9. Composition of Inquiry Committee

The Competent Authority shall set up an Inquiry Committee for performing its responsibilities under clause 5(d) comprising of three members who shall reach a decision using a rule of simple majority.

10. Compensation for the Costs Incurred

The Bidder and/or Contractor shall not be entitled for any compensation on account of costs already incurred by him, whether on the instructions of the Fund or otherwise.

11. Period for Blacklisting or Debarring

The period for blacklisting or debarring shall be approved by the Competent Authority based upon the recommendations of the Inquiry Committee. In case a Bidder and/or Contractor lodge a written complaint shall be brought to the next forum which is sub-committee of the Board, the “Programme Design and Procurement Committee (PDPC)” for redressal and grievance against the blacklisting or debarring.

12. Delisting the Bidders or Contractors

A blacklisted or debarred Bidder and/or Contractor shall be automatically delisted after lapse of the period for the blacklisting or debarment.

13. Maintenance of the list of Blacklisted Bidders or Contractors

The Fund shall maintain a list of blacklisted or debarred Bidder and/or Contractor and shall publicize the list on its website. The list shall be continually updated by the inclusion of new blacklisted Bidder and/or Contractor and exclusion of Bidder and/or Contractor whose time period has been lapsed.

14. Effective Date:

These Guidelines or any amendments thereof, shall take effect immediately after its approval from the Fund’s Board of Directors.

Annexure-1 Procedure for Blacklisting or Debarring of Bidders

1. Initiation of Action

- i. Any observer may initiate the blacklisting or debarring proceedings with the Fund by using any mode of communication as they may deem appropriate.
- ii. The Fund may also by itself commence the proceedings upon prima facie (self-sufficient) determination that the Bidder and/or Contractor has committed any of the grounds for blacklisting or debarring during the competitive bidding process and during the contract implementation stage.
- iii. Inquiry Committee formed by the Competent Authority shall proceed to take further actions in connection with blacklisting or debarring.

2. Notification to Bidder and/or Contractor

Upon verification of the existence of grounds for debarring or blacklisting, the Inquiry Committee shall immediately notify the Bidder and/or Contractor concerned, through a show cause notice in writing, advising Bidder and/or Contractor that:

- i. A complaint for blacklisting or debarring has been filed against them;
- ii. They have the opportunity to defend their case that they shall not be blacklisted or debarred;
- iii. The consequences of backlisting or debarring, including the maximum period for which the Fund proposes to blacklist or debar from participating in the public procurement of the Fund;
- iv. The consequences may also include debarring or blacklisting the Bidder and/or Contractor from participating in public procurements of all the procuring agencies;
- v. The Fund shall give at least ten (10) days to the Bidder and/or Contractor for submission of written reply to the show cause notice;
- vi. Where a complaint is received against a Contractor and Fund decides to commence inquiry which may lead to debarment or blacklisting, all payments due to the contractor shall be suspended till the completion of the investigation and the decision. The contract(s) shall, however, continue to be in force and the obligations under the contract(s) shall not be suspended.
- vii. The Fund shall ensure receipt of the said notice by the concerned Bidder and/or Contractor through email or registered mail, courier mail, immediately from the date of its issuance.

3. Submission of Written Response

- i. Within ten (10) days from receipt of notification, the Bidder and/or Contractor shall submit its written reply with documentary evidence, if any, to the Inquiry Committee. The Inquiry Committee may decide to file the matter or direct issuance of a notice to the Bidder and/or Contractor for personal hearing within Five (5) days upon receiving the written response.
- ii. In case, the Bidder and/or Contractor fails to submit written reply within the requisite time, the Fund may issue notice for personal hearing to the Bidder and/or Contractor/ Authorized Representative of the Bidder and/or Contractor and the Inquiry Committee shall decide the matter on the basis of available evidence/record and personal hearing, if availed.
- iii. Members of Inquiry Committee shall make recommendations, based on the complaint received which shall state all the facts and instances and basis for reaching the resolution to the Competent Authority for taking the final decision.
- iv. If a Bidder and/or Contractor provides the documentary evidence without request for hearing, the Inquiry Committee shall consider the documentary evidence and forward their recommendations to Competent Authority for further consideration.

4. Appearance before Inquiry Committee

- i. Inquiry Committee shall hear the Bidder and/or Contractor and make a determination of the case based on the complaint, personal hearing of the Bidder and/or Contractor, if availed, documentary evidence submitted and facts verified.
- ii. The Inquiry Committee shall forward the recommendations to Competent Authority for further considerations while taking the final decision.
- iii. The assessment shall be concluded within fifteen (15) days from the date of personal hearing unless it is adjourned to a next date and in such case, the period for the conclusion of assessment shall be considered from the last date of personal hearing.
- iv. In case the Bidder and/or Contractor does not show up or refuses to present its case to the Inquiry Committee, despite timely serving of notice of personal appearing, the hearing shall proceed ex-parte without the Bidder and/or Contractor.

5. Recommendations to Competent Authority

- i. If the Inquiry Committee determines that such reasonable cause exists, it shall issue recommendations to Competent Authority regarding the debarring or blacklisting of the Bidder and/or Contractor or notify the Competent Authority of its finding that no reasonable cause exists against the Bidder and/or Contractor.
- ii. In case a Bidder and/or Contractor commits more than one offense or a combination of offenses for the same project or contract, each violation shall be considered for the corresponding penalty.

6. Final Decision by the Competent Authority

- i. Inquiry Committee shall recommend the decision, along with the basis for conclusion to the Competent Authority.
- ii. The decision shall clearly and distinctly state the facts, evidence and the instructions issued by the Fund on which it is based, as well as the date of affectivity.
- iii. For every decision reached, the Fund shall record reasons of blacklisting or debarring and the period specified in the decision.
- iv. In case the funds suffer any loss due to the blacklisting or debarring, the Fund reserves the right to take recourse against the Bidder and/or Contractor.
- v. The Competent Authority shall inform the PDPC about all the decisions that it takes against the Bidder and/or Contractor.

7. Communication of Decision to Bidder and/or Contractor

- i. The Fund shall communicate to the Bidder and/or Contractor the final decision of the Competent Authority, with a statement that the Bidder and/or Contractor may within ten (10) days lodge a written complaint to Program Design and Procurement Committee, in case they have any grievance against the decision, in accordance with the clause (9) of this Annexure.
- ii. The Fund shall ensure receipt the copy of decision by the blacklisted or debarred Bidder and/or Contractor, through email or registered mail or courier mail, immediately from its promulgation.

8. Effect of Decision

- i. A Bidder and/or Contractor is blacklisted or debarred upon receipt of the notice of decision prohibiting him from participating in any procurement being undertaken by the Fund.
- ii. The bid security, performance guarantee or any amount due to the Bidder and/or Contractor shall remain confiscated till the conclusion of final decision of the Inquiry Committee and its appeal.
- iii. Once blacklisted or debarred, all the existing contracts with the Contractor shall be terminated.

9. Appeal for Reconsideration

- i. Any Bidder and/or Contractor aggrieved by the decision of the Fund may within ten (10) days, lodge a written complaint against the order of the Fund to the PDPC, who shall examine the decision made by the Fund and grant an opportunity of hearing to the aggrieved Bidder and/or Contractor in order and determine the matter finally within a period of thirty (30) days.
- ii. A copy of the final decision of the PDPC shall be furnished to the Bidder and/or Contractor immediately after its issuance.

Annexure-2 Consolidated Timelines

Sr. No	Description	No. of Calendar Days
1	Start the Inquiry/Investigation & Notification to Bidder and/or Contractor	0 days
2	Submission of Written Response by Bidder and/or Contractor & Call for Hearing by Inquiry Committee	10 + 5 Days
3	Conclusion of Investigation by Inquiry Committee	15 Days
4	Recommendations by Inquiry Committee to Competent Authority & Final Decision	
5	Communication of Decision to Bidder and/or Contractor by PSDF	
6	Appeal for Reconsideration by Aggrieved Bidder and/or Contractor	10 Days
7	Reconsideration & Decision by Program Design & Procurement Committee	30 Days