

GUIDELINES FOR HOLIDAY LISTING (BANNING OF BUSINESS DEALING)

1. Introduction :

- 1.1. Works and procurement contracts have become a major activity for corporation in current times. In course of such contracting the corporation deals with various Agencies viz. vendors/ parties/ contractors/ suppliers/ consultants/ licensors/ bidders. These entities are expected to adopt ethics of highest standards and a very high degree of integrity, safety, quality, commitments and sincerity towards the work undertaken. However, in few occasions the terms are found to be infringed and deviations from expected behavior are observed. It is not in the interest of the Corporation to deal with Agencies who commit deception, fraud or other misconduct in the tendering and execution process.
- 1.2. Banning of business dealings with the Agency involves civil consequences for the “Agency” concerned. Hence, the same requires adherence to the Principles of Natural Justice. Therefore, it is incumbent that adequate opportunity of hearing is provided and the explanation, if tendered, is considered before passing any order in this regard keeping in view the facts and circumstances of the case. Banning of business dealings/Black listing/Holiday listing would mean same and the term Holiday Listing (Banning of business dealings) shall be used hereinafter in this document.

2. Scope:

- 2.1. The information for Bidders/ Instruction to Bidders and even the General Terms & Conditions of Contract (GTC) generally provide that HPCL shall have the rights to remove an agency from list of approved suppliers / contractors or to ban business dealings if any Agency has been found to have committed misconduct or fraud or poor performance or anything unethical not expected from a reputed supplier / contractor.
- 2.2. The procedure of (i) Suspension (ii) Holiday listing (Banning of business dealing) of Agencies, has been laid down in these guidelines.
- 2.3. These guidelines ***shall be applicable across HPCL and shall form part of all the tenders. The same is part of Procurement Manual and are displayed on HPCL website as “Guidelines for Holiday listing (Banning of business dealing)”. The GTC (General Terms and conditions) has a clause exclusively stating that the Guidelines for Holiday listing (Banning of business dealing) as adopted and available on HPCL website shall be applicable to all tenders floated and all Purchase orders / contracts placed by HPCL.***
- 2.4. It is clarified that these guidelines do not deal with such decisions of management of HPCL or its **Procurement authorities**, taken from time to time, as not to have any form of business dealings based on past performance of the contractors/ Agencies or for any other reasons to be recorded in writing by the appropriate authority with out in any way formally suspending or banning the agency. Such decisions would be only on case to case basis and not to be followed as a general rule.
- 2.5. The banning shall be with prospective effect, i.e. for future business dealings.

3. Definitions:

In these guidelines, unless the context otherwise requires:

- i. **“Agency”**: “Vendor / Party / Contractor / Supplier / Consultant / Bidder / Licensor” shall mean and include a public limited company or a private limited company, a joint venture, consortium, HUF, a firm whether registered or not, an individual, cooperative society or an association or a group of persons engaged in any commerce, trade, industry etc. “Vendor / Party / Contractor / Supplier / Consultant / Bidder / Licensor” in the context of these guidelines is indicated as ‘Agency’.
- ii. **“Allied Firm”**: All concerns which come within the sphere of effective influence of banned / suspended firm shall be treated as allied firms. In determining this, the following factors may be taken into consideration:
 - a. Whether the management is common;
 - b. Majority interest in the management is held by the partners or directors of banned / suspended firm.
 - c. Substantial or majority shares are owned by banned / suspended firm and by virtue of this it has a controlling voice.
- iii. **“Holiday Listing (Banning of Business dealing)”** shall mean officially debarring or forbidding an Agency from participating as Vendor/Supplier with HPCL, for its requirement related to procurement.
- iv. **“Appellate Authority”** *shall be the respective Executive Committee for less than three years of Holiday listing (Banning of business dealing) and CFD for more than three years.* The Appellate authority shall be higher than the “Competent Authority”.
- v. **“Competent Authority”** shall mean the authority, who is competent to take final decision for:
 - a. Suspension of business dealings with a firm/ party pending investigation / examination.
 - b. **Holiday listing (Banning of business dealing)** of firms / parties.
 - c. Debarment for indefinite period

And shall be the respective, Contracts Committee (CC) for holiday listing (Banning of business dealing) upto three years and Executive Committee (EC) for more than three years. Competent authority to pass order for suspension of business with an ‘Agency’ pending investigation shall be respective CC.
- vi. **“EIC”**: Engineer in charge / Designated in-charge shall mean the person(s) designated to act for and on behalf of the Corporation for the execution of the work as per requirement of the user department.
- vii. **“Firm”**: The term used in this ‘Policy includes individual or persons, a company a co-operative society, a Hindu Undivided Family and an association and body of persons whether incorporated or not, engaged in trade and business.
- viii. **“Interconnected Agency”** shall mean two or more companies having any of the following features:

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- a. If one is a subsidiary of other;
 - b. if the Director(s), Partner(s) or Representative(s) are common;
 - c. if management is common;
 - d. if one owns or controls the other in any manner.
- ix. **“Investigating Agency”** shall mean any department or Unit of HPCL investigating into the conduct of Firm / Party / PSE and shall include the Vigilance Department of the Corporation, Central Bureau of Investigation, State Police or any other agency set up by the central or state government having powers to investigate.
- x. **“Moral Turpitude”** means to be a conduct contrary to justice, honesty, modesty or good morals and contrary to what a man owes to a fellowman or to society in general.
- xi. **“Proprietor”** shall include Director of a private limited company, members of Hindu undivided family, a member of an association of persons and a director of a Public limited company.
- xii. **“Affiliate” of a Party shall mean any company or legal entity which:**
a. ***controls either directly or indirectly a Party (including any Foreign Entity), or***
b. ***which is controlled directly or indirectly by a Party; or***
c. ***is directly or indirectly controlled by a company, legal entity or partnership which directly or indirectly controls a Party. “Control” means actual control or ownership of at least a 50% voting or other controlling interest that gives the power to direct, or cause the direction of, the management and material business decisions of the controlled entity.***
d. ***‘Foreign entity’ means a body corporate incorporated outside India.***
- xiii. **Corporation: “Corporation” means Hindustan Petroleum Corporation Ltd with its registered office as 17, J Tata Road, Mumbai -400020**

4. Initiation of Suspension of business dealings:

Action for Suspension/Holiday listing (banning of business dealing) of any Agency shall be initiated on notice of the irregularities or misconduct on the part of Agency concerned by the EIC or the designated in-charge or the department responsible for invitation of bids.

Vigilance Department based on the facts of the case gathered during investigation may recommend appropriate action against the agency as per the banning policy. ***Proposal for Suspension/Holiday Listing (banning of business dealing) of any Agency shall be submitted to the concerned CC.***

5. Suspension of business dealings:

5.1. Suspension of business with an agency may be ordered by the competent authority of the Corporation pending full enquiry in to the allegations, if it is considered not desirable to continue business with the firm. Such an order may be passed:

- i. If CBI or any other investigating agency recommends such a course along with credible evidence in respect of a case under investigation and;
- ii. If a prima-facie case is made out that the firm is guilty of criminal negligence or an offence involving moral turpitude in relation to business dealing, which if established, may result in business dealing with it being banned.

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The order of suspension would operate for a period not more than six months and is to be communicated to the “Agency” as also to the investigating agency. The Competent Authority may extend the period of suspension by another three months pending completion of investigation.

5.2. *Based on CC decision the secretary of CC shall issue the order of suspension and show cause notice to the Agency and the same shall be communicated to the Nodal Department which in turn will block the code in the system.* During this period of suspension, no new business dealing may be held with the “Agency”.

5.3. The existing contract(s) with the Agency may continue unless the “Competent Authority”, having regard to the circumstances of the case, decides otherwise.

5.4. It is necessary to give a show-cause notice to the Agency along with the order for suspension, unless it is not expedient in the public interest to do so. The Agency has to be allowed to submit its written defense to the show-cause notice within 15 days. *Competent Authority* has to take the decision within thirty days of receipt of written defense.

5.5. Period of suspension shall be accounted for in the final order passed for Holiday listing (Banning business dealing) with the “Agency”.

6. Grounds on which holiday listing (banning of business dealings) of Agencies can be initiated:

Some of the eventualities on occurrence of which the firms can be Holiday listed (Banned for business dealing) are indicated below. The list is suggestive and is not exhaustive. The Competent Authority may decide to ban business dealing for any good and sufficient reason:

6.1. If the security consideration, including questions of loyalty of the Agency to the State, so warrants.

6.2. If the Director / owner of the Agency, proprietor or partner of the firm, is convicted by a Court of Law under normal process of law for offences involving moral turpitude in relation to its business dealings during the last five years.

6.3. If there is strong justification for believing that the Directors, Proprietors, Partners, employee(s), representative(s) or owner of the Agency have been either jointly or severally held guilty of malpractices such as bribery, corruption, fraud including submission of fake, false or forged documents / certificates, pilferage, substitution of tenders, bid rigging / price rigging, interpolations, substitution of materials in lieu of materials supplied by HPCL or other violations including misrepresentation of facts.

6.4. If the agency is bankrupt or insolvent or being dissolved or has resolved to be wound up or proceedings for winding up or dissolution have been instituted.

6.5. If the agency has deliberately violated and circumvented the provisions of Labour laws / regulations / rules, safety norms or other statutory requirements.

6.6. If a communication has been received from the MOP&NG to ban the agency from dealing with the Corporation, the party should be automatically put in the banned list.

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- 6.7. If the agency has parted with, leaked or provided confidential proprietary information of the Corporation given to the agency only for their use (in discharge of their obligations against an order) to any third party without prior consent of the Corporation.
- 6.8. If the agency uses intimidation / threatening or brings undue outside pressure on the Corporation or its official/s in acceptance /performances of the job under the contract.
- 6.9. Based on the findings of the investigation report of any investigative agency, Government audit, any law enforcement agency or government regulator against the Agency for malafide / unlawful acts or improper conduct on their part in matters relating to the Corporation or even otherwise.
- 6.10. Poor performance of the Agency in one or several contracts.
- 6.11. If the Agency violates the conditions of tender / contract or vitiates the tender process.
- 6.12. ***If the agency, in the context of its dealings with the Corporation has:***
- i. ***Substituted materials in lieu of materials supplied by the corporation or has not returned or has unauthorizedly disposed of materials/ documents/ drawings/ tools or plants or equipments supplied by the corporation without prior permission of the corporation.***
 - ii. ***Deliberately indulged in construction and erection of defective works or supply of defective materials***
 - iii. ***Committed breach of contract or has abandoned the contract***
 - iv. ***Not honoured the LOI/ LOA/ Contract/ Purchase order after the same is issued by the Corporation.***
 - v. ***Withdraws / revises the bid upwards after becoming L1.***
- 6.13. Any other ground including transgression of Integrity Pact of which, in the opinion of the Corporation makes it undesirable to deal with the party. ***In case of transgression of Integrity Pact, the same should be substantiated by the verdict of the Independent External Monitor/s.***

7. Holiday listing (Banning of Business dealings):

Vendor Management cell of CPO will be the Nodal department for maintaining, updating and publishing the list of Agencies with whom HPCL has decided to Holiday list(Banning of business dealing).

- 7.1. When culpability of an agency is detected during the course of a Vigilance investigation or otherwise and there is adequate ground to believe that the continuance of business dealings with the agency is not in the best interest of the Corporation, CVO may bring the matter to the notice of concerned Director of the Corporation, where upon banning proceedings may be initiated as detailed under Section 5 to 8. A ***Functional*** Director or C&MD may also direct for such an exercise without any reference from Vigilance or other investigating agencies suo-moto.

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- 7.2. In case, any external investigating agency has recommended the banning of the business with a supplier, its role comes to an end with the recommendation and HPCL shall undertake further proceedings through its own officers.
- 7.3. EIC or the designated in-charge or concerned procurement department ***either independently or collectively having been*** satisfied that prima facie the case is fit for banning, shall submit the proposal along with draft show cause notice and all relevant papers and documents to the ***respective Contracts Committee (CC)***. ***The proposal shall state a brief background of the case, the action proposed and all the supporting documents, including a note from EIC or the designated in-charge or the department responsible for invitation of bids. The proceedings would start with this proposal for initiating the action against the Agency.***
8. **Show – Cause Notice:**
Proceedings for Holiday Listing (Banning of business dealing) shall be initiated against an Agency when a prima facie case for banning business dealing comes up under the circumstances mentioned in clause 6. Before taking a decision, a fair opportunity of hearing the party should be given by means of a show cause notice.
- 8.1. On preliminary examination of the proposal if the **CC** is of the opinion that the action is to be initiated against the Agency, a fair opportunity of hearing the party shall be given by means of a Show Cause notice. The show cause notice shall indicate clearly and precisely the charges / misconduct which should be based on facts as can be proved as distinct from mere allegations. ***Secretary CC will issue the Show cause notice to the Agency with an intimation to Nodal department along with copy of showcause notice / suspension order. If the show cause notice includes suspension order then the nodal department will update in the system accordingly.*** Statement containing the imputation of misconduct or misbehavior may be appended to the show cause notice and the “Agency” shall be asked to submit within 15 days a written statement in its defence. A proforma of Show Cause notice (Attachment I) is attached.
- 8.2. If the ‘Agency’ requests for inspection of any relevant document in possession of the Corporation, necessary facility for inspection of documents may be provided.
- 8.3. If no reply is received from the “Agency” within the specified period, the decision may be taken ex-parte.
- 8.4. The Competent Authority will pass an appropriate speaking order after examining the materials on record. ***If CC decides it to be Holiday listed (Banning of business dealing) upto three years then it issues the verdict or if it decides that the agency is to be Holiday listed (Banning of business dealing) for more than three years, then the case is put up to EC.*** The Competent authority can also take assistance from Officers of the Corporation, such as Legal and other Departments. ***The Competent authority shall act in a quasi-judicial capacity and will work independently.***
- 8.5. If it decides to ban business dealings, the period for which the ban would be operative shall be mentioned in the banning order. The order may also specify the names of proprietors, all partners, directors etc of the “Agency”. The order may be extended to its Allied / ***Interconnected / Affiliate*** concerns, as defined at 3(ii)/3(vii)/3(xi), if there are instances of recurrence of lapses from the same group.

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8.6. The decision regarding suspension/Holiday listing (Banning of business dealing) should be communicated by the **Secretary of the concerned CC/ EC** to the “Agency” concerned **with a copy to Nodal department to update the system.** A proforma for intimation of banning order to party is attached (Attachment-II) .

8.7. The banning process should be completed within six months period from the initiation of the case by concerned EIC/ department responsible for invitation of bids.

9. Effect of *Holiday listing (Banning of Business dealing)*:

Effect of suspension will be same as that of Holiday listing (Banning of business dealing) with an Agency.

9.1. No enquiry / bid / tender shall be entertained with a party as long as the “Agency’s”

9.2. name appears in the Banning List i.e. Holiday list.

9.3. If an “Agency” is put on the Banning List during tendering:

9.3.1. If an “Agency” is put on banning list after issue of the enquiry / bid / tender but before opening Technical bids, the bid submitted by the “Agency” shall be returned to the “Agency”/ **will be rejected in case of e-tendering thru E-Proc with approval from purchase authority.** Bank Guarantee (BG) / Earnest Money Deposit (EMD) if submitted shall also be returned.

9.3.2. If an “Agency” is put on banning list after opening technical bid but before opening the price bid, the price bid of the “Agency” shall not be opened **in E- Proc and unopened price bid in case of physical tendering shall be returned with approval from purchase authority.** BG / EMD if submitted shall also be returned to the ‘Agency’.

9.3.3. In case an “Agency” is put on banning list after opening of price bid, BG/EMD made by the “Agency” shall be returned; the offer of the “Agency” shall be ignored & will not be further evaluated. The “Agency” will not be considered for issue of order even if the “Agency” is the lowest (L1). In such situation next lowest shall be considered as L1.

9.4. If contract with the “Agency” concerned is in operation (**including cases where purchase order has been already awarded before decision of banning**), normally order for banning business dealings cannot affect that contract because contract is a legal document and unless the same is terminated in terms of the contract, unilateral termination will amount to breach and will have civil consequences.

9.5. Tenders invited for purchase of Goods and Services for both International Competitive Bidding (ICB) and Indigenous basis should have the provision that the bidder should submit a declaration to the effect that neither the bidder themselves nor any of their directors or proprietors involved in any capacity, or any of its subsidiary, affiliate, sister concern or any other agency over which the bidder has substantial control are currently serving any banning orders issued by the Corporation or MOP&NG debarring them from carrying on business dealings with the Corporation / MOP&NG. Offers not accompanied with a declaration may be incorporated in rejection criteria. **Any wrong declaration in**

this context shall make the Agency liable for holiday listing(banning of business dealing) procedure.

10. Appeal against the Decision of the Competent Authority:

- 10.1. The “Agency” may file an appeal against the order of the “Competent Authority” Holiday listing (Banning business dealing)etc. The appeal shall be filed to “Appellate Authority”. Such an appeal shall be preferred within one month from the date of receipt of the order banning business dealing, etc.
- 10.2. After examining the facts of the case, the Appellate Authority may pass appropriate order which shall be communicated through the concerned **secretary of the Appellate Authority** to the Agency, the “Competent Authority” **and Nodal department for consequential changes in the system.**
- 10.3. Appeal process may be completed within 45 days from the date of receipt of Appeal by the “Appellate Authority”.
- 10.4. ***No Appeal is permitted in case an Agency is Holiday Listed (Banning of business dealing) based on Ministry’s advice.***

11. Duration of Banning :

Ordinarily the period for which an Agency is banned should not be less than **six** months and should not exceed 3 years. However in extraordinary circumstances the period can be more than 3 years.

12. Circulation of the names of Agencies with whom Business Dealings have been banned :

- 12.1. The name(s) and details of the Agency(ies) banned shall be updated in the system.
- 12.2. Banning by any sister PSE will not automatically extend to HPCL unless MOP&NG advises for the same after undertaking appropriate due diligence and process.

13. Revocation:

- 13.1. An order for banning / suspension passed for a certain specified period shall deemed to have been automatically revoked on expiry of that specified period provided no new evidence for continuation of revocation” is taken on record and suspension period is extended and it will not be necessary to issue a specific formal order of revocation, except that an order of suspension / banning passed on account of doubtful loyalty or security consideration shall continue to remain in force until specifically revoked.

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- 13.2. In banning cases, where the proprietor of the firm, its employee, partner or representative is convicted by a court of law for offences involving moral turpitude in relation to business dealings, may be revoked if in respect of the same facts, accused has been wholly exonerated by court of Law.
- 13.3. A banning / suspension order may, on a review 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.

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Annexure - I

(Proforma of Show Cause Notice)

BY REGD. POST/SPEEDPOST/COURIER

No.

Date

To

M/s.. ..

Attn: Shri.....

Sub; Show Cause Notice

Ref; (Name of Job)

Dear Sir,

You are hereby required to show cause in writing within 15 days from the date hereof why there should not be banning of Business with you and you be debarred from entering into any contracts with XYZ Ltd 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 be 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 take into consideration prior to arriving at a decision.

Yours faithfully,

For & On behalf of XYZ Corporation

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Annexure-II

(Proforma for intimation of Banning Order to the Party)

BY REGD. POST/SPEEDPOST/COURIER

No.

Date

To,

M/s.....

Attn: Shri.....

Sub : Intimation of Banning of Business dealings.

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 rebutt the reply furnished by agency allegationwise)

After considering the a/legations 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 and * you will be

debarred from entering into any contracts with XYZ/Corporation/* for from the date hereof.

**ANNEXURE 6: GUIDELINES FOR
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* Strike out if not applicable