

Section – X

**INTEGRITY PACT**

**Between**

**Deendayal Port Authority (DPA) hereinafter referred to as "The Principal"**

**and**

..... (Name of The bidders and consortium members)  
hereinafter referred to as **"The Bidder / Contractor"**

**Preamble**

The Principal intends to award, under laid down organizational procedures, contract(s) / concession(s) for Tender No. .... The Principal values full compliance with all relevant laws of the land rules, regulations, economic use of resources and of fairness / transparency in its relations with its Bidder(s) and / or Contractor(s).

In order to achieve these goals, the Principal will appoint Independent External Monitors (IEMs), who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

**Section 1 - Commitments of the Principal**

- (1) The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles:-
  - (a) No employee of the Principal, personally or through family members, will in connection with the tender for, or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
  - (b) The Principal will, during the tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential / additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.
  - (c) The Principal will exclude from the process all known prejudicial persons.
- (2) If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the IPC / PC Act, or if there be a substantive suspicion in this regard, the Principal will inform the Chief Vigilance Officer and in addition can initiate disciplinary actions.



## Section 2 - Commitments of the Bidder(s) / Contractor(s)

(1) The Bidder(s) / Contractor(s) commits themselves to take all measures necessary to prevent corruption. The Bidder(s) / Contractor(s) commits themselves to observe the following principles during participation in the tender process and during the contract execution.

- a. The Bidder(s) / Contractor(s) will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in tender process or the execution of the contract or to any third person any material or other benefit, which he / she is not legally entitled to, in order to obtain in exchange of advantage of any kind whatsoever during the tender process or during the execution of the contract.
- b. The Bidder(s) / Contractor(s) will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids, or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.
- c. The Bidder(s) / Contractor(s) will not commit any offence, under the relevant Prevention of Corruption Act / Indian Penal Code / PC Act; further the Bidder(s) / Contractor(s) will not use improperly, for purposes of competition, or personal gain, or pass on to others, any information or document provided by the Principal, as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
- d. The Bidder(s) / Contractor(s) of foreign origin shall disclose the name and address of the Agents / Representatives in India, if any. Similarly, the Bidder(s) / Contractor(s) of Indian Nationality shall furnish the name and address of the foreign principals, if any. Further details as mentioned in the "Guidelines on Indian Agents of Foreign Suppliers" shall be disclosed by the Bidder(s) / Contractor(s). Further, as mentioned in the Guidelines all the payments made to Indian agent / representative have to be in Indian Rupees only. Copy of the "Guidelines on Indian Agents of Foreign Suppliers" is placed at (page Nos. 7-20)
- e. The Bidder(s) / Contractor(s) will, when presenting their bid, disclose any and all payments made, is committed to or intends to make to agents, brokers or any other intermediaries, in connection with the award of the contract.
- f. Bidder(s) / Contractor(s) who have signed the Integrity Pact shall not approach the Courts while representing the matter to IEMs and shall wait for their decision in the matter.

(2) The Bidder(s) / Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.





### **Section 3 - Disqualification from tender process and exclusion from future contracts.**

If the Bidder(s) / Contractor(s), before award or during execution has committed a transgression through a violation of Section-2 above, or in any other form, such as to put their reliability or credibility in question, the Principal is entitled to disqualify the Bidder (s) / Contractor(s), from the tender process, or take action as per the procedure mentioned in the "Guidelines on Banning of business dealings". Copy of the "Guidelines on Banning of business dealings" is placed at (Page No. 7-20).

### **Section 4 - Compensation for Damages**

- (1) If the Principal has disqualified the Bidder(s), from the tender process prior to the award, according to Section 3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposit / Bid Security.
- (2) If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to Section 3, the Principal shall be entitled to demand and recover from the Contractor, liquidated damages of the Contract Value or the amount equivalent to Security Deposit / Performance Bank Guarantee, whichever is higher.
- (3) The Bidder(s) agrees and undertakes to pay the said amounts, without protest or demur, subject only to condition that, if the Bidder(s) / Contractor(s) can prove and establish that the termination of the contract, after the contract award has caused no damage or less damage than the amount of the liquidated damages, the Bidder/Contractor shall compensate the principal, only to the extent of the damage in the amount proved.

### **Section 5 - Previous transgression**

- (1) The Bidder declares that, no previous transgressions occurred in the last three years with any other company in any country confirming to the anti-corruption approach or with any other Public Sector Enterprises in India, that could justify his exclusion from the tender process.
- (2) If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or action can be taken as per the procedure mentioned in "Guidelines on Banning of Business dealing".

### **Section 6 - Equal treatment of all Bidders / Contractors**

- (1) In case of a Joint Venture, all the partners of the Joint Venture will enter into agreement with identical conditions as this on which all Bidders.

- (2) There is no provision of sub-contract in the tender, any violation of the same, Contractor shall be held solely responsible for the same.

### **Section 7 - Criminal charges against violating Bidders / Contractors**

If the principal obtains knowledge of conduct of a Bidder or Contractor or of an employee, or a representative, or an associate of a Bidder or Contractor, which constitutes corruption, or if the Principal has substantive suspicion, in this regard, the Principal will inform the same to the Chief Vigilance Officer (CVO) and the CVO will take further necessary action as deemed fit in accordance with the CVC Manual.

### **Section 8 - External Independent Monitor**

- (1) The Principal appoints competent and credible Independent External Monitor for this Pact after approval by Central Vigilance Commission. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
- (2) The Monitor is not subject to instructions by the representative of the parties and performs his / her functions neutrally and independently. The Monitor would have access to all Contact documents, whenever required. It will be obligatory for him / her to treat the information and documents of the Bidders / Contractors as confidential. He / she reports to the Chairperson of the Board of the Principal.
- (3) The Bidder(s) / Contractor(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the Principal including that provided by the Contractor. The Bidder / Contractor will also grant the Monitor, upon his / her request and demonstration of a valid interest, unrestricted and unconditional access to the project documentation. The Monitor is under contractual obligation, to treat the information and documents of the Bidder / Contractor with confidentiality.
- (4) The Monitor is under contractual obligation to treat the information and documents of the Bidder(s) / Contractor(s) with confidentiality. The Monitor has also signed declaration on "Non-Disclosure of Confidential Information" and of "Absence of Conflict of Interest". In case of any conflict of interest arising at a later date, the IEM shall inform Chairman, DPA and recues himself / herself from that case
- (5) The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Bidder / Contactor. The parties offer to the Monitor the option to participate in such meetings.
- (6) As soon as the Monitor notices, or believes to notice, a violation of this agreement, he / she will so inform the Management of the Principal and request the



management to discontinue, or take corrective action. The Monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.

(7) The Monitor will submit a written report to the Chairperson of the Board of the Principal, within 8 to 10 weeks from the date of reference or intimation to him by the Principal and, should the occasion arise, submit proposals for correcting problematic situations.

(8) If the Monitor has reported to the Chairperson of the Board of the Principal, a substantiated suspicion of an offence under relevant IPC / PC Act and the Chairperson of the Board of the Principal has not, within reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner, Government of India.

(9) The word "**Monitor**" would include both singular and plural.

#### **Section 9 - Pact Duration**

This Pact begins when both parties have legally signed it. It expires for the Contractor 12 months after the last payment under the contract, and for all other Bidders 6 months after the contract has been awarded. Any violation of the same would entail disqualification of the bidder and exclusion from future business dealings.

If any claim is made / lodged during this time, the same shall be binding and continue be valid despite the lapse of this Pact as specified above, unless it is discharged / determined Chairperson of the Principal.

The Pact duration in respect of unsuccessful Bidders shall expire after 6 months of the award of the contract.

#### **Section 10 - Other Provisions**

(1) This agreement is subject to Indian Law. Place of performance and jurisdiction is the Registered Office of the Principal, i.e. Gandhidham, Gujarat.

(2) Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.


(3) If the Bidder / Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.

(4) Should one or several provisions of this agreement, turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.



(5) Issues like Warranty / Guarantee etc. shall be outside the purview of IEMs.

(6) In the event of any contradiction between the Integrity Pact and its Annexure, the Clause in the Integrity Pact will prevail.

  
\_\_\_\_\_  
(For & on behalf of the Principal)

\_\_\_\_\_  
(For & on behalf of the  
Bidder/Contractor)

(Office Seal)

(Office Seal)

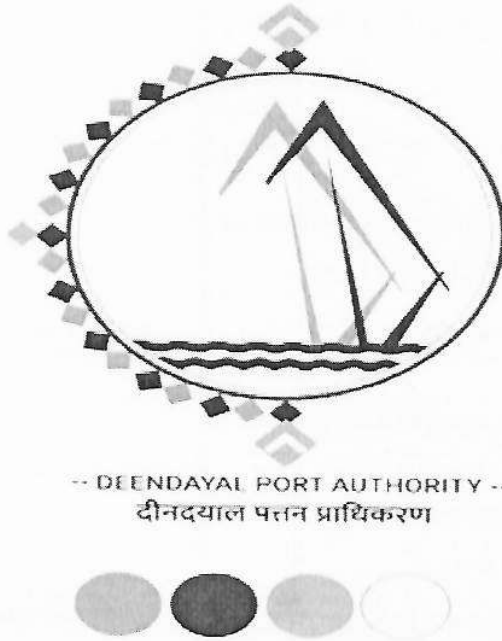
Place : Gandhidham  
Date : \_\_\_\_/\_\_\_\_/2023

Witness-1:  
(Name & Address) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Witness-2 :  
(Name & Address) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# **GUIDELINES ON BANNING OF BUSINESS DEALINGS**

(Effective from 01/01/2023)



## **DEENDAYL PORT AUTHORITY**

(Formerly known as Kandla Port Trust)  
GANDHIDHAM - KUTCH - GUJARAT - 370 201.

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## 1. Introduction

- 1.1 "Board" of Deendayal Port Authority (DPA) constituted by the Central Government in accordance with sub-section (1) of section 3 of the Major Port Authorities Act, 2021, has to ensure preservation of rights enshrined under the above Act. DPA has also to safeguard its commercial interests. DPA is committed to deal with Agencies, who have a very high degree of integrity, commitment and sincerity towards the work undertaken. It is not in the interest of DPA to deal with Agencies who commit deception, fraud or other misconduct while participating in tenders/in the execution of contracts awarded/orders issued to them. In order to ensure compliance with the constitutional mandate, it is incumbent on DPA to observe principles of natural justice before banning the business dealings with any Agency.
- 1.2 Since banning of business dealings involves civil consequences for an Agency concerned, it is incumbent that adequate opportunity for 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.
- 1.3 The objective of these guidelines is to have a common procedure for Banning of Business Dealings with Agencies across the Company.

## 2. Scope

- 2.1 These guidelines are applicable to the sale and procurement of goods & services including contracts / projects across all the Departments and Divisions of DPA.
- 2.2 The General Conditions of Contract (GCC) of DPA provide that DPA reserves the rights to keep on hold participation in tenders or to ban business dealings if any Agency has been found to have committed misconduct and also to suspend business dealings pending investigation. If such provision does not exist in any GCC, the same may be incorporated.
- 2.3 Similarly, in the case of sale of material, there is a clause in Sale Order to deal with the Agencies / customers / buyers, who indulge in lifting of material in unauthorized manner. This should also include all activities including unauthorized selling of the material. If such a stipulation does not exist in any Sale Order, the same may be incorporated.
- 2.4 However, absence of such a clause as mentioned at para 2.2 & 2.3 above does not in any way restrict the right of the Board (DPA) to take action / decision under these guidelines in appropriate cases.
- 2.5 The procedure for (i) Board wide Hold on participation of the Agency in Tenders (ii) Suspension and (iii) Banning of Business Dealings with Agencies, has been laid down in these guidelines.
- 2.6 It is clarified that these guidelines do not deal with the decision of the Management not to entertain any particular Agency due to its poor / inadequate performance or for any other reason.

2.7 The banning shall be with prospective effect, i.e., future business dealings.

### 3. Definitions

In these Guidelines, unless the context otherwise requires:

- i) 'Party / Contractor / Supplier / Purchaser / Customer / Bidder / Tenderer' shall mean and include a public limited company or a private limited company, a firm whether registered or not, an individual, partnership firm, Limited Liability Partnership, a cooperative society or an association or a group of persons engaged in any commerce, trade, industry, etc. Party / Contractor / Supplier / Purchaser / Customer / Bidder / Tenderer' in the context of these guidelines is termed as 'Agency.'
- ii) 'Inter-connected Agency' shall mean two or more companies having any of the following features:
  - a) If one is a subsidiary of the other;
  - b) If the Functional Director(s), Partner(s), Manager(s) or Representative(s) are common;
  - c) If management is common;
  - d) If one owns or controls the other in any manner;
  - e) If the agencies have same authorized signatory (ies)
  - f) If they have the same address/same Permanent Account Number / same Bank Account Number / common email ID.

*Note: This list is only illustrative in nature.*

- iii) 'Competent Authority' and 'Appellate Authority' shall mean the following:

Area of Banning/ Suspension	Competent Authority	1st Appellate Authority	2nd Appellate Authority
Board-wide banning	HoD of the Board	Chairman, DPA	--
Banning / Suspension of business dealings with Foreign supplier of imported coal & coke	HoD's Committee	Chairman, DPA	DPA Board**
Board wide Suspension of business dealings with Agency	Officer nominated by Chairman of Board.  For Department headed by HoDs, the respective HoDs will	Chairman of the Board.  For Departments headed by HoDs, the respective HoDs will be the	--

	nominate the officer for this purpose.*	Appellate Authority.	
Board wide Hold on participation of the Agency in Tenders #	Officer nominated by Chairman of Board.  For Departments headed by HoDs, the respective HoDs will nominate the officer for this purpose.*	Chairman of the Board.  For Departments headed by HoDs, the respective HoDs will be the Appellate Authority.	--

\* For Board – The nominated officer shall be a Direct Reporting Officer (DRO) not below the rank of Head of the Department for “Competent Authority” for the purpose of suspension of business dealings with the Agency as well as for Board wide Hold on participation of the Agency in tenders under these guidelines. For Corporate Office, in case of procurement of items / award of contracts to meet the requirement of Corporate Office only, Head of Department shall be the Competent Authority and HoD concerned shall be the Appellate Authority. The Management of Subsidiary shall define / appoint the “Competent Authority”, Appellate Authority & Standing Banning Committee in their respective cases.

# This provision for Hold on participation of the Agency in tenders shall be applicable only in such case where Standing Banning Committee recommends for keeping on Hold the participation in tenders and which shall be limited to particular Department / Division.

\*\* This would be applicable only in cases of banning of business dealings with Foreign Suppliers of imported coal and coke.

iv) ‘Investigating Department’ shall mean any Department or Division investigating into the conduct of the Agency and shall include the 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.

#### 4. Initiation of Banning/Suspension

Action for banning/suspension of business dealings with any Agency should be initiated by the Concerned Department such as Indenting / Contracting / Executing Departments, etc. having business dealings with Agency or by the department which floated the tender (in case where the tenderer has committed deception, fraud or other misconduct) subsequent to noticing the irregularities or misconduct on their part.



## 5. Suspension of Business Dealings

5.1 If the conduct of any Agency (except Foreign Suppliers of imported coal and coke) dealing with DPA is under investigation by any department of any Department, the Concerned Department may consider whether the allegations under investigations are of serious nature and whether pending investigations, it would be advisable to suspend (temporarily discontinue) business dealings with the Agency. Recommendation in the matter shall be submitted to the Competent Authority for this purpose.

5.2 If the Competent Authority, after consideration of the matter including the recommendation of the Investigating Department, decides that it would not be in the interest of Department of DPA to continue business dealings pending investigation, it may suspend business dealings with the Agency. The Suspension Order to this effect shall be issued by the Head of Concerned Department or by his representative / concerned executive with the approval of the Head of the Concerned Department, indicating a brief of the charges under investigation and the period of suspension. If it is decided that inter-connected Agencies would also come within the ambit of the order of suspension, the same should be specifically stated in the order. Ordinarily, the order of suspension would operate for a period not more than six months and may be communicated to the Agency and also to the Investigating Department.

Further to the suspension, the investigation, recommendation by the Standing Banning Committee (SBC) and final decision by the Competent Authority to be completed within six months from order of suspension.

5.3 The order of suspension of business dealings with the Agency under investigation shall be communicated to all Departmental Heads within the Board. During the period of suspension, no fresh contract will be entered into with the Agency. Suspension would be valid only for the concerned Board.

5.4 As far as possible, the Agency under suspension should be allowed to complete the job of existing contracts, unless the Competent Authority, having regard to the circumstances of the case, decides otherwise. Once the order for suspension is issued, existing offers against ongoing tenders (prior to issuance of contract)/ new offers of the Agency shall not be entertained during the period of suspension.

5.5 For suspension of business dealings with Foreign Suppliers of imported coal & coke, following shall be the procedure :-

- i) Suspension of the foreign suppliers shall apply throughout the Board including Subsidiaries.
- ii) The complaint against any foreign supplier shall be investigated by Board or by any other Investigating Department. If the gravity of the misconduct under investigation is found serious and it is felt that it would not be in the interest of DPA to continue to deal with such Foreign Supplier, pending investigation, the recommendation on such

matter by Investigating Department (including Board) may be sent to Chairman, DPA to place it before a Committee consisting of the following:

1. Head of Finance Department,
2. Head of Department
3. Head of Law / Legal Division

The committee shall expeditiously examine the report; give its comments / recommendations within twenty one days of receipt of the reference by DPA.

- iii) The comments / recommendations of the Committee shall then be placed before DPA Board's Committee. If DPA Board's Committee decides that it is a fit case for suspension, Board's Committee shall pass necessary orders which shall be communicated to the foreign supplier by Head of Department.

5.6 If the Agency concerned asks for detailed reasons of suspension, the Agency may be informed that its conduct is under investigation. It is not necessary to enter into correspondence or argument with the Agency at this stage.

5.7 It is not necessary to give any show-cause notice or personal hearing to the Agency before issuing the order of suspension. However, if investigations are not complete in six months' time, the Competent Authority with approval of Head of the Department may extend the period of suspension by another three months, during which period the investigation must be completed.

#### **6. Grounds on which Banning of Business Dealings can be initiated**

- 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 for offences involving moral turpitude in relation to its business dealings with the Government or any other public sector enterprises or DPA, during the last five years preceding date of tender opening or during execution of contract, provided such information is known to DPA;
- 6.3 If there is strong justification for believing that the Directors, Proprietors, Partners, owner of the Agency have been guilty of malpractices such as bribery, corruption, fraud, substitution of tenders, interpolations, etc. during the last five years preceding date of tender opening or during execution of contract, provided such information is known to DPA;
- 6.4 If the Agency continuously refuses to return / refund the dues of DPA without showing adequate reason and this is not due to any reasonable dispute which would attract proceedings in Arbitration or Court of Law;

- 6.5 If the Agency employs a public servant dismissed / removed or employs a person convicted for an offence involving corruption or abetment of such offence, provided such information is known to DPA;
- 6.6 If business dealings with the Agency have been banned by the Central or State Govt. or any other public sector enterprise at the time of submitting his bid or on the date of tender opening or at the time of placement of order, provided such information is known to DPA;
- 6.7 If the Agency has resorted to Corrupt, fraudulent practices including misrepresentation of facts and / or fudging / forging / tampering of documents; Ω
- 6.8 If the Agency uses intimidation / threatening / misbehaves with DPA Official or brings undue outside pressure or influence on the Board (DPA) or its official in acceptance / performances of the job under the contract;
- 6.9 If the Agency indulges in repeated and / or deliberate use of delay tactics in complying with contractual stipulations / delayed the tendering process;
- 6.10 Willful indulgence by the Agency in supplying sub-standard material irrespective of whether pre-dispatch inspection was carried out by Board (DPA) or not;
- 6.11 Based on the findings of the investigation report of Investigating Department against the Agency for mala-fide / unlawful acts or improper conduct on its part in matters relating to the Board (DPA) or even otherwise;
- 6.12 Established litigant nature of the Agency to derive undue benefit;
- 6.13 Continued poor performance of the Agency in several contracts;
- 6.14 If the Agency misuses the premises or facilities of the Board (DPA), forcefully occupies tampers or damages the Board's properties including land, water resources, forests / trees, etc.
- 6.15 If the Agency resorts to unauthorized sale of materials purchased from the Board.
- 6.16 If the Agency has committed a transgression through violation of any of its commitments under the Integrity Pact entered with DPA.

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

Ω *No experience certificate shall be issued by Engineer in Charge / Executing Authority against the contract to the Agency found to have submitted forged / fabricated documents / indulged in corrupt / fraudulent practices.*



## **7. Banning of Business Dealings.**

- 7.1 A decision to ban business dealings with any Agency by any one of the Departments of DPA will apply throughout the Board including Divisions, i.e., Board-wide banning.
- 7.2 There will be a Standing Banning Committee (SBC) in each Department to be appointed by Competent Authority for processing the cases of "Banning of Business Dealings". However, for procurement of items / award of contracts, to meet the requirement of Board only, the Committee shall be HoD each from Operations, Finance & Law Departments. The proposal of the Concerned Department for initiating action under the Guidelines for Banning of Business Dealings based on their own findings and / or upon receipt of advice of the Investigating Department shall be forwarded through respective Head of Department to the Standing Banning Committee for consideration.
- 7.3 The functions of the Standing Banning Committee shall, inter-alia include:
  - i) To examine in detail the allegations / irregularities / misconduct mentioned in the proposal for banning forwarded by the Department, hold preliminary meeting and decide if a prima-facie case for banning under the guidelines exists. If during preliminary meeting, SBC is of opinion that prima facie no case is made out, it shall return the case to the Concerned Department.
  - ii) If it is decided to proceed for banning action, to recommend for issue of show-cause notice (as per para 9) to the Agency by the Concerned Department, as to why action should not be taken against the Agency, including its interconnected agencies, under the Guidelines for Banning of Business Dealings with them. Agency should be asked to submit its reply within 15 days of the show-cause notice.
  - iii) To examine the reply given by the Agency to show-cause notice and call the Agency for personal hearing, if required.
  - iv) To submit final recommendation to the Concerned Department for banning of business dealings with the Agency or Board wide Hold on participation of the Agency in tenders or exoneration.
- 7.4 If banning is recommended by the Standing Banning Committee of any Department / Division, the proposal containing the facts of the case, proper justification of the action proposed, relevant supporting documents along with the recommendation of the SBC and proposed banning period should be sent by the Concerned Department and duly forwarded by the Head of the Department / Division, to the Competent Authority. Based on this proposal, a decision for banning or otherwise shall be taken by the Competent Authority. At this stage if it is felt by the Competent Authority that there is no sufficient ground for banning, then the case with detailed reasons shall be sent back to the respective Department / Division for necessary action at their end. The Competent Authority may consider and pass an appropriate Speaking Order:

- a) For exonerating the Agency if the charges / allegations are not established;
  - b) For banning the business dealings with the Agency or
  - c) For putting on Hold the participation of the Agency in tenders in the concerned Department / Division.
- 7.5 If the Competent Authority decides that it is a fit case for banning of business dealings with the Agency, the Competent Authority shall pass necessary orders which shall be routed back to the Department concerned for issuance of banning orders to the Agency. However, in cases where there is a shortage of suppliers and banning may hurt the overall interest of DPA, endeavour should be to pragmatically analyze the circumstances, try to reform the Supplier and to get a written commitment from them that their performance will improve.
- 7.6 If the Competent Authority decides to ban business dealings, the period for which the ban would be operative shall be mentioned. If applicable, the order may also mention that the ban would extend to the interconnected agencies of the Agency. The Speaking Order for banning would be conveyed by the Concerned Department to the Agency concerned and copy circulated to all Departments of DPA.
- 7.7 The Banning period may range from 1 year to 3 years depending on the gravity of the case as decided by the Competent Authority. Ordinarily, the period of banning shall be in the range of 1-2 years from the date of issuance of order depending on the severity of the irregularities / lapses committed / termination of contract due to poor performance, etc. However, in case of fraud / forgery / corrupt / fraudulent practice or tampering of documents by the Agency as given in para 6.7 above, the period of banning to be imposed on the Agency would be three years. The period of suspension, if any, shall be accounted for up to a maximum of 6 months in the period of banning provided the banning order is issued within the period of suspension.
- 7.8 As far as possible, the Agency under banning should be allowed to complete the job of existing contracts, unless the Competent Authority, having regard to the circumstances of the case, decides otherwise. Once the order for banning is issued, existing offers against ongoing tenders (prior to issuance of contract) / new offers of the Agency shall not be entertained during the period of banning. In addition, if the Agency has been banned under provisions of Para 6.7, then the particular contract in which the irregularity has been proved will be terminated with immediate effect. In exceptional cases, where it would not be prudent to terminate the said contract with immediate effect, the contract may be allowed to continue for such minimum period during which alternate arrangement(s) can be made. The same shall however require the approval of the Chairman / HoD where the exigency to continue the contract has been clearly brought out.
- 7.9 In case the Competent Authority has decided to exonerate the Agency, the Concerned Department will issue the exoneration letter to the Agency

concerned as well as communicate to all Departmental Heads within the Department / Division. If the Agency has been suspended in the case under consideration, in the same letter to the Agency it must be clarified that the Suspension has also been revoked.

**7.10 Procedure for Banning of Business Dealings with Foreign Suppliers.**

- i) Banning of the Agencies shall apply throughout the Company including Subsidiaries.
- ii) The complaint against any Foreign Supplier shall be investigated by Head of Department of DPA or any other Investigating Department. After investigation, depending upon the gravity of the misconduct, Investigating Department may send their report to Head of Department of DPA to place it before a Committee referred at 5.5 (ii) above. The Committee shall examine the report and give its comments / recommendations within 21 days of receipt of the reference by Head of Department, DPA.
- iii) The comments / recommendations of the Committee shall be placed by Head of Department before DPA Board's Committee constituted for the above purpose. If DPA Board's Committee decides that it is a fit case for initiating banning action, it will direct Chairman of DPA to issue show-cause notice to the Agency for replying within a period of 15 days of receipt of the show-cause notice or reasonable time.
- iv) On receipt of the reply or on expiry of the stipulated period, the case shall be submitted by DPA Board's Committee to Chairman of DPA for consideration & decision.
- v) The decision of the Chairman of DPA shall be communicated to the Agency by DPA.

**8. Department / Division wide Hold on participation of the Agency in Tenders**

- 8.1 If the SBC recommends for Board wide Hold on participation of the Agency in Tenders on coming to a conclusion that the charge against the Agency is minor in nature, the Concerned Department shall put up a proposal to the Competent Authority containing facts of the case, proper justification of action proposed, relevant documents alongwith the recommendations of the Committee and proposed period for Hold from participation in tenders. If the Competent Authority decides that it is a fit case for Board wide Hold on participation of the Agency in tenders, the Competent Authority may pass necessary orders which shall be communicated to the Agency by the Concerned Department. The period of Hold may range from 6 months to 1 year.
- 8.2 The effect of Board wide Hold on participation of the Agency in tenders would be that the Agency would not be considered for any type of Tenders for such period as mentioned in the order at any stage before issuance of contract. Other existing contracts with the Agency would continue unless otherwise



decided by the Competent Authority. However, no repeat orders would be placed on the party for the period as mentioned in the order.

- 8.3 The modalities for effecting Hold on participation of the Agency in tenders and re-entry after completion of period of Hold shall be worked out by the concerned Department / Division as the Hold is Department / Division specific.

**9. Show-cause Notice**

- 9.1 In case where the Competent Authority decides that action against an Agency is called for, a show-cause notice shall be issued to the Agency by the Concerned Department. Statement containing the imputation of misconduct should be appended to the show-cause notice and the Agency should be asked to submit within 15 days a written statement in its defence. It must be clearly mentioned in the Show-Cause Notice that DPA hereby proposes to initiate action against the Agency in terms of the Guidelines on Banning of Business Dealings. Generally, all communication with the Agency shall be through email mentioned by Agency in contract or last known email and postal address.
- 9.2 If the Agency requests for inspection of any relevant document in possession of DPA, necessary facility only for inspection of documents may be provided.

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

- 10.1 The Agency may file an appeal against the order of Board-wide banning of business dealings / suspension / Board wide Hold on participation of the Agency in tenders. The appeal shall lie to the respective Appellate Authority only. Such an appeal shall be preferred within 30 days of receipt of the order.
- 10.2 Appellate Authority would consider the appeal and pass appropriate Speaking Order which shall be communicated by the Concerned Department to the Agency as well as the Competent Authority whose Order has been appealed.

**11. Circulation of the names of Agencies with whom Business Dealings have been banned**

- 11.1 The Board shall upload/update the list of banned agencies alongwith the period of banning immediately on issue of the banning order on the Board's website as well as DPA Tenders website for wider circulation. Other Boards would check the list of banned Agencies before proceeding on tenders at their respective Boards. Boards having SAP/SRM system shall disable the banned vendors in SAP/SRM from issuance of further Enquiry/Purchase Order till the expiry of the banning period.
- 11.2 Depending upon the gravity of misconduct established, the Competent Authority may advise Head of Vigilance Department / HoD for circulating the names of Agency with whom business dealings have been banned, to the Government Departments, other Boards, Public Sector Enterprises, etc., for such action as they deem appropriate. The updated list of banned Agencies must be uploaded by Board on DPA Tenders website for wider circulation.

- 11.3 If Government Departments or a Public Sector Enterprise request for more information about the Agency with whom business dealings have been banned, a copy of the report of Investigating Department / Standing Banning Committee / DPA Board's Committee together with a copy of the order of the Competent Authority / Appellate Authority may be provided.
- 11.4 If business dealings with any Agency have been banned by the Central or State Government or any other Public Sector Enterprise, DPA may, on receipt of such information, without any further enquiry or investigation, issue an order banning business dealings with the Agency and its interconnected Agencies. In event of receipt of information, the procedure for banning in DPA will still have to be followed though no investigation will be called for, and the banning period proposed should be co-terminus with the period of banning in the organization which has issued the banning order but limited to the maximum period of banning as per the extant banning guidelines of DPA. On completion of the banning period as per DPA banning order, the Agency will be eligible for participating in any tenders in DPA irrespective of banning status in the other organization.
- 11.5 Based on the above, Departments / Divisions may take necessary action for implementation of the Guidelines for Banning of Business Dealings and same be made a part of the tender documents.

**12. Saving**

Any amendment to the guidelines shall require the approval of Chairman, DPA.

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