

GUIDELINES FOR HOLIDAY LISTING (BANNING OF BUSINESS DEALING)

1. Introduction:

- 1.1** Works and procurement contracts have become a major activity for the company in current times. In course of such contracting the company 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 behaviour are observed. It is not in the interest of the Company 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/Blacklisting/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 HOGPL 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 Holiday listing (Banning of business dealing) of Agencies, has been laid down in these guidelines.
- 2.3** These guidelines shall be applicable across the company and shall form part of all the tenders. The same is a part of Procurement Manual and displayed on HOGPL 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 HOGPL website shall be applicable to all tenders floated and all Purchase orders / contracts placed by the company.
- 2.4** The banning shall be on prospective basis, i.e. for future business dealings. However, the management will take call depending on the criticality of the job being carried out by the concerned agency for cases where work is already under execution.

3. Definition:

- 3.1** In these guidelines, unless the context otherwise requires: “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’.
- 3.2** “Allied Firm”: All concerns which come within the sphere of effective influence of banned 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 firm.
- c. Substantial or majority shares are owned by banned firm and by virtue of this it has a controlling voice.

3.3 Holiday Listing (Banning of Business dealing)” shall mean officially debarring or forbidding an Agency from participating as Vendor/Supplier with the company, for its requirement related to procurement and services.

3.4 “Competent Authority” shall comprise members of TC (Tender committee) and a cross-functional domain head appointed by the CEO. Competent Authority to review and can recommend the following:

- a. Holiday listing (Banning of business dealing) of firms / parties.
- b. Suspension of business dealings with a firm/ party pending investigation / examination.

Note: The recommendation in each of the above cases shall be implemented with the approval of CEO and Sub-Committee.

3.5 The Approving Authority shall be the CEO for Holiday listing/Banning up to 3 years.

3.6 The Approving Authority shall be the “Sub Committee”, represented by the members of the “Executive Committee”, for Holiday listing/Banning of Business beyond 3 years.

3.7 “Appellate Authority” shall be the CEO and CFO for less than/upto three years of Holiday listing (banning of Business dealing) and Board of Directors for more than three years. The Appellate authority shall be higher than the “Approving Authority”.

3.8 “EIC”/ “OIC”: Engineer in charge / Officer in-charge shall mean the person(s) designated to act for and on behalf of the Company for the execution of the work as per requirement of the user department.

3.9 “Firm”: The term used in this ‘Policy includes individual or persons, a company a cooperative society, a Hindu Undivided Family and an association and body of persons whether incorporated or not, engaged in trade and business.

3.10 “Interconnected Agency” shall mean two or more companies having any of the following features:

- 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

3.11 “Investigating Agency/Team” shall mean any department or Unit of the company investigating into the matters covered under clause No. 7 of the instant policy. A multifunctional committee will be appointed by CEO to conduct the investigation and submit the report to the competent authority mentioned herein above after conducting the investigation.

3.12 “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.

3.13 “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.

3.14 "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
- d. directly or indirectly controls a Party. "Control" means actual control or ownership.
- e. of at least a 50% voting or other controlling interest that gives the power to direct,
- f. or cause the direction of, the management and material business decisions of the
- g. controlled entity.
- h. 'Foreign entity' means a body corporate incorporated outside India.

3.15 "Company" means HPOIL Gas Private Ltd with its registered office as Marathon Futurex, 10th Floor, N.M. Joshi Marg, Lower Parel (East), Mumbai - 400013, Maharashtra

4. Initiation of Suspension of business dealings pending investigation:

Action for Holiday listing (banning of business dealing) of any Agency shall be initiated on noticing of the irregularities or misconduct or on account of reasons as mentioned in clause No. 7 on the part of Agency concerned by the EIC or the officer in-charge or the department head responsible for invitation of bids. Even action can be initiated on having information about the irregularities or misconduct on the part of Agency concerned through email, call or any other means after verifying the credentials of the same.

Based on the facts of the case gathered during investigation the Investigating agency/team shall submit the report as per clause no. 3.11 referred herein above for Holiday Listing (banning of business dealing) of any Agency to the concerned competent Authority.

Note: Anonymous complaints will not be entertained. The same can be considered by the appropriate authority for preliminary inquiry on case-to-case basis subject to the criticality of the contents mentioned in the complaint.

5. Suspension of business dealings (Pending Investigation):

5.1 Suspension of business with an agency may be ordered by the competent authority of the Company pending full enquiry into the allegations if it is considered not desirable to continue business with the firm. Such an order may be passed through Head C&P basis the recommendations from the EIC/OIC and basis the information gathered from the project team/User department on the requirement of the vendor to continue the job in progress, status of the job like nearer to the completion or at critical stage of main aspects of the job / services etc., and the same shall be communicated to the finance Department which in turn will block the code in the system. Such suspension order issued also shall indicate whether that vendor can be considered for new business / services during that suspension period.

5.1.1 If any statutory/ or any other investigating agency recommends such a course along with credible evidence in respect of a case under investigation and.

5.1.2 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.

The order of suspension would operate for a period up to 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 for any justifiable reasons.

- 5.2 The existing contract(s) with the Agency may continue unless the “Competent Authority”, having regard to the circumstances of the case, decides otherwise.
- 5.3 Period of suspension shall be accounted for in the final order passed for Holiday listing (Banning business dealing) with the “Agency”.
- 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 must be allowed to submit its written explanation to the show-cause notice within 15 days to the C&P Head. The competent authority shall make its recommendation as per clause no. 3.4 within thirty days of receipt of written explanation and review of the same.

6. Process of holiday Listing or Banning of Business dealing:

Once the action/ proposal of holiday listing/ banning of business dealing is initiated by EIC/OIC/or the department head responsible for invitation of bids, Investigation team to be appointed by the CEO as per clause no. 3.11. Investigation team to carryout investigation based on the recommendation submitted by the initiator. Such investigation reports to be submitted to the Competent Authority that would be constituted as per clause No. 3.4.

Competent Authority would evaluate the reports from investigation team vis-à-vis the proposal for holiday listing/ Banning of business dealing and put forward a final recommendation to CEO.

Recommendation by Competent Authority for Holiday listing/Banning of business dealing will be clearly specifying –

- a. The Banning is for existing work order and also the party cannot participate in all upcoming tenders.
- b. The Banning is for upcoming tenders for the period mentioned and the party will continue to work for completing the existing order.
- i. If the recommendation of Competent authority is for Banning up to 3 years CEO may review and approve the recommendation as deemed suitable.
- ii. If the recommendation of Competent authority is for Banning more than 3 years CEO to review and forward the recommendation to the Sub-Committee for onward approval with his remarks / recommendations

Upon receipt of approval from CEO/Sub-Committee mentioned herein above Head C&P shall issue the show cause notice to the Agency and the same shall be communicated to the finance Department which in turn will block the code in the system. The Agency would be given 15 days’ time to respond/clarify against the served show cause notice. During this show cause period, no new business dealing to be held with the “Agency”.

The Agency must be allowed to submit its written explanation to the show-cause notice within 15 days to the Head C&P. In the event of no response from the party Head C&P would issue suo – motto a letter for holiday listing/Banning of business dealing as approved by CEO/Sub-Committee.

If party submits an explanation to the show cause notice the same shall be reviewed by the Competent Authority. Based on the merit of explanation by the party the competent authority will decide whether to stay on the order or go ahead with the earlier approval.

7. 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 initiate proposal to ban business dealing for any good and sufficient reason:

- 7.1** If the security consideration, including questions of loyalty of the Agency to the State, so warrants.
- 7.2** 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.
- 7.3** 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 HOGPL or other violations including misrepresentation of facts.
- 7.4** 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.
- 7.5** If the agency has deliberately violated and circumvented the provisions of Labour laws / regulations / rules, safety norms or other statutory requirements.
- 7.6** If a communication has been received from the MOP&NG or any other Ministry or Government / statutory / Judicial agency to ban the agency from dealing with the Company, the party should be automatically put in the banned list.
- 7.7** If the agency has parted with, leaked, or provided confidential proprietary information of the Company 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 company.
- 7.8** If the agency uses intimidation / threatening or brings undue outside pressure on the company or its official/s in acceptance /performances of the job under the contract.
- 7.9** 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 mala fide / unlawful acts or improper conduct on their part in matters relating to the Company or even otherwise.
- 7.10** Poor performance of the Agency in one or several contracts.
- 7.11** If the Agency violates the conditions of tender / contract or vitiates the tender process.
- 7.12** If the agency, in the context of its dealings with the company has:
 - i. Substituted materials in lieu of materials supplied by the company or has not returned or has unauthorizedly disposed of materials/ documents/ drawings/ tools or plants or equipment's supplied by the company without prior permission of the company.

- 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 Company.
- v. Withdraws / revises the bid upwards after becoming L1.

7.13 Any other ground, in the opinion of the company makes it undesirable to deal with the party.

8. Holiday listing (Banning of Business dealings):

C&P Department will be the responsible for maintaining, updating, and publishing the list of Agencies with whom HOGPL has decided for Holiday list (Banning of business dealing).

9. 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.

9.1 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. Head C&P will issue the Show cause notice to the Agency with an intimation to finance department along with copy of show cause notice/ suspension order. If the show cause notice includes suspension order, then the finance department will update in the system accordingly. Statement containing the imputation of misconduct or misbehaviour 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.

9.2 If the 'Agency' requests for inspection of any relevant document in possession of the Company, necessary facility for inspection of documents may be provided.

9.3 If no reply is received from the "Agency" within the specified period, the decision may be taken expatriate.

9.4 The Competent Authority will recommend for an appropriate speaking order after examining the materials on record.

9.5 If it recommended 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 3.2/3.10/3.14, if there are instances of recurrence of lapses from the same group.

9.6 The decision regarding suspension/Holiday listing (Banning of business dealing) should be communicated by the C&P Head to the "Agency" concerned with a copy to finance department to update the system. A proforma for intimation of banning order to party is attached (Annexure-II).

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

10. 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:

10.1 No enquiry / bid / tender shall be entertained with a party as long as the “Agency’s name appears in the Banning List i.e. Holiday list.

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

10.2.1 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.

10.2.2 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 EProc 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’.

10.2.3 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.

10.3 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 Company or MOP&NG debarring them from carrying on business dealings with the Company / 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.

11. Appeal against the Decision of the Company:

11.1 The “Agency” may file an appeal against the order of the company 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.

11.2 After examining the facts of the case, the Appellate Authority may pass appropriate order which shall be communicated through Head C&P and Finance department for consequential changes in the system.

11.3 Appeal process may be completed within 45 days from the date of receipt of appeal by the “Appellate Authority”.

11.4 No Appeal is permitted in case an Agency is Holiday Listed (Banning of business dealing) based on Govt / Statutory authorities’ advice.

12. 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.

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

13.1 The name(s) and details of the agencies banned shall be updated in the system and companies' website.

13.2 Banning by any other sister PSE will not automatically extend to the company unless advice is received from any Govt / Statutory authority MOP&NG advises for the same after undertaking appropriate due diligence and process.

14. Revocation:

14.1 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.

14.2 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.

14.3 A banning / suspension order may, on a review be revoked by the appellate Authority) if it is of the opinion that the disability already suffered is adequate in the circumstances of the case.

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. In line with companies' holiday listing/Banning of business dealing policy.

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

Your reply should be addressed to the undersigned and to be posted to the address given below in physical format or in mail to the mail ID mentioned here.

Yours faithfully,

For & On behalf of HOGPL

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 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 stands cancelled and or you will be debarred from entering into any contracts with HOGPL for__ years effective from the date hereof.

Yours faithfully,

* Strike out if not applicable