

GUIDELINES ON BANNING OF BUSINESS DEALINGS
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सेल SAIL

STEEL AUTHORITY OF INDIA LIMITED
CORPORATE MATERIALS MANAGEMENT GROUP
DELHI - 110092

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1. Introduction

- 1.1 Steel Authority of India Limited (SAIL), being a Public Sector Enterprise and 'State', within the meaning of Article 12 of the Constitution of India, has to ensure preservation of rights enshrined in Chapter III of the Constitution. SAIL has also to safeguard its commercial interests. SAIL 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 SAIL 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 SAIL 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 Plants/ Units and subsidiaries of SAIL.
- 2.2 The General Conditions of Contract (GCC) of SAIL provide that SAIL 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 Company (SAIL) to take action/decision under these guidelines in appropriate cases.
- 2.5 The procedure for(i) Plant/Unit 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	1 st Appellate Authority	2 nd Appellate Authority
Company-wide banning, except for foreign suppliers of imported coal & coke	Director concerned/ Director I/c / Chief Executive Officer (CEO) of Plant /Unit	Chairman SAIL	-
Banning/ Suspension of business dealings with Foreign supplier of imported coal & coke	SAIL Directors' Committee (SDC) for import of coal & coke	Chairman, SAIL	SAIL Board**
Plant/Unit wide Suspension of business dealings with Agency	Officer nominated by Director concerned / Director I/c / CEO of Plant/Unit. For units headed by Executive Directors, the respective EDs will nominate the officer for this purpose.*	Director concerned / Director I/c / CEO of Plant/Unit. For units headed by Executive Directors, the respective EDs will be the Appellate Authority.	-

Plant/Unit wide Hold on participation of the Agency in Tenders #	Officer nominated by Director concerned/ Director I/c / CEO of Plant/Unit. For units headed by Executive Directors, the respective EDs will nominate the officer for this purpose.*	Director concerned / Director I/c / CEO of Plant/Unit. For units headed by Executive Directors, the respective EDs will be the Appellate Authority	-
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* For Plants/Units –The nominated officer shall be a Direct Reporting Officer (DRO) not below the rank of Chief General Manager for “Competent Authority” for the purpose of suspension of business dealings with the Agency as well as for Plant/Unit 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 CMMG shall be the Competent Authority and Director 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 Plant/Unit.

**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 Unit 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. Besides the Concerned Department, Vigilance Department of each Plant/Unit/Corporate Vigilance shall also be competent to advise such action to the concerned Competent Authority/Department.

5. Suspension of Business Dealings

- 5.1 If the conduct of any Agency(except Foreign Suppliers of imported coal and coke)dealing with SAIL is under investigation by any department of any Plant/Unit, 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 Plant/Unit of SAIL 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 Plant/Unit. During the period of suspension, no fresh contract will be entered into with the Agency. Suspension would be valid only for the concerned Plant/Unit.
- 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 Company including Subsidiaries.
 - ii) The complaint against any foreign supplier of imported coal and coke shall be investigated by Coal Import Group (CIG) 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 SAIL to continue to deal with such Foreign Supplier, pending investigation, the recommendation on such matter by Investigating Department (including CIG) may be sent to Head of CIG to place it before a Committee

consisting of the following:

1. Head of Corporate Finance,
2. Head of CIG – Convenor of the Committee
3. Head of CMMG, Corporate Office
4. Head of Corporate Law

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

iii) The comments/recommendations of the Committee shall then be placed by Head of CIG before SAIL Directors' Committee (SDC) constituted for import of Coal & Coke. If SDC decides that it is a fit case for suspension, SDC shall pass necessary orders which shall be communicated to the foreign supplier by Head of CIG.

- 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 Director concerned / Director I/c / CEO 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, Proprietor, Partner and/or Officials of the 'Agency' 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 SAIL, during the last five years preceding date of tender opening or during execution of contract, provided such information is known to SAIL;
- 6.3 If there is strong justification for believing that the Directors, Proprietors, Partners, Owner and/or Officials of the 'Agency' have been guilty of malpractices such as bribery, corruption, fraud, substitution of tenders, interpolations, etc., in relation to its business dealings with the Government or any other Public Sector Enterprises or SAIL, during the last five years preceding date of tender opening or during execution of contract, provided such information is known to SAIL;
- 6.4 If the Agency continuously refuses to return/refund the dues of SAIL 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 SAIL ;

- 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 SAIL;
 - 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 SAIL Official or brings undue outside pressure or influence on the Company (SAIL) 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 Company (SAIL) 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 Company (SAIL) 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 Company (SAIL), forcefully occupies, tampers or damages the Company's properties including land, water resources, forests / trees, etc.
 - 6.15 If the Agency resorts to unauthorized sale of materials purchased from the Company.
 - 6.16 If the Agency has committed a transgression through violation of any of its commitments under the Integrity Pact entered with SAIL.
(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 Plants/Units of SAIL will apply throughout the Company including Subsidiaries, i.e., company-wide banning.

- 7.2 There will be a Standing Banning Committee (SBC) in each Plant/Unit to be appointed by Competent Authority for processing the cases of “Banning of Business Dealings” (except for banning of business dealings with foreign suppliers of coal & coke). However, for procurement of items/award of contracts, to meet the requirement of Corporate Office only, the Committee shall be CGM/GM each from Operations, Finance, Law & CMMG. 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 Plant/Unit wide Hold on participation of the Agency in tenders or exoneration.
- 7.4 If banning is recommended by the Standing Banning Committee of any plant/unit, 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/Unit, 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/Unit 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 plant/unit.

- 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 Plant/Unit/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 SAIL, endeavor 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 Plants/Units of SAIL as well as Head of CMMG.
- 7.7 The Banning period may range from 1 year to 3years 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 Director concerned/ Director I/c /CEO 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 Plant/ Unit. 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 of imported coal and coke.
- i) Banning of the Agencies shall apply throughout the Company including Subsidiaries.
 - ii) The complaint against any Foreign Supplier of imported coal and coke, shall be investigated by Coal Import Group (CIG) or any other Investigating Department. After investigation, depending upon the gravity of the misconduct, Investigating Department may send their report to Head of CIG 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 CIG.
 - iii) The comments/recommendations of the Committee shall be placed by Head of CIG before SAIL Directors' Committee (SDC) constituted for import of Coal and Coke. If SDC decides that it is a fit case for initiating banning action, it will direct Head of CIG 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 Head of CIG to SDC for consideration & decision.
 - v) The decision of the SDC shall be communicated to the Agency by Head of CIG.

8. Plant/Unit wide Hold on participation of the Agency in Tenders

- 8.1 If the SBC recommends for Plant/Unit 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 Plant/Unit 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 Plant/Unit 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 Plant/Unit as the Hold is Plant/ Unit 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 defense. It must be clearly mentioned in the Show-Cause Notice that SAIL 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 SAIL, 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 Company-wide banning of business dealings/suspension/Plant/Unit 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 concerned Plant/Unit shall upload/update the list of banned agencies alongwith the period of banning immediately on issue of the banning order on the Plant/Unit website as well as SAIL Tenders website for wider circulation. Other Plants/Units would check the list of banned Agencies before proceeding on tenders at their respective Units. Plants 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 CMMG/CIG for circulating the names of Agency with whom business dealings have been banned, to the Government Departments, other Public Sector Enterprises, etc., for such action as they deem appropriate. The updated list of banned Agencies must be uploaded by Plants/Units on SAIL 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/ SDC 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, SAIL may, on receipt of such information, without any further enquiry or investigation, issue an order banning business dealings with the Agency and its inter-connected Agencies. In event of receipt of information, the procedure for banning in SAIL 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 SAIL. On completion of the banning period as per SAIL banning order, the Agency will be eligible for participating in any tenders in SAIL irrespective of banning status in the other organization.

11.5 Based on the above, Plants/Units 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, SAIL.
