

# INTEGRITY PACT

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**B**etween

**National Aviation Company of India Ltd. (NACIL)** hereinafter referred to as “**The Principal**”,

and

\_\_\_\_\_ hereinafter referred to as “**The Bidder/ Contractor**”

## **PREAMBLE**

The Principal intends to award, under laid down organizational procedures, contract(s) for Sale of A310-300 (Freighter) aircraft – 02 Nos, CF6-80C2 Engines - 02 Nos, APU GTCP331-250H – 01 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 an Independent External Monitor (IEM), 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. The word ‘take’ shall also include the past and future.
  - 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 prejudiced persons and persons who would be known to have a connection or nexus with the prospective bidder.
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 the conduct rules of the Principal, 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) commit themselves to take all measures necessary to prevent corruption in their dealings with NACIL. He commits himself to observe the following principles during his 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 the 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 any 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 cartelisation in the bidding process.
  - c. The Bidder(s)/Contractor(s) will not commit any offence under the relevant IPC/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)/Contractors(s) of foreign origin shall disclose the name and address of the Agents/representatives in India, if any. Similarly the Bidder(s)/Contractors(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 the 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. 6-7)
  - e. The Bidder(s)/Contractor(s) will, when presenting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.
  - f. This integrity pact shall override the confidentiality clause, if any, in the offer submitted by the Contractor/Bidder and in the agreement entered into by the Principal with the Contractor/Bidder.
2. The Bidder(s)/Contractor(s) will not instigate third persons to commit offences or acts 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 his 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 nos. 8-16.

#### **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 and other actual damages due to the consequential delay.
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 Performance Bank Guarantee.
3. The Contractor/Bidder shall not be entitled to claim from the Principal any amounts either as damages or otherwise, on account of termination.

#### **Section 5 – Previous transgression**

1. The Bidder declares that no previous transgressions occurred in the last 3 years with any other Company in any country conforming to the corruption approach or with any other Public Sector Enterprise 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 dealings".

#### **Section 6 – Equal treatment of all Bidders/Contractors/Subcontractors**

1. The Bidder(s)/ Contractor(s) undertake(s) to demand from all subcontractors a commitment in conformity with this Integrity Pact, and to submit it to the Principal before contract signing.
2. The Principal will enter into agreements with identical conditions as this one with all Bidders, Contractors and Subcontractors.
3. The Principal will disqualify from the tender process all bidders who do not sign this Pact or violate its provisions.

#### **Section 7 –Criminal charges against violating Bidder(s)/Contractor(s)/ Subcontractor(s)**

If the Principal obtains knowledge of conduct of a Bidder, Contractor or Subcontractor, or of an employee or a representative or an associate of a Bidder, Contractor or Subcontractor which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the same to the Chief Vigilance Officer.

#### **Section 8 – Independent External Monitor/Monitors**

1. The Principal appoints competent and credible Independent External Monitor for this Pact. 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 representatives of the parties and performs his functions neutrally and independently. He shall report to the Chairman, NACIL.
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 Contractor will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors. The Monitor is under contractual obligation to treat the information and documents of the Bidder(s)/ Contractor(s)/ Subcontractor(s) with confidentiality.
4. 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 Contractor. The parties offer to the Monitor the option to participate in such meetings.
5. As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform the Management of the Principal and request the Management to discontinue or take corrective action, or to take other relevant 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.
6. The Monitor will submit a written report to the Chairman, NACIL 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.
7. Monitor shall be entitled to compensation on the same terms as being extended to / provided to Independent Directors on the NACIL Board.
8. If the Monitor has reported to the Chairman NACIL, a substantiated suspicion of an offence under relevant IPC/ PC Act, and the Chairman NACIL has not, within the 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.
9. The word 'Monitor' would include both singular and plural.

## **Section 9 – Pact Duration**

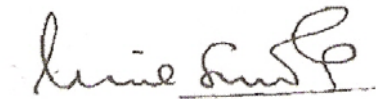
This Pact begins when both parties have legally signed it. It expires for the Contractor 3 years after the last payment under the contract, and for all other Bidders 12 months after the contract has been awarded.

If any claim is made/lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged / determined by Board of NACIL.

## **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. Mumbai.

2. Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.
3. If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members and in the case of a Company by an authorised representative.
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.



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(For & On behalf of the Principal)

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(For & On behalf of  
Bidder/ Contractor)

(Office Seal)

(Office Seal)

Place -----

Date -----

Witness 1:

(Name & Address)

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Witness 2:

(Name & Address)

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## **GUIDELINES FOR INDIAN AGENTS OF FOREIGN SUPPLIERS**

- 1.0 There shall be compulsory registration of agents for all Global (Open) Tender and Limited Tender. An agent who is not registered with NACIL Departments/Stations shall apply for registration in the prescribed Application –Form.
- 1.1 Registered agents will file an authenticated Photostat copy duly attested by a Notary Public/Original certificate of the principal confirming the agency agreement and giving the status being enjoyed by the agent and the commission/remuneration/salary/ retainer ship being paid by the principal to the agent before the placement of order by NACIL Departments/Stations.
- 1.2 Wherever the Indian representatives have communicated on behalf of their principals and the foreign parties have stated that they are not paying any commission to the Indian agents, and the Indian representative is working on the basis of salary or as retainer, a written declaration to this effect should be submitted by the party (i.e. Principal) before finalizing the order

### **2.0 DISCLOSURE OF PARTICULARS OF AGENTS/ REPRESENTATIVES IN INDIA. IF ANY.**

- 2.1 Tenderers of Foreign nationality shall furnish the following details in their offer:
  - 2.1.1 The name and address of the agents/representatives in India, if any and the extent of authorization and authority given to commit the Principals. In case the agent/representative be a foreign Company, it shall be confirmed whether it is real substantial Company and details of the same shall be furnished.
  - 2.1.2 The amount of commission/remuneration included in the quoted price(s) for such agents/representatives in India.
  - 2.1.3 Confirmation of the Tenderer that the commission/ remuneration if any, payable to his agents/representatives in India, may be paid by NACIL in Indian Rupees only.
- 2.2 Tenderers of Indian Nationality shall furnish the following details in their offers:
  - 2.2.1 The name and address of the foreign principals indicating their nationality as well as their status, i.e, whether manufacturer or agents of manufacturer holding the Letter of Authority of the Principal specifically authorizing the agent to make an offer in India in response to tender either directly or through the agents/representatives.
  - 2.2.2 The amount of commission/remuneration included in the price (s) quoted by the Tenderer for himself.
  - 2.2.3 Confirmation of the foreign principals of the Tenderer that the commission/remuneration, if any, reserved for the Tenderer in the quoted price (s), may be paid by NACIL in India in equivalent Indian Rupees on

satisfactory completion of the Project or supplies of Stores and Spares in case of operation items .

- 2.3 In either case, in the event of contract materializing, the terms of payment will provide for payment of the commission /remuneration, if any payable to the agents/representatives in India in Indian Rupees on expiry of 90 days after the discharge of the obligations under the contract.
- 2.4 Failure to furnish correct and detailed information as called for in paragraph-2.0 above will render the concerned tender liable to rejection or in the event of a contract materializing, the same liable to termination by NACIL. Besides this there would be a penalty of banning business dealings with NACIL or damage or payment of a named sum.

## GUIDELINES ON BANNING OF BUSINESS DEALINGS

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## 1. Introduction

- 1.1 National Aviation Company of India Ltd. (NACIL), 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. NACIL has also to safeguard its commercial interests. NACIL deals with *Agencies*, who have a very high degree of integrity, commitments and sincerity towards the work undertaken. It is not in the interest of NACIL to deal with Agencies who commit deception, fraud or exercise of coercion or undue influence or other misconduct in the execution of contracts awarded / orders issued to them. In order to ensure compliance with the constitutional mandate, it is incumbent on NACIL 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 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.

## 2. Scope

- 2.1 The General Conditions of Contract (GCC) of NACIL generally provide that NACIL reserves its rights to remove from list of approved suppliers/contractors or to ban business dealings if any Agency has been found to have committed misconduct, violation of any law or any term of the agreement and also to suspend business dealings pending investigation. If such provision does not exist in any GCC, the same may be incorporated.
- 2.2 Similarly, in case of sale of material there is a clause to deal with the Agencies/customers/buyers, who indulge in lifting of material in unauthorized manner. If such a stipulation does not exist in any Sale Order, the same may be incorporated.
- 2.3 However, absence of such a clause does not in any way restrict the right of Company (NACIL) to take action/decision under these guidelines in appropriate cases.
- 2.4 The procedure of (i) Removal of Agency from the List of approved suppliers / contractors; (ii) Suspension and (iii) Banning of Business Dealing with Agencies, has been laid down in these guidelines.
- 2.5 These guidelines apply to all the Departments/Stations and subsidiaries of NACIL.
- 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'* shall mean and include a public limited company or a private limited company, a firm whether registered or not, an individual, a cooperative society or an association or a group of persons engaged in any commerce, trade, industry, etc. *'Party/Contractor/Supplier/Purchaser/Customer'* in the context of these guidelines is indicated 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 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;
- iii) *'Competent Authority'* and *'Appellate Authority'* shall mean the following:
  - a. For Company (entire NACIL) Wide Banning  
The Executive Director – SBU in charge of Procurement shall be the *'Competent Authority'* for the purpose of these guidelines. Chairman, NACIL shall be the *'Appellate Authority'* in respect of such cases.
  - b. In case the foreign supplier is not satisfied by the decision of the First Appellate Authority, it may approach NACIL Board as Second Appellate Authority.
  - c. For Departments / Stations only  
Any officer not below the rank of Executive Director appointed or nominated by the Functional Director / SBU Head shall be the *'Appellate Authority'* in all such cases.
  - d. For Corporate Office only  
For procurement of items / award of contracts, to meet the requirement of Corporate Office only, Head of CMMG shall be the *"Competent Authority"* and Director (Technical) shall be the *"Appellate Authority"*.
  - e. Chairman, NACIL shall have overall power to take suo-moto action on any information available or received by him and pass such order(s) as he may think appropriate, including modifying the order(s) passed by any authority under these guidelines.
- 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 authority or agency set up by the Central or State Government having powers to investigate.

- v) *'List of approved Agencies - Parties/Contractors/Suppliers/Purchasers/Customers shall mean and include list of approved/registered Agencies - Parties/Contractors/Suppliers/Purchasers/Customers, etc.*

#### **4. Initiation of Banning/Suspension**

Action for banning/suspension of business dealings with any Agency should be initiated by the department having business dealings with them after noticing the irregularities or misconduct on their part. The Vigilance Department of NACIL shall have the right to recommend banning/suspension and this shall be binding on the Department/SBU and non-compliance of these recommendations/instructions shall be deemed to be a misconduct on the part of the Head of the Department/SBU.

#### **5. Suspension of Business Dealings**

- 5.1 If the conduct of any Agency dealing with NACIL is under investigation by any department (except Foreign Suppliers of imported coal/coke), the Competent Authority may consider whether the allegations under investigation are of a serious nature and whether pending investigation, it would be advisable to continue business dealing with the Agency. If the Competent Authority, after consideration of the matter including the recommendation of the Investigating Department, if any, decides that it would not be in the interest to continue business dealings pending investigation, it may suspend business dealings with the Agency. The order to this effect may indicate a brief of the charges under investigation. 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. The order of suspension would operate for a period not more than six months and may be communicated to the Agency as also to the Investigating Department. The Investigating Department may ensure that their investigation is completed and whole process of final order is over within such period.
- 5.2 The order of suspension shall be communicated to all Departmental Heads within the Departments/Stations. During the period of suspension, no business dealing may be held with the Agency.
- 5.3 As far as possible, the existing contract(s) with the Agency may continue unless the Competent Authority, having regard to the circumstances of the case, decides otherwise.
- 5.4 If the gravity of the misconduct/violation under investigation is very serious and it would not be in the interest of NACIL, as a whole, to deal with such an Agency pending investigation, the Competent Authority may send his recommendation to Chief Vigilance Officer (CVO), NACIL Corporate Office along with the material available. If Corporate Office considers that depending upon the gravity of the misconduct/violation, it would not be desirable for all the Departments/Stations and Subsidiaries of NACIL to have any dealings with the Agency concerned, an order suspending business dealings may be issued to all the Departments/Stations by the Competent Authority of the Corporate Office, copy of which may be endorsed to the Agency concerned. Such an order would operate for a period of six months from the date of issue.

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

- i. Suspension of the foreign suppliers shall apply through out the Company including Subsidiaries.
- ii. Based on the complaint forwarded by ED-Procurement or received directly by Corporate Vigilance, if gravity of the misconduct under investigation is found serious and it is felt that it would not be in the interest of NACIL to continue to deal with such agency, pending investigation, Corporate Vigilance may send such recommendation on the matter to Executive Director-Procurement to place it before a Committee consisting of the following :
  1. Director-Finance/Head of Corporate Finance;
  2. SBU Head/Department concerned;
  3. ED-Headquarters/Head of Corporate Office;
  4. GM-Legal/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 ED-Procurement.

- iii. The comments/recommendations of the Committee shall then be placed by ED-Procurement before the Board of NACIL and if the Board opines that it is a fit case for suspension, SBU Head may pass necessary orders which shall be communicated to the foreign supplier by ED-Headquarters.

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 may extend the period of suspension by another three months, during which period the investigations 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 NACIL, during the last five years;
- 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;

- 6.4 If the Agency continuously refuses to return/refund the dues of NACIL 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;
- 6.6 If business dealings with the Agency have been banned by the Govt. or any other public sector enterprise;
- 6.7 If the Agency has resorted to Corrupt, fraudulent practices, coercion, undue influence and other violations including misrepresentation of facts;
- 6.8 If the Agency uses intimidation/threatening or brings undue outside pressure on the Company (NACIL) 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;
- 6.10 Wilful indulgence by the Agency in supplying sub-standard material irrespective of whether pre-despatch inspection was carried out by Company (NACIL) or not;
- 6.11 Based on the findings of the investigation report of CBI/Police/internal Vigilance or any other investigative agency including Government Audit against the Agency for malafide/unlawful acts or improper conduct on his part in matters relating to the Company (NACIL) 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 (NACIL), forcefully occupies tampers or damages the Company's properties including land, water resources, forests / trees, etc.

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

## **7 Banning of Business Dealings**

- 7.1 Normally, a decision to ban business dealings with any Agency should apply throughout the Company including Subsidiaries. However, the Competent Authority of the Department/Unit except Corporate Office can impose such ban unit-wise only if in the particular case banning of business dealings by respective Department/Unit will serve the purpose and achieve its objective and banning throughout the Company is not required in view of the local conditions and impact of the misconduct/default to beyond the Department/Unit. Any ban imposed by Corporate Office shall be applicable across all Departments/Stations of the Company including Subsidiaries.

- 7.2 For Company-wide banning, the proposal should be sent by ACVO of the Department/Unit to the CVO through the Chief Executive of the Department/Unit setting out the facts of the case and the justification of the action proposed along with all the relevant papers and documents except for banning of business dealings with Foreign Suppliers of imported coal/coke.

The Corporate Vigilance shall process the proposal of the Department/Unit for a prima-facie view in the matter by the Competent Authority nominated for Company-wide banning.

The CVO shall get feedback about that agency from all other Departments/Stations. Based on this feedback, a prima-facie decision for banning/or otherwise shall be taken by the Competent Authority.

If the prima-facie decision for Company-wide banning has been taken, the Corporate Vigilance shall issue a show-cause notice to the agency conveying why it should not be banned throughout NACIL.

After considering the reply of the Agency and other circumstances and facts of the case, a final decision for Company-wide banning shall be taken by the Competent Authority.

- 7.3 There will be a Standing Committee in each Department/Unit to be appointed by Chief Executive 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 consisting of Executive Director/General Manager from Finance, Procurement and Legal:

- i) To study the report of the Investigating Agency and decide if a prima-facie case for Company-wide/Local unit wise banning exists, if not, send back the case to the Competent Authority.
- ii) To recommend for issue of show-cause notice to the Agency by the concerned department.
- iii) To examine the reply to show-cause notice and call the Agency for personal hearing, if required.
- iv) To submit final recommendation to the Competent Authority for banning or otherwise.

- 7.4 If the Competent Authority is prima-facie of the view that action for banning business dealings with the Agency is called for, a show-cause notice may be issued to the Agency as per paragraph 9.1 and an enquiry held accordingly.

## **8 Removal from List of Approved Agencies - Suppliers/Contractors, etc.**

- 8.1 If the Competent Authority decides that the charge against the Agency is of a minor nature, it may issue a show-cause notice as to why the name of the Agency should not be removed from the list of approved Agencies - Suppliers/Contractors, etc.

- 8.2 The effect of such an order would be that the Agency would not be disqualified from competing in Open Tender Enquiries.
- 8.3 Past performance of the Agency may be taken into account while processing for approval of the Competent Authority for awarding the contract.

## **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 has to be issued to the Agency. Statement containing the imputation of misconduct or misbehaviour may be appended to the show-cause notice and the Agency should be asked to submit within 15 days a written statement in its defence.
- 9.2 If the Agency requests for inspection of any relevant document in possession of NACIL, necessary facility for inspection of documents may be provided.
- 9.3 The Competent Authority may consider and pass an appropriate speaking order:
  - a. For exonerating the Agency if the charges are not established;
  - b. For removing the Agency from the list of approved Suppliers/Contractors, etc.
  - c. For banning the business dealing with the Agency.
- 9.4 If it decides to ban business dealings, the period for which the ban would be operative may be mentioned. The order may also mention that the ban would extend to the interconnected Agencies of the Agency.

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

- 10.1 The Agency may file an appeal against the order of the Competent Authority banning business dealing, etc. The appeal shall be to the Appellate Authority. Such an appeal shall be preferred within one month from the date of receipt of the order banning business dealing, etc.
- 10.2 Appellate Authority would consider the appeal and pass appropriate order which shall be communicated to the Agency as well as the Competent Authority.

## **11 Review of the Decision by the Competent Authority**

Any petition/application filed by the Agency concerning the review of the banning order passed originally by Chief Executive/Competent Authority under the existing guidelines either before or after filing of appeal before the Appellate Authority or after disposal of appeal by the Appellate Authority, the review petition can be decided by the Chief Executive/Competent Authority upon disclosure of new facts/circumstances or subsequent development necessitating such review. The Competent Authority may refer the same petition to the Standing Committee for examination and recommendation.

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

- 12.1 Depending upon the gravity of misconduct established, the Competent Authority of the Corporate Office may circulate 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.
  - 12.2 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 Inquiring Authority together with a copy of the order of the Competent Authority/Appellate Authority may be supplied.
  - 12.3 If business dealings with any Agency have been banned by the Central or State Government or any other Public Sector Enterprise, NACIL may, without any further enquiry or investigation, issue an order banning business dealing with the Agency and its inter-connected Agencies.
  - 12.4 Based on the above, Departments/Stations may formulate their own procedure for implementation of the Guidelines.
-