

NATIONAL AGRICULTURAL COOPERATIVE MARKETING FEDERATION OF INDIA LTD.

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NAFED'S POLICY OF HOLIDAY LISTING/BANNING

**GUIDELINES FOR APPROPRIATE ACTION AGAINST ERRING AND DEFAULTING BIDDERS,
CONTRACTORS, SUPPLIERS, VENDORS, AND SERVICE PROVIDERS**


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ARTICLE-1: INTRODUCTION:

- 1.1. NATIONAL AGRICULTURAL COOPERATIVE MARKETING FEDERATION OF INDIA LTD (hereinafter referred to as "Nafed") deals with various Agencies, in the course of various procurement, works and service contracts, who are expected to adopt ethics of highest standard and a very high degree of integrity, transparency, commitments and sincerity towards the work undertaken by them. It is not in the interest of Nafed to deal with any agency who commits deception, fraud or other misconduct of whatsoever nature in the tendering process and/or contract execution processes.
- 1.2. While participating in the tender and performing under a Contract/Order, the Agencies are required to meet certain standard of integrity and adherence to the terms and conditions of the tender/contract. In case any agency fails to meet the standard benchmark of integrity, it is prudent to put the agency on holiday/banning list for specific periods in order to deter the Agencies from committing such defaults. Such decisions shall be taken after following a laid down process.
- 1.3. Since holiday listing or banning from business dealings involves civil consequences for the agency concerned, it is incumbent that adequate opportunity of hearing is provided and the explanation, if submitted by agency, is considered before passing any order in this regard keeping in view the facts and circumstances of the case.
- 1.4. The meaning of "Black listing", "Holiday Listing" and "Banning" is considered one and the same and shall hereafter be referred to only as "Holiday Listing".

ARTICLE-2: SCOPE

- 2.1. The information for Bidders/Instruction to Bidders and even the General Conditions of Contract generally provide that NAFED shall have the rights to remove 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 agency.
 - 2.2. The procedure of Holiday Listing of Agencies from Business Dealings with NAFED has been laid down in these guidelines.
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2.3. These guidelines are applicable across NAFED including all its Branches, sub-offices, etc and shall form part of all the tenders. These guidelines shall be published as a separate document in NAFED website and the General Conditions of Contract shall have a clause expressly stating that the Guidelines and Procedures for Holiday Listing as adopted by NAFED and available separately in NAFED website shall be applicable in the context of all tenders floated and consequently all orders/ contracts / purchase orders placed by NAFED.

2.4. The Holiday Listing shall be with prospective effect, i.e. for future business dealings.


ARTICLE-3: DEFINITIONS.

In these Guidelines, unless the context otherwise requires

- 3.1. **Agency:** Party/Contractor/Supplier/Vendor/Bidder/Licensor” in the context of these guidelines is indicated as ‘Agency’.
- 3.2. **Competent Authority:** “Competent Authority” shall mean the authority, which is competent to take final decision for Banning of business dealings with Agencies, in accordance with these guidelines.
- 3.3. **Appellate Authority:** The Appellate authority shall be higher than the “Competent Authority”.
- 3.4. **Corrupt Practice:** “Corrupt Practice” means the offering, giving, receiving or soliciting, directly or indirectly, anything of value to improperly influence the actions in selection process or in contract execution. Corrupt Practice” also includes any omission for misrepresentation that may mislead or attempt to mislead so that financial or other benefit may be obtained or an obligation avoided.
- 3.5. **Fraudulent Practice:** “Fraudulent Practice” means and include any act or omission committed by a agency or with his connivance or by his agent by misrepresenting/ submitting false documents and/ or false information or concealment of facts or to deceive in order to influence a selection process or during execution of contract/ order.
- 3.6. **Collusive Practice :** “Collusive Practice” amongst bidders (prior to or after bid submission)” means a scheme or arrangement designed to establish bid prices at artificial non-competitive levels and to deprive the Employer of the benefits of free and open competition.

- 3.7. **Coercive Practice:** "Coercive practice" means impairing or harming or threatening to impair or harm directly or indirectly, any agency or its property to influence the improperly actions of an agency, obstruction of any investigation or auditing of a procurement process.
- 3.8. **Contract:** "Contract" shall mean all or any contract awarded to an Agency and shall include Purchase Orders/Works Contract/Service Contract.
- 3.9. **Malpractice :** Malpractice means any Corrupt Practice, Fraudulent Practice, Collusive Practice or Coercive practice as defined herein;
- 3.10. **Mis-Conduct :** "Mis-conduct" means any act or omission by the Agency, making it liable for action for Holiday Listing as per these guidelines.
- 3.11. **Nodal Division:** "Nodal Division" means the Division primarily assigned with the role of overseeing the Holiday Listing Process to ensure adherence to guidelines, maintaining, updating and publishing the list of Agencies with whom NAFED has decided to ban business dealings.
- 3.12. **"Tender:** "Tender" shall mean all or any tender and shall include Enquiry, Request for Quotation, Request for Proposal, Notice Inviting Tender, etc.
- 3.13. **Vendor De-listment Committee:** "Vendor De-listment Committee" relevant to the concerned Division/Branch which initiates the holiday listing process would the same as the vendor enlistment Committee.

ARTICLE-4: HOLIDAY LISTING

- 4.1. **Reasons for Holiday Listing:** An Agency may be placed in Holiday List for any one or more of the following circumstances:
- 4.1.1. If the Agency, in the context of its dealings with the Federation:
- a) Has indulged in malpractices ;
 - b) Has submitted fake, false or forged documents / certificates;
 - c) Has substituted materials in lieu of materials supplied by NAFED or has not returned or has unauthorized disposed off materials;
 - d) Has deliberately violated and circumvented the provisions of labor laws/ regulations / rules, safety norms, environmental norms or other statutory requirements;
 - e) Has deliberately indulged in construction and erection of defective works or supply of substandard materials/commodities;
 - f) Has not cleared previous dues to NAFED if applicable;
 - g) Has committed breach of contract or has abandoned the contract;
 - h) Poor performance of the Agency in one or several contracts;
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- i) Has not honoured the fax of award / letter of award / Contract / Purchase order after the same is issued by NAFED;
- j) Withdraws/ revises the bid upwards after becoming the L1 bidder;
- k) Has parted with, leaked or provided confidential / proprietary information of NAFED to any third party without the prior consent of NAFED.
- l) Has violated Non-Disclosure Agreement.

4.1.2. The following additional grounds can also be reasons for Holiday listing of an agency:

- a) If the Agency is or has become bankrupt , OR is being dissolved OR has resolved to be wound up OR if proceedings for winding up or dissolution has been instituted against the Agency;
- b) Any other ground, including transgression of Integrity Pact, which, in the opinion of the Federation, makes it undesirable to deal with the Agency; In the case of transgression of Integrity Pact, the same should be substantiated by the verdict of the Independent External Monitor.

4.2. Procedure:

- 4.2.1. Proceedings for Holiday Listing shall be initiated against an Agency when a prima facie case for Holiday Listing comes up, under any of the above mentioned circumstances; before taking a decision, a fair opportunity of hearing the party should be given by means of a Show Cause notice. The show cause notice should indicate clearly and precisely the charges/misconduct which should be based on facts as can be proved as distinct from mere allegations. 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. A performa of Show Cause notice is attached at **Annexure-A**.
- 4.2.2. The proceedings shall start with a proposal for initiating action against the Agency, to be raised by the concerned Branch/Division which, in the first instance, is to be cleared by the relevant Vendor De-listment Committee.
- 4.2.3. The proposal shall state a brief background of the case, the action proposed and all supporting documents, including a note from the concerned Branch/Division responsible for execution of a work, in the case the proposal is related to the performance of a contract. A draft show cause notice is also to be attached to the proposal.
- 4.2.4. On preliminary examination of the proposal with attached documents, if the vendor de-listment committee is of the opinion that action is to be initiated against the Agency, the committee will approve the proposal along with the proposed Show Cause Notice.
- 4.2.5. Thereupon the Show Cause Notice, as approved, will be issued by the concerned Division. Before issuing the Show Cause Notice, concerned



Division should give intimation to the Nodal Division regarding the proposed action against the Agency, along with a copy of the Show Cause notice for record. The Nodal Division, shall in turn publish this information in NAFED website for information and reference of all business divisions/all branches across the Federation.

- 4.2.6. On receipt of the explanation from the Agency, the concerned Division/Branch will put up the proposal for holiday listing, to the competent authority, through the vendor de-listment committee & the Nodal Department. This proposal would consist of a background of the case, copy of initiation proposal approved by vendor de-listment committee, copy of the Show Cause Notice issued and Agency's reply received and the concerned branch/division's comments on the same. The period for which holiday listing is recommended should also be clearly mentioned in the proposal. All relevant supporting documents should also be attached; In case no explanation is received from the Agency within the stipulated time, the case shall be preceded with ex-parte.
- 4.2.7. The proposal along with the reply from the Agency would be examined by the Vendor delistment Committee; thereafter, with the recommendation from the vendor de-listment Committee, the proposal would be put up through the Nodal Division to the Competent Authority for final decision on banning or otherwise.
- 4.2.8. The competent authority, after examining all the materials on record, including the explanation from the Agency, will give their decision on the proposal. Competent Authority in its decision may :
- a) Approve the proposal for Holiday Listing as such; OR
 - b) Approval the proposal for holiday listing for a period higher than that was recommended, in case the Competent Authority is of the opinion that banning for a longer period is required in view of the gravity of the case; OR
 - c) Approve the proposal for holiday listing for a period lesser than that was recommended, in case the Competent Authority is of the opinion that lesser period would meet the requirement, considering the gravity of the case; OR
 - d) Reject the proposal, in case, based on explanation furnished by the Agency, the Competent Authority is of opinion that the alleged misconduct / malpractice was either not substantiated or has happened on account of circumstances on which Agency had no control.
- 4.2.9. The decision of the Competent Authority regarding Holiday Listing of business dealings should be communicated to the 'Agency' concerned, by the concerned Branch/Division. A draft performa for intimation of Holiday Listing to Agency is at **Annexure B**.

4.2.10. The Holiday Listing process should be completed at the earliest and in any case within 45 days from initiation of case by concerned Branch/Division responsible for invitation of bids.

4.2.11. The Competent Authority shall decide on the period of holiday listing, on case to case basis, depending on the gravity of the case and considering the implications for NAFED on account of the Act/Omission on the part of the Agency, intentions of the Agency as established from the circumstances of the case, frequency of tendering for work of similar nature etc.

4.2.12. Ordinarily, the period for which as Agency is Holiday listed should not be less than 01 year and should not exceed 03 years. However, in extraordinary circumstances as mentioned below, banning of 15 years can be done. The broad guidelines for the period of holiday listing based on the circumstances under which they were put on holiday listing is as under :

S.No.	Reasons for holiday listing	Period of holiday listing
1.	Indulged in malpractices resulting in financial loss to the Nafed	15 years
2.	Submitted fake, false or forged documents / certificates	3 years
3.	Has substituted materials in lieu of materials supplied by NAFED or has not returned or has unauthorizedly disposed off materials / documents or equipments supplied by NAFED.	15 years
4.	Has deliberately violated and circumvented the provisions of labour laws/ regulations / rules , safety norms, environmental norms or other statutory requirements	3 years
5.	Has deliberately indulged in construction and erection of defective works or supply of substandard materials	3 years
6.	has not cleared NAFEDs previous dues, if applicable	1 year
7.	Has committed .breach of contract or has abandoned the contract	3 years
8.	Poor performance of the Agency in one or several contracts	1 year
9.	Has not honoured the fax of award / letter of award / Contract / Purchase order after the same is issued by NAFED.	1 year
10.	Withdraws/ revises the bid upwards after becoming the L1 bidder	1 year
11.	Has parted with, leaked or provided confidential / proprietary information of NAFED to any third party without the prior consent of NAFED.	15 years
12.	If the Agency is or has become bankrupt , OR is being dissolved OR has resolved to be wound up OR if proceedings for winding up or dissolution has been instituted against the Agency	3 years
13.	Transgression of Integrity Pact of Nafed, which, in the opinion of the Nafed, makes it undesirable to deal with the Agency;	3 years

4.2.13. Provision for Appeal

- i. An agency aggrieved with the decision of the Competent Authority shall have the option of filing an appeal against the decision of the Competent Authority i.e. Managing Director to the Appellate Authority i.e. Business Committee of NAFED within a maximum of 15 days from the date of receipt of intimation of holiday listing.
- ii. Any appeal filed after expiry of the above period shall not be considered by the Appellate Authority.
- iii. On receipt of the Appeal from the Agency, the Appellate Authority, if it so desires, may call for comments from the Competent Authority;
- iv. After receipt of the comments from the Competent Authority, the Appellate Authority, if it so desires, may also give an opportunity for personal hearing, to the Appellant Agency.
- v. After examining the facts of the case and documents available on record and considering the submissions of the Appellant Agency, the Appellate Authority may pass appropriate order by which the Appellate Authority may either: (a) Uphold the decision of Competent authority with or without any variation /lesser period of Holiday Listing; OR (b) Annul the order of the Competent Authority.
- vi. Appellate Authority shall pass its order within a maximum period of 45 days from the date of receipt of Appeal.
- vii. Order of the Appellate Authority shall be communicated to the Agency by the concerned Branch/Division copy of which shall be given to the Nodal Division. A draft performa for communicating the decision of the Appellate Authority is at **Annexure C**.

4.2.15. Effect of Holiday Listing

- i. No enquiry / bid / tender shall be entertained with an Agency as long as the 'Agency' name appears in the Holiday list.
- ii. If an 'Agency' is put on the Holiday list during tendering :
 - a) If an 'Agency' is put on Holiday List after issue of the enquiry / bid / tender but before opening of the un-priced bid, the un-priced bid of the 'Agency' shall not be opened and BG/EMD , if submitted by the 'Agency' shall be returned . If an 'Agency' is put on Holiday List after un-priced bid opening but before price bid opening, the price bid of the 'Agency' shall not be opened and BG/EMD submitted by the 'Agency' shall be returned .
 - b) If an 'Agency' is put on Holiday List after opening of price bid but before finalization of the tender, the offer of the 'Agency' shall be ignored and will not be further evaluated and the BG/EMD if any

submitted by the 'Agency' shall be returned, 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.

- c) If contract with the 'Agency' concerned is in operation, (including cases where contract has already been awarded before decision of holiday listing) normally order for Holiday Listing from business dealings cannot affect the contract, because contract is a legal document and unless the same is terminated in terms of the contract, unilateral termination will amount to breach and will have civil consequences.
- iii. In cases where holiday listing proposal has been initiated by some Branches/Divisions in the Federation, but the process is yet to be completed and order of Competent Authority is awaited, the tendering process may be taken forward till price bid opening and after price bid opening, decision on the tender may be kept on hold till such time order of Competent Authority is issued.

ARTICLE-5: DECLARATION BY BIDDERS REGARDING HOLIDAY LISTING STATUS:

Tenders invited for purchase of Goods and Services for both Open Tenders as well as Limited Tenders, should have the provision that the bidder should submit a declaration to the effect that they are not currently serving any Holiday Listing orders issued by NAFED debaring them from carrying on business dealings with the NAFED or serving a banning order by another Department/Federations. Offers not accompanied with a declaration should be incorporated in rejection criteria. Any wrong declaration in this context shall make the Agency liable for action under this Holiday Listing procedure.

ARTICLE-6. REVOCATION OF HOLIDAY LISTING:

- 6.1. An order for Holiday Listing once passed for a certain specified period shall be revoked as under :
- 6.1.1. An order for Holiday Listing passed for a certain specified period shall be revoked on the expiry of that specified period, subject to the Agency giving a request in writing clearly mentioning the corrective action which has already been taken / proposed to be taken, to avoid recurrence Specific order of revocation shall be issued by the concerned Branch/Division Vendor Enlistment Committee, which had recommended the Holiday Listing , after considering the Vendor's request, with copy to the Nodal Division.
- 6.1.2. A Holiday Listing order may, on a review during its currency of operation, be revoked by the Competent Authority if it is of the opinion that the disability already suffered is adequate in the circumstances of the case, and the Agency has taken appropriate action to avoid recurrence.

ARTICLE-7: PUBLISHING OF HOLIDAY LISTING INFORMATION IN NAFED WEB-SITE:

- 7.1. Once an order of Holiday Listing of an Agency is passed by the Competent Authority, the said information shall be published in the NAFED web-site, by the Nodal Division/Branch.
 - 7.2. All Agencies, should before issue of tender in limited tender cases and before opening of price bids in all cases, verify with this published information that the bidder concerned is not currently serving any Holiday Listing orders issued by NAFED.
 - 7.3. All orders of revocation of holiday listing shall, immediately on revocation, be made available to the Nodal Division, who in turn shall update the information in the web-site accordingly.
 - 7.4. To take cognizance of the holiday listing process in the initiation stage itself, the Nodal Division should update the information in the NAFED web site, as soon as they get intimation from the concerned Branch/Division, along with copy of proposed show cause notice.
 - 7.5. Nodal Division shall intimate each Instance of Holiday Listing and Revocation to other Department/Federation. Similarly information regarding Holiday Listing, if any received from other Department/Federation shall be communicated by the Nodal Division to the concerned Branch/Division and/or published in the website for reference.
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Annexure –A

(Proforma of Show Cause Notice)

BY REGD. POST/SPEED POST/COURIER

No.

Date.....

To

M/s

Sub: Show Cause Notice

Ref :

Dear Sir,

You are hereby required to show-cause in writing within 15 days from the date hereof why you should not be placed on Holiday List and be debarred from entering into any contracts with NAFED 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 you fail to reply to this Show Cause Notice within the time and manner aforesaid, it will be presumed that you have nothing to say and we shall proceed accordingly.

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

Yours faithfully,

Annexure –B

(Performa for Intimation of Holiday Listing)

BY REGD. POST/SPEED POST/COURIER

No.

Date.....

To

M/s

Sub: Intimation of Banning of Business Dealings / Holiday Listing

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 will be banned and you are hereby debarred from entering into contracts with NAFED for Years/months, effective from the date hereof.

This order shall have the following effects:

1. No enquiry / bid / tender shall be issued to you nor will the bids submitted by you be entertained;
2. In cases where tenders have already been issued to you and price bids are yet to be opened, the price bid submitted by you shall not be opened and BG/EMD, if any, submitted by you shall be returned.
3. In cases where tenders have already been issued to you and price bids have already been opened , but final decision is pending, your quote will not be considered for further evaluation and finalization of the tender, and BG/EMD, if any, submitted by you shall be returned.
4. In case of ongoing contracts between you & NAFED, (including cases where contract has already been awarded before) you will be required to continue with the execution and perform as per terms of the contract.

In case you are aggrieved by this order, you may file an Appeal before (Indicate here the relevant Appellate Authority), within a maximum of 15 days from the date of receipt of this order. You may represent your case before the Appellate Authority, along with necessary justification. On expiry of the above period of holiday listing, you may approach.....(indicate the concerned Branch/Division) , with request for revocation of the order mentioning inter-alia the steps taken by you to avoid recurrence of misconduct which has led to the Holiday Listing. (Give Reasons)

Yours faithfully,

Annexure –C

(Performa for communication of Appellate Decision on Holiday Listing Order)

BY REGD. POST/SPEED POST/COURIER

No.

Date

To

M/s

Sub: Banning of Business Dealings / Holiday Listing- Intimation of decision of Appellate Authority

Ref: 1. Order dated placing M/s on Holiday List by NAFED

2. Your Appeal reference Dt.....

Dear Sir,

This has reference to the order dt..... placing you on Holiday List and your appeal petition reference dt.... on the same. After considering the findings of the Original Authority in order dt....., submissions made by you in your appeal , and the documents/documentary evidences available on record, it has been decided finally that :

- There is no infirmity in the order of the Original Authority, and the allegations stand substantiated and the Holiday Listing for the period of years/month from the date of order, as ordered by the original Authority is upheld.
- Considering your submissions, the order of Holiday Listing passed by the original authority is upheld , but with a reduction in period of holiday listing for years/months from the date of order of original authority.
- Considering your submissions and the evidence available on record, there is enough justification to annul the order of the original authority. (***) Incorporate any one of the above as applicable)

Yours faithfully,