

## Notice inviting tenders (Pre-bid)

**Notice No. :** TCIL/05/NIT/UTTARAKHAND/1/12

**Date of publication :** 13.01.2012  
**Last date of submission :** 27.01.2012

### **Sub : Road works in Uttarakhand**

Agencies experienced in Road/ buildings/ infrastructure development Projects and having proper Construction Plant & Machinery and interested in working in association with TCIL may send their " Expression of Interest" along with their Rates for work, latest by 03.00 P.M. on 27.01.2012 at below mentioned address.

Details of work such as BOQ, technical specifications, location of work etc. are available with the TCIL Dehradun, which can be obtained up to 2.00 P.M. of 27.01.2012 on submission of a written request and a draft of Rs. 10,000/- only in favour of ' Telecommunication Consultants India Limited' payable at Dehradun by the interested agency at below mentioned address.

It is to inform you that this tender will be covered under the integrity pact program of TCIL and any vendor who has signed the integrity pack with TCIL can send his grievances if any to the IEMs through the Nodal Officer in the prescribed performa. The further details are available on TCIL Website or can be obtained from undersigned.

The received tenders shall be opened at 4.00 P.M. on 27.01.2012 at TCIL Dehradun.

For any information, please contact:

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Name of work: **Road works in Uttarakhand**

Details of work is as under:

Description of item	Preliminary Accessed Cost (PAC)
Providing Laying and Compaction of WMM 100 MM, WMM 150 MM, BM 75 MM, SDBC 25 MM Thick and Centre Line Marking by Thermoplastic Painting as per Mosrth & H specification between Km 140.00 to Km 150.00 on Road Simly – Gwaldam.	Rs 10.32 Crore

**1. Eligibility Criteria: -**

a. Experience of having successfully completed similar works during last 7 years ending 31.12.2011 should be either of the following: -

a. Three similar works each completed and each costing not less than 40% of the PAC cost

OR

b. Two similar works each completed and each costing not less than 50% of the PAC cost

OR

c. One similar work completed and costing not less than 80% of the PAC cost.

Similar work will be considered as Construction of road/buildings/power project/Irrigation project/ infrastructure development in govt./semi govt./reputed private organization.

b. Average annual turnover of the bidder for last three years ending on 31.03.2011 should be 50% of PAC.

**2. Submission of offer :**

a) Agency shall submit his offer in two envelopes marking "Envelop No. 1 (Technical Bid)". Envelope No. 1 shall contain EMD as at S. No- 3 and documents in support of Eligibility of the agency as per para No. 1 above.

b) Envelope No. 2 marked "Price Bid" shall contain the signed MOU, Integrity pact etc and the Financial Offer. Financial Offers of those agencies shall be opened who meet the eligibility criteria.

c) Envelops containing "Technical Bid" and "Price Bid" shall be put together in one marked "Offer for Tender No. \_\_\_\_\_"

(Name of Work)

**3.EMD:**

Interested party should deposit EMD as 0.4% of the estimated cost of works only in the form of DD (Non Interest Bearing)/ Call Deposit Receipt in prescribed format in favour of TCIL Dehradun pledged to Telecommunication Consultants India Limited Dehradun for a minimum of 120 days.

**4.Machinery:**

Agency should submit a list of plant & machinery available with the agency.

**5.Experience:**

Experience of civil engineering works i.e. Roads, Culverts and Cross Drainage Works, buildings, Power, Irrigation projects and infrastructure development works.

**6.Terms & Conditions:**

All the terms and conditions of the NIT as prescribed in the Bidding tender documents of client shall be applicable on back-to-back basis including all tax liabilities, except the conditions given in the "MOU" and "Terms & Condition".

**7. Insurance:**

TCIL shall take Insurance Policy as per requirement of the client. Cost of insurance @ 0.70 % of contract value shall be borne by the Agency.

**8. MOU:**

Agencies willing to participate shall sign the MOU and submit the same along with their offer to avoid risk of rejection their bid.

Attachments: Draft MOU

Shri Sanjeev Jain  
Project Director

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ '2011 between Telecommunications Consultants India Ltd., a Govt. of India Enterprise, having its Corporate Office at TCIL Bhawan, Greater Kailash – I, New Delhi – 110 048 (hereinafter called 'TCIL')

AND

M/s \_\_\_\_\_ (Name and address of Agency) on the other part (herein after called as 'Agency')

Whereas TCIL is a prime contracting and engineering company and undertakes projects in all the fields of telecommunications, civil constructions including road constructions.

Whereas M/s \_\_\_\_\_ are engaged in civil construction works under various departments and having experience in similar works for the last \_\_\_\_\_ years.

Whereas TCIL has participated in a tender for \_\_\_\_\_  
(Name of work)

Whereas TCIL had invited competitive quotes from the bidders for participating in the works and whereas the agency has agreed to execute the work as per the specification of the client.

Now this MOU witnesseth as under;

1. It is mutually agreed that following documents shall be deemed to form, read and construed as part of this MOU.
  - i) Tender document issued by the client \_\_\_\_\_.
  - ii) Offers dated \_\_\_\_\_ submitted by the Agency.
  - iii) MOU between TCIL and agency.
  
2. On acceptance of TCIL's tender, TCIL shall award part or whole of the work as mutually agreed to the agency and, the agency shall mobilize immediately and execute the work speedily and assure quality in works and achieve the Progress as stipulated in the contract between TCIL and the client. All terms and conditions of the tender issued by the client shall applicable on back to back basis except pricing, payments, right of termination by TCIL and execution of the work at the risk and cost of the agency.
  
3. The Agency shall submit EMD in the form of Bank Draft (Non Interest Bearing)/ Call Deposit Receipt as amounting to 0.4% of the estimated cost of work only. EMD shall not carry any interest and shall be returned in case contract is not awarded to TCIL subject to return of TCIL's EMD by the client / Client.

4. In case the Agency withdraws from the offer or fails to sign the agreement or fails to furnish the back up performance security within the stipulated period, the EMD shall stand forfeited by TCIL. The earnest money shall despite signing of the agreement and furnishing the performance guarantee be retained as part of security deposit.
5. On award of the works to the agency, the agency undertakes to carry out the same work as per specifications of the client and to the best satisfaction of Client / TCIL towards quality of works.
6. Agency has confirmed that it owns requisite construction machinery and has resources and shall deploy the same for execution of the project and shall complete project in scheduled time.
7. The work shall be awarded to the agency at the rates \_\_\_\_\_ . Agency agrees that while making the progress payments to the agency by TCIL, all deductions made by the client shall be deductible from the agency's bills by TCIL. Agency agrees that all tax liabilities including Works Tax / VAT on total contract value shall be borne by agency.
8. TCIL shall take Contractor's all risk policy in accordance with the requirement and deduct 0.70% of the contract value from the agency towards premium. Contractor shall take other policies required for all plant and equipment/workman compensation etc.
9. Agency shall provide and establish well-equipped labs to meet the requirement of Client at his own cost.
10. Agency shall comply with all applicable local laws regarding labour, mining laws etc. and payment of royalty, license fee for contract labour, if any, shall be entirely borne by the agency.
11. All statutory deductions not limited to Income Tax deductible at source / VAT etc shall be deducted by TCIL for which due certificate shall be given to the agency.
12. In case party desires that Bitumen/Cement/Steel/Pipe/Fuel/Diesel etc shall be procured by TCIL from any other agency on the request of the agency, the same shall be purchased and sold to the agency at procurement price plus 1% on sale value. In addition the agency shall pay interest at SBI Base Rate PLR plus 6.5% with a minimum of @ 12.0% p.a. on quarterly rests, from the day TCIL makes payment to supplier till amount is fully recovered.
13. It is agreed between the parties that all marketing, inspection costs and other costs shall be on account of the agency.
14. Agency undertakes to deploy requisite own working capital to execute the contract.

15. Payment Terms: Payment to the Agency shall be on back to back i.e. on receipt of the payment, corresponding payment shall be released by TCIL to the agency. In case the contractor desires, 50% payment can be released on the value of work certified by TCIL/Client. Such payments shall bear an interest at SBI base rate plus 6.5 % from time to time to a minimum of 12% per annum at quarterly rest till the amount is fully recovered from the agency.
16. Performance Security: The agency shall provide back up performance Bank Guarantee from a scheduled Bank through its branch in New Delhi. The bank guarantee shall be an unconditional and irrevocable guarantee payable on demand and without demur.
17. In case of delay in execution of work, LD as per terms of bidding tender of the client shall be applicable. In case of continued delay, on breach of other contract conditions TCIL may terminate the contract and get the work carried out at the risks and costs of the agency.
18. In case the client deducts / withholds some amount towards checking, discrepancies, delay or any other reasons, the same shall be deducted / withheld from the bills of agencies.
19. Arbitration: Any dispute in relation to or arising out of this MOU shall be resolved amicably by the parties. Unresolved disputes shall be referred to Arbitration. The Arbitrator shall be appointed by the CMD, TCIL, New Delhi. The venue of Arbitration shall be New Delhi. Laws of India shall be the governing laws under this MOU.
20. On award of works to the agency, a detailed agreement shall be signed where the main agreement between the client and TCIL shall form part except the pricing schedule.
21. The agency understands and agrees that he has read the tender document of the client / Client fully and carefully. It is expressly understood and agreed by the agency that all duties and obligations of TCIL towards the client / Client shall be that of the agency for the corresponding portion of work awarded to and executed by it.
22. TCIL shall get registered with the Commercial Tax Department in the State of \_\_\_\_\_ and apply for composite scheme for the Works Contract Tax. The agency shall extend all assistance in this regard. Works Tax shall be borne by the agency and agency shall also get themselves registered with the Commercial Tax Department of \_\_\_\_\_.
23. This MOU is valid for the specific work as awarded by TCIL.

**M/s. Telecommunications Consultants India Ltd.**

**For Contractor**

Signatures of the authorized representative  
of TCIL

Signature and Seal

**INTEGRITY PACT**

**Between**

**Telecommunications Consultants India Ltd. (TCIL) 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..... 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) and expects the Bidder(s) and/or Contractor(s) to reciprocate the same. The Bidder(s) and/or Contractor(s) also agree to the principles of integrity and transparency in the tender process.

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.

Further, the Principal and The Bidder/Contractor agrees to the following:

**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. PRINCIPAL is committed to have ethical and corruption free business dealings with Bidder(s)/contractor(s).
  - b. 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.

- c. The Principal will, during the tender process treat all Bidder(s) with equity and reason and will deal with them in a fair and transparent manner. 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.
  - d. The Principal will exclude from the process all known prejudiced persons.
  - e. PRINCIPAL will honour its commitments and make due payments to The Bidder(s)/Contractor(s) in a timely manner.
  - f. PRINCIPAL will initiate action and pursue it vigorously whenever unethical behaviour occurs or is suspected to have occurred.
- (2) If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the IPC/PC Act, or if there be a substantive suspicion in this regard, the Principal will inform the Corporate Vigilance Office and in addition can initiate disciplinary actions.

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

- (1) The Bidder(s)/Contractor(s) commit himself to take all measures necessary to prevent corruption. 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 impropriety, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
  - d. The Bidder(s)/Contractor(s) 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.
  - e. The Bidder(s)/Contractor(s) will not make any false or misleading allegations against the principal or its associates.
  - f. The Bidder/Contractor will not bring any Political, Governmental or Diplomatic influence to gain undue advantage in its dealing with PRINCIPAL

- g. The Bidder(s)/Contractor(s) will promote and observe best ethical practices within its organization.
- h. The Bidder(s)/Contractor(s) will promptly inform the Independent Monitor(of PRINCIPAL) If he receives demand for a bribe or illegal payment/benefit and
  - i. If comes to know of any unethical or illegal practice in PRINCIPAL.
  - ii. If he makes any payment to any PRINCIPAL Associate.

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

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

If the Bidder(s)/Contractor(s) before award or during execution has committed a transgression through a violation of Section 2, above or in any other form such as to put 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 annexed and marked as Annex-"A".

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

- (i) 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.
- (ii) 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 the amount equivalent to Security Deposit/Performance Bank Guarantee in addition to any other penalties/recoveries as per terms and conditions of the tender.
- (iii) The Bidders/Contractors in addition to above will also be liable to damages as determined by the Principal based on the recommendations of IEMs.

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

- (i) The Bidder declares that no previous transgressions occurred in the last 3 years conforming to the anti corruption approach with any Public Sector Enterprise in India that could justify his exclusion from the tender process.
- (ii) 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**

- (i) The Principal will enter into agreements with identical conditions as this one with all Bidders/Contractors.
- (ii) The Bidder(s)/Contractor(s) undertake(s) to demand from all subcontractors a commitment in conformity with this Integrity Pact.
- (iv) 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 Subcontractors, 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 Corporate Vigilance Office and may initiate criminal proceedings against the violating Bidder(s)/Contractor(s).

### **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 reports to the CMD, TCIL.
- (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 nonbinding 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 CMD, TCIL 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) If the Monitor has reported to the CMD, TCIL, a substantiated suspicion of an offence under relevant IPC/PC Act, and TCIL has not, within the reasonable time taken visible action to proceed against such offence or reported it to the Corporate Vigilance Office, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.
- (8) The word '**Monitor**' would include both singular and plural.

### **Section 9 – Pact Duration**

This pact begins when both parties have legally signed it. It expires for the Contractor 12 months after the last payment under the contract, and for all other unsuccessful bidders, 3 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 CMD, TCIL.

**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. New Delhi. The arbitration clause provided in the tender document/contract shall not be applicable for any issue/dispute arising under Integrity Pact.
- (2) Changes and supplements as well as termination notice need to be made in writing.
- (3) If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.
- (4) Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

\_\_\_\_\_

**(For & On behalf of the Principal) (For & On behalf of Bidder/Contractor)**

**(Office Seal)**

**(Office Seal)**

**Place -----**

**Date -----**

**Witness 1:**

**(Name & Address)** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Witness 2:**

**(Name & Address)** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Guidelines of TCIL on Banning of Business Dealings****1. Introduction**

- 1.1.1 Telecommunications Consultants India Limited (TCIL), being a Public Sector Enterprise and 'State', within the meaning of Article 12 of Constitution of India, has to ensure preservation of rights enshrined in Chapter III of the Constitution. TCIL has also to safeguard its commercial interests. TCIL 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 TCIL to deal with Agencies who commit deception, fraud 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 TCIL 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 TCIL should generally provide that TCIL reserves its rights to remove from list of approved suppliers / contractors or to ban business dealings if any bidder/contractor 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.
- 2.2 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 (TCIL) to take action / decision under these guidelines in appropriate cases.
- 2.4 The procedure of (i) Suspension and (ii) Banning of Business Dealing with Agencies, has been laid down in these guidelines.
- 2.5 These guidelines apply to all the Units of TCIL.
- 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 Wide Banning (entire TCIL) the **Director (Projects)** shall be the 'Competent Authority' for the purpose of these guidelines. **CMD, TCIL** shall be the 'Appellate Authority' in respect of such cases except banning of business dealings with Suppliers of Imported Equipment.
  - b) For Units level banning: Any **officer not below the rank of ED** shall be the 'Competent Authority' for the purpose of these guidelines. The Director (Projects) shall be the 'Appellate Authority' in all such cases.
  - c) For banning of business dealings with Suppliers of Imported Equipment, **TCIL Directors' Committee (TDC), consisting of Director(Technical), Director (Finance), Director (Projects)** of TCIL, shall be the 'Competent Authority'. The Appeal against the Order passed by TDC shall lie with CMD, as First Appellate Authority.
  - d) In case the foreign supplier is not satisfied by the decision of the First Appellate Authority, it may approach TCIL Board as Second Appellate Authority.
  - e) CMD, TCIL 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 department set up by the Central or State Government having powers to investigate.

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

Action for banning / suspension 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.

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

- 5.1 If the conduct of any Agency dealing with TCIL is under investigation by any department (except Suppliers of Imported Equipment), 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 such 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 Units. 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 be continued unless the Competent Authority, having regard to the circumstances of the case, decides otherwise.

5.4 If the gravity of the misconduct under investigation is very serious and it would not be in the interest of TCIL, as a whole, to deal with such an Agency pending investigation, the Competent Authority may send his recommendation to Corporate Office along with the material available. If Corporate Office considers that depending upon the gravity of the misconduct, it would not be desirable for all the Units of TCIL to have any dealings with the Agency concerned, an order suspending business dealings may be issued to all the Units 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 Suppliers of Imported Equipment following shall be the procedure: -

i) Suspension of the foreign suppliers shall apply through out the Company.

ii) If gravity of the misconduct under investigation is found serious and it is felt that it would not be in the interest of TCIL to continue to deal with such agency, pending investigation, Unit dealing with agency may send such recommendation on the matter to a Committee consisting of the following:

1. ED (TG)
2. ED (T)
3. ED (F&BD)
4. GGM (MM)

The committee shall expeditiously examine the report; give its comments/recommendations within twenty one days.

iii) The comments / recommendations of the Committee shall then be placed before TCIL Directors' Committee (TDC). If TDC opines that it is a fit case for suspension, TDC may pass necessary orders which shall be communicated to the supplier of Imported Equipment.

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. Ground 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 TCIL, 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 TCIL 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 including misrepresentation of facts;
- 6.8 If the Agency uses intimidation / threatening or brings undue outside pressure on the Company (TCIL) 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 Willful indulgence by the Agency in supplying sub-standard material irrespective of whether pre-dispatch inspection was carried out by Company (TCIL) or not;
- 6.11 Based on the findings of the investigation report of CBI / Police against the Agency for malafide / unlawful acts or improper conduct on his part in matters relating to the Company (TCIL) 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 (TCIL), 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. However, the Competent Authority of the Unit except Corporate Office can impose such ban unit-wise only if in the particular case banning of business dealings by respective 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 Unit. Any ban imposed by Corporate Office shall be applicable across all Units of the Company.

- 7.2 For Company-wide banning, the proposal should be sent through the Head of the 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.

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

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

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 Corporate Office and each Unit to be appointed by CMD, TCIL for processing the cases of “Banning of Business Dealings” except for banning of business dealings with suppliers of Imported Equipment. The functions of the committee shall, inter-alia include:

- 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 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 8.1 and an enquiry held accordingly.

- 7.5 Procedure for Banning of Business Dealings with Suppliers of Imported Equipment.

- i) Banning of the agencies shall apply through out the Company.
- ii) Depending upon the gravity of the alleged misconduct the investigation report with all relevant details shall be placed before a Committee consisting of the following :-

1. ED (TG)
2. ED (T)
3. ED (F&BD)
4. GGM (MM)

The Committee shall examine the proposal and give its comments / recommendations within 21 days.

- iii) The comments / recommendations of the Committee shall be placed before TCIL Directors' Committee (TDC). If TDC opines that it is a fit case for initiating banning action, it will direct to issue show-cause notice to the agency for replying within a reasonable period.
- iv) On receipt of the reply or on expiry of the stipulated period, TDC will consider & award decision on case.
- v) The decision of the TDC shall be communicated to the agency.

## 8. Show-cause Notice

- 8.1 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 mis-behaviour may be appended to the show-cause notice and the Agency should be asked to submit within 30 days a written statement in its defence.
- 8.2 If the Agency requests for inspection of any relevant document in possession of TCIL, necessary facility for inspection of documents may be provided.
- 8.3 The Competent Authority may consider and pass an appropriate speaking order:
  - a) For exonerating the Agency if the charges are not established;
  - b) For banning the business dealing with the Agency.
- 8.4 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.

## **9. Appeal against the Decision of the Competent Authority**

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

## **10. 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 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 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.

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

- 11.1 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.
- 11.2 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.
- 11.3 If business dealings with any Agency have been banned by the Central or State Government or any other Public Sector Enterprise, TCIL may, without any further enquiry or investigation, issue an order banning business dealing with the Agency and its inter-connected Agencies.
- 11.4 Based on the above, Units may formulate their own procedure for implementation of the Guidelines.

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**ANNEXURE – III**

**(REFERENCE TO INDEPENDENT EXTERNAL MONITOR)**

Date :

To

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Sub: Tender No. / Contract No. \_\_\_\_\_

1. **No reference can be made to Independent External Monitor if the time to submit the tender / bid is less than 7 days. It may also be noted that no time extension will be allowed for submission of tender.**
2. **Reference of only those bidders who have purchased the tender document and signed the Integrity Pact will be entertained.**
3. **Application be made in triplicate – one shall be sent to TCIL and two copies of the same shall be sent to IEM.**

A) PRE-TENDER STAGE

I) Please provide the following information: -

- a) Whether tender document has been purchased. Yes /  
No  
(If Yes, indicate the Receipt No.)
- b) If downloaded from website, whether fee for the same has been deposited. Yes /  
No
- c) Whether the query has been given to TCIL before submission to IEM Yes /  
No (If Yes, please state the date of submission of query).
- d) If reply has been received, please attach a copy of the reply.

II) Please state the query in clear terms giving reference to the clause in the tender.

B) ISSUES RELATING TO EVALUATION OF TENDERS :

- I) Whether any reference has been made to TCIL Yes / No  
(If Yes, reply received from TCIL be attached.)
- II) Issue on which reference is being made.
- III) Documentary proof with reference to query be attached.

C) IN CASE CONTRACT HAS BEEN SIGNED/EXECUTATION STAGE

I) Date of signing of the contract.

- II) Please state whether the Performance Guarantee has been submitted in terms of the contract. Yes / No
- III) Agreement Clause No. against which the complaint is being made.
- IV) Integrity Pact clause under which reference is being made.
- D) ISSUES REFERENCE : (Please State the query)
- I) Please state whether any reference was made to TCIL. Yes / No.  
(If Yes, reply of TCIL be attached)
- II) In case no reference is made, please note that first reference is required to be made to TCIL unless the issue relates to any corrupt practice.

Signature\_\_\_\_\_

Name of the Company \_\_\_\_\_

Address\_\_\_\_\_

Tel. No. \_\_\_\_\_

Mob. No. \_\_\_\_\_

Fax No. \_\_\_\_\_

E-MAIL \_\_\_\_\_

(Please attach separate sheets for detailing the issues, if need be)