


Ministry of Defence
D (Vigilance)

Subject: Guidelines of the Ministry of Defence for Penalties in Business Dealings with Entities.

Please find enclosed the guidelines of Ministry of Defence for penalties in business dealings with entities applicable for both Capital and Revenue Procurement of Goods and Services, duly approved in the meeting of DAC held on 7.11.2016, for compliance.

Encl.: As above.


(Atul Kumar Singh)
Director (Vigilance)
Tele No.:23012304

SA to RM Secretary (DP) Secretary (Defence Finance)
VCOAS VCNS VCAS DG (Coast Guard) CISC
DG (Acquisition) AS (R) AS (P) JS &AM (LS) JS&AM (MS)
JS&AM (Air) JS (Army) JS (Air) JS (E/CAO)&CVO
MoD ID No.31013/1/2016-D (Vig) Vol.II dated 21.11.2016

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Copy also to: NIC with the request to upload the guidelines on the website of this Ministry.

GUIDELINES OF THE MINISTRY OF DEFENCE FOR PENALTIES IN BUSINESS DEALINGS WITH ENTITIES

(A) Introduction

A.1 It is imperative that the highest standards of propriety be maintained throughout the process of procurement of defence equipment.

A.2 The procurement process needs to proceed without loss of credibility and therefore, there is a need to put in place appropriate measures to deal with acts of impropriety.

A.3 The following paragraphs lay down the policy and guidelines for Levy of Financial Penalties and/ or Suspension/Banning of business dealings with entities seeking to enter into contract with/having entered into a contract for the procurement of goods and services by the Ministry of Defence.

A.4 In applying the measures provided for under the guidelines, the concerned authorities shall be guided by the need to ensure probity, transparency, propriety and compliance in the defence procurement process. Equally, the concerned authorities shall also ensure fairness, impartiality, rigour and correctness in dealing with entities, keeping in view the overall security interests of the country.

(B) General

B.1 Ministry of Defence will include Department of Defence, Department of Defence Production, Department of Defence Research & Development, HQ IDS, Armed Forces Headquarters and their attached/subordinate offices.

B.2 "Entities" will include companies, trusts, societies, as well as individuals and their associations with whom the Ministry of Defence has entered into, or intends to enter into, or could enter into contracts or agreements.

B.3 All firms/companies which come within the sphere of effective influence of the entities shall be treated as its allied firms. In determining this, the following factors may be taken into consideration:-

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- (i) Whether the management is common or the majority interest in the management is held by the partners or directors of the entities.
- (ii) Majority shares are owned by the entity, their directors/shareholders and by virtue of this it has a controlling voice.

B.4 Effect of actions, viz., levy of financial penalties and/or suspension/banning of business dealings with an entity in accordance with these guidelines may, with the approval of the competent authority also apply when an entity participates in the procurement process as member of consortium.

B.5 The competent authority for the purpose of these guidelines will be Raksha Mantri.

B.6 The Competent Authority may constitute Committees as necessary, to examine and make recommendations on any matter provided for under the guidelines.

(C) Causes for Suspension and Banning of Business Dealings with Entities

C.1 The competent authority may levy financial penalties and/or suspend/ban business dealings with an entity for one or more of the grounds listed below:-

- a) Violation of Pre-Contract Integrity Pact (PCIP) (where such PCIPs are entered into between the Ministry of Defence and an entity).
- b) Resort to corrupt practices, unfair means and illegal activities during any stage of bid/contract to secure a contract, even in cases where PCIP is not mandated.
- c) Violation of Standard Clause in the contract of agents/agency commissions.
- d) If national security considerations so warrant.
- e) Non-performance or under performance under the terms and conditions of contract(s) or agreements(s) not covered in grounds listed in (a) to (c) above in accordance with provisions in contract or agreement.

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- f) Any other ground for which the competent authority may determine that suspension or banning of business dealings with an entity shall be in the public interest.

(D) Suspension

D.1 Suspension of business dealing with an entity may be ordered by the competent authority pending a full proceeding into allegations or facts related to any grounds enumerated in paragraph C.1 (a) to (f) above.

D.2 The competent authority may suspend business dealings with an entity when it refers any complaint against the entity to CBI or any investigating agency or when intimation is received regarding initiation of criminal investigation or enquiry against any entity.

D.3 An order of suspension of business dealings with an entity will be issued for such period as the competent authority may deem fit. The period of suspension shall not ordinarily exceed one year. A review of the Order of suspension of business dealings with an entity shall be undertaken within six months of the issue of such an Order and before expiry of the period specified therein. The suspension of an entity may be extended beyond the period of one year, on the order of the Competent Authority for subsequent periods of six months each. The total period of suspension of business dealings with an entity shall not exceed the maximum period of banning of business dealings with an entity for the same cause of action.

(E) Effect of Suspension of Business Dealings with an Entity

E.1 An order of suspension of business dealings with an entity shall result in immediate ineligibility of the entity from participating in future bids. No RFP will be issued to such an entity.

E.2 Any on-going procurement process, where L1 determination has not yet been done, will be progressed after excluding the bid involving an entity with which business dealings are suspended. In case there are only two bidders, one being the entity with which business dealings are suspended, the procurement will be progressed as per extant provisions of DPP after excluding such an entity.

E.3 Any on-going procurement process where the lowest bid involves the entity with which business dealings are suspended by order of

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competent authority, will be held in abeyance till decision of revocation of such order or banning of business dealings with the entity or till expiry of the validity of the existing bid, whichever is earlier. Extension of the validity of the bid involving such entity will not be permitted. On expiry of the bid validity, the procurement process will be terminated and fresh procurement process, if required, may be initiated. In cases of operational urgency, the procurement process may be foreclosed prior to the expiry of the bid validity and a fresh process initiated, excluding the entity with which business dealings are suspended.

E.4 Order of suspension of business dealings with an entity may be extended to its allied firms by specific order of the competent authority.

(F) Banning of Business Dealings with an Entity/Debarment of an Entity

F.1 Banning of business dealings with an entity may be ordered by the competent authority on acceptance of misconduct related to any of the grounds enumerated in paragraph C.1 (a) to (f) above by the entity or establishment of such misconduct by a competent court/ tribunal/ authority.

F.2 Banning of business dealings with an entity may be ordered by the competent authority on receipt of information regarding filing of charge-sheet in the court of law by CBI or any other investigating agency.

F.3 The order of banning of business dealings with an entity will be issued for such specified period as the competent authority may deem fit. For the grounds listed in paragraph C.1 (a) to (d) above, the period of banning of business dealings with an entity shall not be less than five years. For the grounds listed in paragraph C.1 (e) and (f) above, banning of business dealings may be resorted to if, in the view of the competent authority, the grounds for action are such that continuation of business dealings with the entity would be detrimental to public interest. In such cases, the period of banning of business dealings with an entity shall not ordinarily exceed three years. The period of Banning of business dealings with an entity in both the categories will be inclusive of period of suspension of business dealings with an entity, if any, for the same cause of action. In exceptional cases and those involving national security considerations the competent authority may order a longer period of banning of business dealings with an Entity, as deemed appropriate.

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(G) Effect of Banning of Business Dealings with an Entity/Debarment of an Entity

G.1 An order of banning of business dealings with an entity shall result in immediate ineligibility of the entity, from participating in future bids for a specified period with effect from the date of such order. No RFP will be issued to such an entity.

G.2 Any on-going procurement process where L1 determination has not yet been done will be progressed after excluding the bid involving entity with which the business dealings are banned. In case there are only two bidders, one being the entity with which business dealings are banned, the procurement will be progressed as per extant provisions of DPP after excluding such an entity.

G.3 Any on-going procurement process where the lowest bidder involves an entity with which business dealings are banned, will be terminated and fresh procurement process, if required, may be initiated.

G.4 Orders of banning of business dealings with an entity may be extended to its allied firms by specific order of the competent authority.

(H) Employees / Agents of an Entity

H.1 Any employee or agent of an entity, who is convicted for any act of impropriety, will not be allowed to engage in any bid process in any capacity with the Ministry of Defence, any time in the future.

H.2 Any employee or agent of an entity with which business dealings are suspended or banned and who is involved in a case of alleged impropriety for which investigation or judicial proceedings is in progress, will not be allowed to engage in any bid process in any capacity with the Ministry of Defence even after the expiry of the period of suspension / banning of business dealings with the entity.

(I) Miscellaneous

I.1 The entity with which business dealings are suspended or banned, may with the approval of competent authority, participate in the future RFPs for spares, upgrades, maintenance etc. for the equipment/weapon systems supplied earlier by it, if the equipment which is the object of the Contract is a proprietary item and there are no available alternate sources of supply.

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1.2 In cases wherein Transfer of Technology (ToT)/Licensed production has been taken in the past for manufacturing of equipment/weapon systems in India from the entity with which business dealings are suspended or banned, may with the approval of the competent authority, participate in the future RFPs related to components/ rotables/ additional items of such equipment/ weapon systems for which the TOT/ Licensed production has been taken.

1.3 Any contract(s) related to the procurement process(es) in connection with which business dealings with an entity have been suspended will be held in abeyance. Any contract(s) related to the procurement process(es) in connection with which business dealings with an entity have been banned, shall be cancelled. However, other contracts involving such entity shall continue unless a decision to the contrary is taken by the competent authority, on a case by case basis.

1.4 If it becomes necessary on grounds of national security and operational preparedness / export obligations, to deal with an entity with which business dealings have been suspended or banned, in a procurement process and which is the only source that can supply/manufacture an equipment/weapon systems, the Competent Authority will be approached for approval of issuance of RFP or conclusion of contract with such an entity. Certificates (as provided in **Annexure-I**) signed by the Vice Chief of the service concerned / CISC / Additional Secretary (Defence Production) will be placed before the Competent Authority. SHQ / Department of Defence Production may propose special conditions to conclude a contract with such an entity.

1.5 The entity with which business dealings have been suspended or banned will not be permitted to transact contracts or agreements under a different name or division either through a transfer of assets of such an entity to another legal entity or otherwise.

1.6 An updated list of entities with which business dealings have been suspended or banned by the competent authority and/or against which financial penalties have been imposed shall be maintained on the official website of the Ministry of Defence.

(J) Application

J.1 These guidelines shall come into force with immediate effect.

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Annexure-I

(Refers to Para-1.4 of ~~the~~ Guidelines)

CERTIFICATE**

1) The

.....
[equipment/weapon system] is inescapably required for national security and operational preparedness / export obligations and no other alternative/combination of equipment/weapon system can fulfil the requirement.

2) The

.....
[equipment/weapon system] is not available from any other source.

3) It is absolutely necessary to deal with

..... [name of the entity]
with which business dealings have been suspended or banned for meeting the instant requirement.

**Certificates as above, signed separately by the Vice Chief of the Service concerned / CISC, are to be placed before the Competent Authority.

** Certificate for inescapable requirement on account of export obligations, signed by AS (DP) is to be placed before the Competent Authority.