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केन्द्रीय भण्डारण निगम
(भारत सरकार का उपक्रम)

CENTRAL WAREHOUSING CORPORATION
(A Govt. of India Undertaking)

जन-जन के लिए भण्डारण/Warehousing for Everyone



No. CWC CO-FD0PAY/13/2021-FINANCE

Dated: 24.01.2022

CIRCULAR /01/2021-FINANCE

Sub: Fixation of Earnest Money Deposit (Bid Security)

Ref: (i) Commercial Division, CO Circular No. CWC/CD/XII-ICP Attari/H&T/2017-18 dated 23.01.2019 (Circular No. 191)

(ii) Purchase Division, CO Circular No. CWC/Pur/ARC/2004-05 dated 10.06.2004

The Earnest Money Deposit (EMD) also known as Bid Security is obtained from the bidders to safeguard the Corporation against a bidder's withdrawing or altering its bid during the bid validity period in the case of advertised or limited tender enquiry. The EMD is to be obtained from the bidders except who have been specifically exempted to submit the bid security i.e. Micro and Small Enterprises (MSEs), startups etc. The bidders should be asked to furnish bid security along with their bids.

The Earnest Money Deposit (bid security) for H&T tenders has been fixed at 2% of the annual estimated value of the contract vide circular at ref (i) above.

The issue of fixation of EMD has been examined in supersession of all existing circulars and the EMD should be fixed for the tender as per following guidelines:

1. Fixation of Earnest Money Deposit (bid security) amount:

i. Amount of EMD for the tenders should be fixed as under:

S No.	Estimated Value of Contract	EMD Amount
a.	For tenders having estimated value of contract upto Rs. 2 Lakh	Nil
b.	For tenders having estimated value of contract upto Rs. 10 (ten) Crore	2% of the estimated value of the contract
c.	For tenders having estimated value of contract more than Rs. 10 (ten) Crore and upto Rs.50 Crore	Rs. 20 (twenty) lakh + 1% of the estimated value of the contract in excess of Rs.10 Crore.
d.	For tenders having estimated value of contract above Rs.50 (fifty) Crore	Rs. 60 (sixty) lakh + 0.5% of the estimated value contract in excess of Rs.50 Crore.

- ii. Estimate value of Contract for fixation of EMD for different tenders should be considered as under:

S.No.	Type of Tender	Estimate Value of Contract
(a)	For Handling and Transportation Contract (Including H&T for CFS/ICDs) having contract period of more than one year.	Estimated Annual value of Contract.
(b)	For Handling and Transportation Contract (Including H&T for CFS/ICDs) having contract period of one year or less.	Total Estimated Value of Contract during period of contract.
(c)	Strategic Alliances Management Operation contracts of more than one year	Estimated Annual Value of Contract.
(d)	Engineering Contract	Total Estimated Value of Contract
(e)	MIS Contract	Total Estimated Value of Contract
(g)	Procurement of items/services	Total Estimated Value of Contract
(h)	GeM Contracts	No EMD up to Rs. 25 Lakh as per GeM Guidelines. For tender above Rs. 25 lakh, the EMD should be as per above slabs and based on contract value as prescribed above for each type of tender.

- (iii) Bidders who are exempted from submission of EMD as per Government of India guidelines i.e. Micro and Small Enterprises (MSEs), Startup certified by Department for Promotion of Industry and Internal Trade (DPIIT) etc and for tenders having total estimated value of the contract up to Rs. 2 lakh; should submit the Bid Security Declaration (As per format placed at Annexure – I) along with the bid.

2. The EMD should be accepted through online mode i.e. NEFT/RTGS or any other digital mode allowed in the respective tendering system i.e. GeM / e-tendering portal etc.

3. A tender not accompanied by requisite EMD or bid security declaration in case of exempted bidders should be rejected summarily.

4. EMD (Bid security) to the unsuccessful tenderers should be returned within 30 days after the expiry of stipulated bid validity period or after the award of contract whichever is earlier.

5. In case of bidder who are not required to submit the bid security as per extant Government guidelines, the bidder shall sign the bid security declaration accepting that if they withdraw or modify their bid during the period of validity or if they are awarded the contract and they fail to sign the contract or to submit the performance security before the deadline defined in the bid document, they may be de-barred from participating in any of the tenders/procurement process of CWC for a period of **two years**.

6. The EMD can be forfeited as per the terms of the tender. If the successful bidder fails to furnish the prescribed performance guarantee/security deposit within the prescribed period, the EMD shall be forfeited. In case of forfeiture of Earnest Money as per the conditions of the contract, the bidder may be de-barred from participating in any of the tenders/procurement process of CWC for a period of **two year**.

7. The tender accepting authority shall be the competent Authority to debar for failure to abide by the bid security declaration as per the guidelines on debarment of firms from bidding issued by Department of Expenditure, Ministry of Finance vide OM No. No.F.1/20/2018-PPD dated 02.11.2021 (placed at Annexure-II).

Ratti Ram
Aggarwal

Digitally signed
by Ratti Ram
Aggarwal
Date: 2022.01.25
11:32:20 +05'30'

(RR Aggarwal)
GGM (Finance)

Distribution: -

1. All HoDs, CWC, CO New Delhi.
2. All Regional Managers.
3. GGM (System): With a request to place the above circular in internal circulars.

Copy for information:

1. MD CWC/ Director (Fin)/ Director (Pers)/ Director (M&CP), CVO, CWC, CO New Delhi.

Performa for Bid Security Declaration

(On Letter Head of Bidder)

Whereas.....(name of agency) have submitted bids for
..... (name of work).....

I/we hereby submit following declaration in lieu of submitting Earnest Money Deposit.

1) If after the opening of tender, I/we withdraw or modify my/our bid during the period of validity of tender (including extended validity of tender) specified in the tender documents I/we shall be suspended for two years and shall not be eligible to bid for Central Warehousing Corporation tenders from date of issue of suspension order,

Or

2) If, after the award of work, I/we fail to sign the contract, or to submit performance guarantee/security deposit before the deadline defined in the tender documents, I/we shall be suspended for two years and shall not be eligible to bid for Central Warehousing Corporation tenders from date of issue of suspension order.

Signature of the contractor(s)
with stamp

No.F.1/20/2018-PPD
Government of India
Department of Expenditure
Ministry of Finance
Procurement Policy Division

169-A, North Block, New Delhi,
2nd November, 2021.

OFFICE MEMORANDUM

Subject: Guidelines on Debarment of firms from Bidding

Attention is drawn towards Rule 151 of General Financial Rules (GFRs), 2017 regarding 'Debarment from Bidding' which is reproduced as under:

(i) A bidder shall be debarred if he has been convicted of an offence—

- (a) under the Prevention of Corruption Act, 1988; or*
- (b) the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.*

(ii) A bidder debarred under sub-section (i) or any successor of the bidder shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date of debarment. Department of Commerce (DGS&D) will maintain such list which will also be displayed on the website of DGS&D as well as Central Public Procurement Portal.

(iii) A procuring entity may debar a bidder or any of its successors, from participating in any procurement process undertaken by it, for a period not exceeding two years, if it determines that the bidder has breached the code of integrity. The Ministry/ Department will maintain such list which will also be displayed on their website.

(iv) The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment.

2. This department has received a reference from Department of Commerce with a proposal that the task of universal banning of firms as per Rule 151 (ii) of GFRs as above may be undertaken by Department of Expenditure or should be decentralized to individual line Ministries/ Departments as DGS&D had been wind up on 31.10.2017. Central Public Procurement Portal (CPPP) or the Department of Expenditure can then maintain a master data of all such banned firms and it can be made available in public domain.

3 In context of above, all issues regarding debarment have been reviewed in consultations with major procuring Ministries/ Departments and it is decided to issue attached 'Debarment Guidelines' in suppression to all earlier instructions on this subject.

4. This issues with the approval of Finance Secretary.



2.11.21

(Sanjay Aggarwal)

Advisor/ Procurement Policy Division

Email: sanjay.aggarwal68@nic.in

Tel: 23093224

To,

Secretaries, All Central Ministries/ Departments.

Secretary/ Department of Public Enterprises with a request to circulate these instructions to all Central Public Sector Undertakings (CPSUs).

Guidelines on Debarment of firms from Bidding

1. The Guidelines are classified under following two types:
 - (i) In cases where debarment is proposed to be limited to a single Ministry, the appropriate Orders can be issued by that Ministry itself, thereby banning all its business dealing with the debarred firm.
 - (ii) Where it is proposed to extend the debarment beyond the jurisdiction of the particular Ministry i.e. covering to all central Ministries/ Departments, the requisite Orders shall be issued by Department of Expenditure (DoE), Ministry of Finance (MoF).

Definitions

2. Firm: The term 'firm' or 'bidder' has the same meaning for the purpose of these Guidelines, which includes an individual or person, a company, a cooperative society, a Hindu undivided family and an association or body of persons, whether incorporated or not, engaged in trade or business.
3. Allied firm: All concerns which come within the sphere of effective influence of the debarred firms shall be treated as allied firms. In determining this, the following factors may be taken into consideration:
 - a. Whether the management is common;
 - b. Majority interest in the management is held by the partners or directors of banned/ suspended firm;
 - c. Substantial or majority shares are owned by the banned/ suspended firm and by virtue of this it has a controlling voice.
 - d. Directly or indirectly controls, or is controlled by or is under common control with another bidder.
 - e. All successor firms will also be considered as allied firms.

4. The terms "banning of firm", 'suspension', 'Black-Listing' etc. convey the same meaning as of "Debarment".

Debarment by a Single Ministry/ Department

5. Orders for Debarment of a firm(s) shall be passed by a Ministry/ Department/ organizations, keeping in view of the following:
 - a. A bidder or any of its successors may be debarred from participating in any procurement process for a period not exceeding two years.
 - b. Firms will be debarred if it is determined that the bidder has breached the code of integrity as per Rule 175 of GFRs 2017.

- c. A bidder can also be debarred for any actions or omissions by the bidder other than violation of code of integrity, which in the opinion of the Ministry/ Department, warrants debarment, for the reasons like supply of sub-standard material, non-supply of material, abandonment of works, sub-standard quality of works, failure to abide "Bid Securing Declaration" etc.
 - d. It shall **not** be circulated to other Ministries/ Departments. It will only be applicable to all the attached/ subordinate offices, Autonomous bodies, Central Public Sector Undertakings (CPSUs) etc. of the Ministry/ Department issuing the debarment Order.
 - e. The concerned Ministry/ Department before issuing the debarment order against a firm must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm).
 - f. Secretary of Ministry/Department may nominate an officer at the rank of Joint Secretary/Additional Secretary as competent authority to debar the firms.
 - g. Ministry/ Department that issued the order of debarment can also issue an Order for revocation of debarment before the period of debarment is over, if there is adequate justification for the same. Ordinarily, the revocation of the Order before expiry of debarred period should be done with the approval of Secretary concerned of Ministry/Department.
 - h. The Ministry/Department will maintain list of debarred firms, which will also be displayed on its website.
 - i. Debarment is an executive function and should not be allocated to Vigilance Department.
6. Code of Integrity as contained in Rule 175 of the GFRs is reproduced as under:

No official of a procuring entity or a bidder shall act in contravention of the codes which includes

(i) prohibition of

- (a) making offer, solicitation or acceptance of bribe, reward or gift or any material benefit, either directly or indirectly, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process.*
- (b) any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefit may be obtained or an obligation avoided.*
- (c) any collusion, bid rigging or anticompetitive behavior that may impair the transparency, fairness and the progress of the procurement process.*
- (d) improper use of information provided by the procuring entity to the bidder with an intent to gain unfair advantage in the procurement process or for personal gain.*
- (e) any financial or business transactions between the bidder and any official of the procuring entity related to tender or execution process of contract; which can affect the decision of the procuring entity directly or indirectly.*
- (f) any coercion or any threat to impair or harm, directly or indirectly, any party or its property to influence the procurement process.*
- (g) obstruction of any investigation or auditing of a procurement process.*

(h) making false declaration or providing false information for participation in a tender process or to secure a contract;

(ii) disclosure of conflict of interest.

(iii) Disclosure by the bidder of any previous transgressions made in respect of the provisions of sub-clause (i) with any entity in any country during the last three years or of being debarred by any other procuring entity.

7. It is possible that the firm may be debarred concurrently by more than one Ministry/ Department.

8. Ministries/ Departments at their option may also delegate powers to to debar bidders to their CPSUs, Attached Offices/ Autonomous Bodies etc. In such cases, broad principles for debarment in para 5 as above are to be kept in mind. Debarment by such bodies like CPSUs etc. shall be applicable only for the procurements made by such bodies.

9. Similarly, Government e-Marketplace (GeM) can also debar bidders upto two years on its portal.

10. In case of debarments under para 8 as above, revocation the debarment orders before expiry of debarred period should be done only with the approval of Chief Executive Officer of concerned CPSUs etc.

Debarment across All Ministries/ Departments

11. Where a Ministry/ Department is of the view that business dealings with a particular firm should be banned across all the Ministries/ Departments by debarring the firm from taking part in any bidding procedure floated by the Central Government Ministries/ Departments, the Ministry/ Department concerned, should after obtaining the approval of the Secretary concerned, forward to DoE a self-contained note setting out all the facts of the case and the justification for the proposed debarment, along with all the relevant papers and documents. DoE will issue the necessary orders after satisfying itself that proposed debarment across all the Ministries/ Departments is in accordance with Rule 151 of GFRs, 2017. This scrutiny is intended to ensure uniformity of treatment in all cases.

12. The firm will remain in suspension mode (i.e. debarred) during the interim period till the final decision taken by DoE, only in the Ministry/ Department forwarding such proposal.

13. Ministry/ Department before forwarding the proposal to DoE must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm). If DoE realizes that

sufficient opportunity has not be given to the firm to represent against the debarment, such debarment requests received from Ministries/ Departments shall be rejected.

14. DoE can also give additional opportunity, at their option, to firm to represent against proposed debarment. DoE can also take suo-moto action to debar the firms in certain circumstances

15. No contract of any kind whatsoever shall be placed on the debarred firm, including its allied firms by any Ministries/ Departments/ Attached/Subordinate offices of the Government of India including autonomous body, CPSUs etc. after the issue of a debarment order.

16. DoE will maintain list of such debarred firms, which will be displayed on Central Public Procurement Portal.

Revocation of Orders

14. An order for debarment passed shall be deemed to have been automatically revoked on the expiry of that specified period and it will not be necessary to issue a specific formal order of revocation.

15. A debarment order may be revoked before the expiry of the Order, by the competent authority, if it is of the opinion that the disability already suffered is adequate in the circumstances of the case or for any other reason.

Other Provisions (common to both types of debarment)

16. No contract of any kind whatsoever shall be placed to debarred firm including its allied firms after the issue of a debarment order by the Ministry/ Department. Bids from only such firms shall be considered for placement of contract, which are neither debarred on the date of opening of tender (first bid, normally called as technical bid, in case of two packet/two stage bidding) nor debarred on the date of contract. Even in the cases of risk purchase, no contract should be placed on such debarred firms.

17. If case, any debar firms has submitted the bid, the same will be ignored. In case such firm is lowest (L-1), next lowest firm shall be considered as L-1. Bid security submitted by such debarred firms shall be returned to them.

18. Contracts concluded before the issue of the debarment order shall, not be affected by the debarment Orders.

19. The Debarment shall be automatically extended to all its allied firms. In case of joint venture/ consortium is debarred all partners will also stand debarred for the period specified in Debarment Order. The names of partners should be clearly specified in the "Debarment Order".

20. Debarment in any manner does not impact any other contractual or other legal rights of the procuring entities.
21. The period of debarment shall start from the date of issue of debarment order.
22. The Order of debarment will indicate the reason(s) in brief that lead to debarment of the firm.
23. Ordinarily, the period of debarment should not be less than six months.
24. In case of shortage of suppliers in a particular group, such debarments may also hurt the interest of procuring entities. In such cases, endeavor should be to pragmatically analyze the circumstances, try to reform the supplier and may get a written commitment from the supplier that its performance will improve.
25. All Ministries/ Departments must align their existing Debarment Guidelines in conformity with these Guidelines within two months of issue of these Guidelines. Further, bidding documents must also be suitably amended, if required.

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