

List of Debarment or Disqualification Grounds

AUTHORITY AND RATIONALE FOR DEBARMENT

The authority for debarment of defaulting contractors lies with the Standing Committee on Debarment (SCOD). The members of this Committee are:

- (a) Deputy Secretary (Finance) or his deputy, as Chairman;
- (b) Deputy Secretary (Transport) or his deputy;
- (c) Deputy Secretary (Environment) or his deputy;
- (d) Deputy Secretary (National Development) or his deputy;
- (e) Deputy Chief Executive of Building and Construction Authority or his deputy; and
- (f) Attorney-General or his deputy;
- (g) Director, Corrupt Practices Investigation Bureau or his deputy

SCOD decides on all cases of debarment. Public sector agencies will submit their debarment recommendations directly to the Secretary, SCOD of the Ministry of Finance. In general, the debarment period should be commensurate with the financial or material losses suffered by the government agency and the defaulting tenderers will be debarred from all lines of business. This is to protect the interests of the other government agencies from contracting with the defaulting tenderers.

GROUND FOR DEBARMENT

The grounds for and standard periods of debarment for the various kinds of infringements and defaults are as follows:

(1) Abandonment/Termination of Contract

If the contract or work has commenced and there is abandonment/termination of contract in any of the following situations, the defaulting contractors will be debarred from all lines of business:

- (i) the contractor has defaulted in performing the contract resulting in the government agencies serving notice to terminate the contract; or
- (ii) the contractor has formally informed the government agencies that it is unable to continue performing its obligations under the contract.

(2) Withdrawal of Tenders

Tenderers who withdraw from a tender after closing date of tender but before award are made, will be debarred. The defaulting tenderers will be debarred from all lines of business.

(3) Withdrawal of Tender After Award

If tender is awarded to a tenderer but the tenderer fails or refuses to acknowledge or commence work after the government agency has awarded the tender (e.g. by issuing Letter of Acceptance).

(4) Use of Sub-Standard Materials and Short Supply/Cheating/Attempted Cheating

Contractors found to have used Sub-Standard Materials and Short Supply leading to compromise of public safety, e.g. the structure of a building is affected by the use of substandard materials.

For Cheating/Attempted Cheating cases, the "amount overpaid by the GPE" is used as the affected value.

(5) Giving False Information

Contractors found to have given false information (that has have a material bearing on the award or performance of the contract) will be debarred.

(6) Corruption

Corruption offences are investigated by the CPIB and the CPIB would, where appropriate, recommend to SCOD for debarment action or otherwise, as soon as possible after the court decision which establishes that the contractor or any of its employees, directors, partners or its sole proprietor had bribed a public sector officer or another person, in connection with a government agency or contract, is available.

The debarment applies to the following:

- (i) Contractors involved in corruption
- (ii) Directors/partners/sole proprietors of the debarred companies/businesses who are involved in corruption
- (iii) Other companies/ businesses on which the directors/partners/sole proprietors sit.
- (iv) Existing and new subsidiaries of the principal offending company (that is, companies in which the principal offending company has 50% or more ownership directly or indirectly).

(7) Poor Performance Reports

Contractors which have 5 or more net poor performance reports (i.e. overall poor performance reports) will be debarred. The poor performance report can cover both construction and goods and service contracts.

(8) Unauthorised Sub-Contracting

A contractor which has sub-contracted the entire contract, or sub-contracted partially the tendered works or services to some other contractor(s) without authorisation or approval will be debarred. In addition to debarment, other action may be taken (e.g. prosecution in court where a criminal offence is detected or a claim for damages where there are grounds for a civil suit).

(9) Novation of Contract

Novation of contract may be arranged by an existing contractor on his own accord or it can be requested by a government agency. Novation is often the result of changed circumstances

midway through the contract e.g. mergers and acquisitions, financial difficulties, sale of a part of the business or inability to fulfil contractual obligations.

For cases where the contractor takes the initiative to novate the unfinished part of a contract without causing delay or inconvenience or resulting in increased cost or significant impact to the government agency, then there is no need to refer the case to Secretary SCOD as no penalty need be imposed.

In cases where the government agency assesses that:

(i) the contractor had not acted responsibly and responsively in getting the contract novated and causes the government agency to suffer losses such as inconvenience or delay in progress of the contract ; or

(ii) the ability of the contractor to take on future projects either in the same product/service category or another category, is affected

then the government agency should issue a warning letter to the contractor and inform Secretary, SCOD so that the warning is put on record in the debarment system. This can be done by copying the warning letter to Secretary SCOD.

In cases where the government agency suffers much inconvenience or losses, eg the novation is carried out at the end of a protracted delay in the project, or the contractor had acted irresponsibly, or the government agency has reason to believe that the contractor had deliberately arranged for a novation to make a profit (e.g. by acting as a 'middle man' to clinch the contract first then novate it to another contractor), then the government agency can recommend to SCOD to debar the contractor. The period of debarment will be that under abandonment/ termination of contract.

(10) Defaulting Repeatedly

If a contractor is debarred 3 times or more within a period of 12 months, an additional 6 months of debarment should be imposed. The additional debarment will begin immediately after the last original debarment period ends. Secretary, SCOD will exercise caution when recommending the additional 6 months, taking into account the reasons for the repeated defaults and also the contractor's track records.

(11) Violation of safety regulations or safety requirements or Debarment by MOM for poor safety record

(a) Where a contractor had been barred by the Ministry of Manpower (MOM) from employing or renewing the employment of foreign manpower on account of its poor safety performance.

(b) Where a contractor has infringed any regulation relating to safety or has occupational safety lapses when carrying out works resulting in or liable to cause compromise to public safety or bodily injuries.

(c) GPEs can rely on findings of independent bodies such as a Committee On Inquiry or a competent regulatory authority such as MOM, Building and Construction Authority or Professional Engineers Board or Board Of Architects etc to make recommendations to SCOD (before court conviction relating to infringement of regulation). Debarment is on the basis of prudence on the part of the government. If no conviction is found subsequently, SCOD will lift the debarment.

(12) Compromise of national security or public interest

Where the conduct or actions of a contractor causes national security or public interest to be compromised.

(13) Bid-Rigging

Bid-rigging involves the submission of a tender as a result of collusion or co-operation between contractors. Fixing of bid prices, market sharing and production controls in the context of a tender are regarded as forms of bid rigging.

Allegations of bid-rigging are investigated by the Competition Commission of Singapore (CCS). Where the CCS has issued an infringement decision finding that two or more contractors have rigged bids in connection with a Government tender, the CCS will where appropriate, recommend to SCOD that debarment action be taken. The recommendation will be made as soon as possible after the timeframe for the filing of an appeal against the CCS' infringement decision has expired. Where an appeal has been filed against the CCS' infringement decision, the recommendation will be made as soon as possible after the resolution of the appeal.

The debarment applies to the following:

- (i) Contractors involved in the bid rigging; and
- (ii) Directors/partners/sole proprietors of the debarred companies/businesses who are involved in bid rigging.

Debarment of Director/Partner/Sole Proprietor or Defaulting General Managers/ Project Managers/Employees

When a contractor is debarred, the director/partner/sole proprietor of the defaulting contractor will likewise be debarred for the same period as the company. SCOD also reserves the right to debar other companies that such individuals are serving as directors or deemed to have effective influence or control over (e.g. holding majority shares).

In addition to recommending debarment for contractors, government agency can also recommend to SCOD to debar an employee of a defaulting company (e.g. the general manager or project manager) if it can be clearly proven that they are responsible for the company's default. SCOD can debar a director/partner/sole proprietor of a defaulting company or firm. The debarment period shall be the same as that of the debarred company or firm.

The job titles of general manager and project manager serve merely as illustrations. More importantly, their role should have direct bearing and involvement in the project/work in question. Their titles may not be general manager or project manager, but if their involvement/decisions result in the inability of the company to deliver the service/end products as specified in the contract, then they can be considered for debarment.

PROCEDURE FOR DEBARMENT

If a contractor has defaulted under any of the circumstances mentioned above, the government agency should submit the full facts of the case (including the contractor's reasons for its default)

with its recommendations to SCOD. The facts of the case should include the contractor's line of business, all relevant correspondence with the contractor, internal investigation report and ACRA's Instant Information (Business Profile) wherever applicable. All the facts of the case and mitigating factors submitted by the defaulting contractors should be considered in arriving at a decision.

Except for cases involving CPIB and CCS investigations government agencies should warn the defaulting companies in writing of the intention to debar them and the grounds for such action (e.g. abandonment of contract) before these cases are subsequently submitted to SCOD. This would give the defaulting contractor the opportunity to make a business tradeoff between proceeding with the contract or facing the possibility of debarment. When warning contractors of debarment, government agencies should at the same time ask the contractors to explain the reasons for their default within 10 days. The defaulting contractor will be given an opportunity to explain why it has defaulted. The explanation should be included in the recommendation to SCOD. The response from the defaulting contractor would be taken into consideration by SCOD in its decision.

Once a decision has been made by SCOD, Secretary, SCOD will inform the contractors debarred by SCOD of the reasons for doing so and the period of debarment including the effective date of the debarment. Debarred directors/partners/sole proprietors are allowed to appeal against sanctions against them if they have good reasons not to be held personally responsible directly or indirectly, for the default. The appeal should go to the Permanent Secretary (Finance). Permanent Secretary (Finance), before making the decision, shall take into account the reasons forwarded by government agencies supporting the lifting of, or modifications to, the sanctions. There will be no minimum period before the sanctions can be lifted, and no further recourse if the appeal is turned down. Where two or more government agencies recommend debarment of the same contractor at about the same time, any approved periods of debarment will run concurrently.