

REVENUE CONTRACTING PROCEDURES

PENALTIES AND DEBARMENT

#180 Penalties and debarment serve to protect Government from unscrupulous and recalcitrant parties who try to exploit the open, fair and transparent system of allocation to their own advantage.

#181 The guiding principle in debarment is to prevent other Government agencies from meeting with the same set of circumstances which a particular agency has met with in dealing with an external party. In particular, undesirable tenants who give problems, are constantly in arrears, or breach conditions of tenancy should be excluded from future tenancies.

#182 In considering the extent of debarment, the seriousness of the breach and the extent of damage, both tangible and intangible, suffered by the Government as a result of the breach should be considered.

Withdrawal of Tender Before Award

#183 Where tenderers withdraw their offers before tender award is made, and the tender deposit is forfeited successfully by the Government agency, no debarment action is necessary, except for cases where corruption is involved.

#184 If the tender deposit is not collected (e.g. dishonoured cheques, stoppage of payment) the tenderer should be debarred for a period of at least one year from all lines of business.

Penalties for Fundamental Breach of Contract

#185 If the successful tenderer failed to observe or perform any of the conditions laid down in the Conditions of Tender or breach any of the Agreements, which leads to a fundamental breach, the Ministry, Department or Statutory Board concerned can forfeit all monies already made under the Agreement, re-possess the property, vary or rescind the contract. These terms and conditions should be included in the Invitation to Tender or other relevant documents prior to formation of contract.

Imposition of Substantial Fines

#186 The Ministries, Departments and Statutory Boards involved in land sales and revenue tenders should ensure that their tender documents are written to provide for punitive penalties in the form of substantial fines which would apply not only to the successful tenderers but also to their agents.

#187 If any party concerned refuses to pay the fine, debarment from all lines of business may be imposed. The terms and penalties involved must be explicitly stated in the contracts so that the tenderer and his agent are given an option to pay the fine or face debarment action.

Forfeiture of Deposits for Withdrawal of Tenders

#188 For all revenue contracting tenders, the penalty for withdrawal of tender after the closing date of the tender, but before award is made shall be the forfeiture of tender deposit.

Corruption/Collusion in Tenders

#189 Corruption and collusion are serious offences. In addition to the forfeiture of tender deposits, tenderers convicted of corruption/collusion in any tender will be debarred from all lines of business for a minimum of 5 years, regardless of the amount involved. The staff involved shall be dealt with in accordance with IM2. For cases where there is no conviction by the Courts, the Standing Committee on Debarment (SCOD) will base its decision on the recommendations of CPIB. CPIB and the Ministry conducting the tender are to submit reports and recommendations to SCOD for all cases where corruption or collusion is involved, even if the recommendation is not to debar.

Infringement of Safety Rules

#190 Ministries shall recommend the appropriate debarment action for tenderers who cause a risk to life or infringe safety rules.

Failure to Pay Tender Deposit

#191 Where the tender deposit has not been collected, the agency concerned should ascertain the cause of the failure to pay tender deposit, and if warranted, put up a case to debar the tenderer concerned.

Withdrawal of Tender After the Award Was Made

#192 For withdrawal of tender after the award was made, in addition to forfeiture of tender deposit, the withdrawal shall be treated as a breach of contract, and the debarment periods for breach of contract shall apply.

Termination of Contract

#193 If sufficient notice has been given for the termination of the contract, in accordance with the agreed terms and conditions no penalty should be imposed. If insufficient notice for termination is given, the entire security deposit shall be forfeited. In addition, the Ministry shall consider if debarment is warranted, and put up a case to SCOD accordingly.

Abandonment of Contract

#194 If a tenderer/applicant abandons the contract without giving notice, he should be penalised by debarring him from all lines of business for at least 1 year.

Giving False Information

#195 Tenderers/applicants giving false information to gain advantage for securing award will be debarred from participating in all tenders for 2 years regardless of value of tenancy or lease agreements.

Refusal to Vacate Premises

#196 Tenderers/applicants who refuse to vacate premises even though their contracts are up will face a debarment of 2 years, on top of eviction/legal action.

Breach of Contract

#197 For any breach of contract by the tenderer, such as unauthorised conversion of use, unlawful or unauthorised activities, and unauthorised sub-letting, the security deposit may be forfeited. Punitive fines may also be imposed. The debarment period will depend on the severity of the breach, up to a maximum of 5 years.

Arrears in Rental

#198 Arrears in rental during the tenancy period attract late interest payments in accordance with IM1. If however, there are outstanding arrears in rentals due to any Government agency, the extenant shall be debarred from future leases, whether through tenders, “to-let” notices or lease through managing agents, until they have paid up the outstanding sums, with interest. If a prospective tenant still owes Government outstanding rental, it does not make sense to give a fresh tenancy to the same party, unless it is warranted on compassionate grounds. Cases for lifting of debarment whilst arrears are due should be approved by SCOD.

(#199 - 209 not used)

OTHER PENALTY OR ACTION

#210 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) against the defaulting party.

#211 If a party is involved in arbitration or any legal proceedings with the Government, the Ministry, Department or Statutory Board should take these proceedings into account in tender evaluation.

AUTHORITY FOR DEBARMENT

#212 The authority for debarment of defaulting tenderers lies with SCOD, comprising members from Ministries of Finance, Transport, Environment and National Development, Attorney-General's Chambers, CPIB and Building & Construction Authority (BCA). SCOD will decide on all cases of debarment. Ministries will submit their debarment recommendations for revenue-earning tenders to Ministry of Finance.

#213 Cases of debarment containing the pertinent facts of the case (especially the reasons for default/breach) and recommendations should be forwarded to MOF in the format as set out in Appendix G1. The facts of the case should include the firm's line of business, all relevant correspondence with the firm and internal investigation report, wherever applicable.

#214 All recommendations must be personally endorsed by the Permanent Secretary of the ministry or the Chief Executive Officer of the statutory board, or an officer not below the grade of Director nominated personally by him.

#215 Except for cases involving convicted cases of corruption, Ministries, Departments or Statutory Boards should warn the defaulting companies in writing of the intention to debar them and the grounds for such action (eg. Abandonment of contract) before these cases are submitted to Ministry of Finance. This would give the defaulting firm the opportunity to make

a business tradeoff between proceeding with the tender/contract or facing the possibility of debarment. When warning firms of debarment, Ministries, Departments or Statutory Boards should at the same time ask the firms to explain the reasons for their default within 10 days.

#216 A copy of the firm's letter, when received, should be included in the recommendation to MOF. SCOD would also take these reasons into consideration in its decision. Ministries, Departments or Statutory Boards should not mention the period of debarment in their warning letters. The period of debarment will be decided by SCOD.

#217 If Ministries, Departments or Statutory Boards are convinced that the offence is not serious enough to warrant debarment or the firm's explanation is acceptable or for any other reason, they can recommend to SCOD for a written warning letter to be issued to the firm. Ministries, Departments or Statutory Boards can consult MOF if they are not sure whether debarment action should be recommended or if they propose to deviate from MOF's guidelines on debarment.

#218 MOF would consider the cases put up by the Ministries, Departments or Statutory Boards, and in turn submit its recommendations to SCOD for a decision. Once a decision has been made by SCOD, Secretary, SCOD will issue a circular notifying Ministries, Departments and Statutory Boards of the decision.

#219 Secretary, SCOD shall inform the debarred firms of the reasons for doing so. Secretary, SCOD shall use the standard format at IM3B Appendix B 21 for this purpose. The debarred firm should be informed within 1 week after the Debarment Circular is issued. The debarred firm may submit directly to the Secretary, SCOD an appeal against the decision of SCOD within 2 weeks. A copy of the appeal should be sent to the Ministry, Department or Statutory Board concerned. The Permanent Secretary/Chief Executive Officer in person, or an officer not below the grade of Director nominated personally by him, should consider the appeal and submit his recommendation to MOF.

#220 The appeals will be put up to the Permanent Secretary (Finance). No appeal will be entertained in cases involving convicted cases of corruption.

#221 Where two or more Ministries, Departments or Statutory Boards recommend debarment of the same firm at about the same time, any approved periods of debarment will run concurrently.