



CENTRAL ELECTRONICS LIMITED

Policy and Procedure for Banning of Business Dealings

(w.e.f. 9th December 2020)

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Introduction

- 1.1 Central Electronics Limited (CEL), 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. CEL has also to safeguard its commercial interests. CEL 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 CEL 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 CEL 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.



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1.3 Action taken under this policy shall be without prejudice to the other remedies as may be available to CEL under the contract and/or law.

Scope

2.1 The Standard Conditions of Contract of CEL generally provide that CEL reserves its rights to remove from list of approved suppliers / contractors or to ban business dealings if any Agency has been found to have committed misconduct and also to suspend business dealings pending investigation. If such provision does not exist in such conditions, 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 the company (CEL) to take action/decision under these guidelines in appropriate cases.

2.4 The procedure of (i) Removal of Agency from the List of approved suppliers / contractors; Banning of Business Dealing with Agencies, has been laid down in these guidelines (ii) Suspension.

2.5 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.

2.6 The banning shall be with prospective effect, i.e., future business dealings.

Definitions

In these Guidelines, unless the context otherwise requires:

i) 'Party / Contractor / Supplier / Purchaser / Customer/Bidder/Tenderer' shall mean and include a public limited company or a private limited company, a firm whether registered or not, an individual, a cooperative – society, Joint venture, consortium or an association or a group of persons engaged in any commerce, trade, industry, etc.



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'Party / Contractor / Supplier / Purchaser / Customer/ Bidder / Tenderer' 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) Head (Finance) shall be the 'Competent Authority' for the purpose of these guidelines. CMD, CEL shall be the 'Appellate Authority' in respect of such cases.
- b) CMD, CEL shall have overall power to take suo-moto action on any information available or received and pass such order(s) as it 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 of CEL, Central Bureau of Investigation, Central Vigilance Commission, the State Police or any other Central or State authority set-up under the authority of law.

v) 'List of approved Agencies - Parties / Contractors / Suppliers / Purchasers / Customers / Bidders / Tenderers shall mean and include list of approved / registered Agencies – Parties/ Contractors / Suppliers / Purchasers / Customers / Bidders / renderers, etc.

Initiation of Banning / Suspension

Action for banning /suspension business dealings with any Agency should be initiated only by the division/department having business dealings with them after noticing the irregularities or misconduct on their part as specified in clause 7.1b or by MMD as



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specified in clause 7.1c. Besides the concerned department, Vigilance Department of the company (CEL) shall also be competent to initiate such action.

Suspension of Business Dealings

5.1 If the conduct of any Agency dealing with CEL is under investigation by any department, 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 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 company (CEL). During the period of suspension, no business dealing shall be held with the Agency.

5.3 As far as possible, the existing contract(s) with the Agency may continue 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 serious and it would not be in the interest of CEL, as a company, to deal with such an Agency pending investigation, depending upon the gravity of the misconduct, it would not be desirable for CEL to have any dealings with the Agency concerned, an order suspending business dealings may be issued by the competent authority, copy of which shall be endorsed



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to the Agency concerned. Such an order would operate for a period as mentioned in the order issued by competent authority.

5.5 If the Agency concerned asks for detailed reasons of suspension, the Agency may be informed that reasons thereof in writing. It is not necessary to enter into any further correspondence with the Agency at this stage.

5.6 It is not necessary to give any show-cause notice or personal hearing to the Agency before issuing the order of suspension. Further, if investigations are not complete within the period referred to in suspension order, the Competent Authority may extend the period of suspension, during which period the investigations must be completed.

Ground on which suspension or Banning of Business Dealings can be initiated

It includes following:-

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 CEL, 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 CEL 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;



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- 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 and / or fudging /forging /tampering of documents;
- 6.8 If the Agency uses intimidation / threatening or brings undue outside pressure on the company (CEL) 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 CEL or not;
- 6.11 Based on the findings of the investigation report of CBI / Police etc. against the Agency for malafide / unlawful acts or improper conduct on his part in matters relating to the company (CEL);
- 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 (CEL), forcefully occupies, tampers or damages the CEL's properties including land, water resources, forests / trees, etc.
- 6.15 Non- payment of security deposit within the given timelines as per contractual terms.
- 6.16 In case a non-exempted bidder becomes successful bidder whose EMD has been converted into security deposit or an EMD exempted bidder submits the security deposit or an EMD exempted bidder submits the security deposit but does not start the work or fails to supply the ordered material despite a notice being given by CEL to supply the material/perform the obligations as per work/purchase order.



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- 6.17 If the agency is bankrupt or insolvent or being dissolved or has resolved to be wound up or proceedings for winding up or dissolution have been initiated.
- 6.18 If there is withdrawal of bid after opening of price bids or refusal to accept the purchase/work order of CEL.
- 6.19 If the agency violates the terms and conditions of tender, Purchase/work order, contract with CEL.
- 6.20 If the agency violates the provisions of labour laws/ regulations/rules/safety norms, provisions of Factories Act or any other statutes in vogue from time to time.
- 6.21 If performance of the agency/supplier/contractor is reported poor by the customer or any division of CEL and it is recommended that it is desirable for CEL to have no dealings with the Agency concerned.
- 6.22 If the agency discloses any information pertaining to the contract with CEL to any third party/agency without prior written permission of CEL.
- (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).

Banning of Business Dealings

7.1 Procedure:

- a. A committee consisting of Head (PPC) of the concerned division, Head (MMD), and concerned section in-charge of FAD under the chairmanship of concerned Business Head will look into such cases. Concerned section-in-charge of MMD shall be the convener. The Committee may, if so required, seek advice of the legal section.
- b. Proposal for banning setting out facts of the case and the justification of the action proposed along with all the relevant papers and documents will be sent by the concerned PPC through their divisional Head to the Head (MMD).



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- c. In the event of non-submission of security deposit within the stipulated time by any vendor against the purchase order, if security deposit is not submitted even within ten days of expiry of such stipulated time in the respective tender and no information is received from indenting division, MMD may proceed further to call the meeting of the committee to initiate action for banning of business dealing of the vendor on the ground of non-submission of security deposit.
- d. On the receipt of the proposal from the indenting division/PPC or in the event as stated in 'c' above, meeting of the committee will be arranged by the convener as soon as possible.
- e. If the prima-facie decision for banning of business has been taken by the committee, Manager (Law) CEL shall prepare a draft show-cause notice and with the approval of Competent Authority, MMD will issue the same to the concerned vendor conveying why the business dealing with it be not banned and call for an explanation from the vendor.
- f. After issuance of show-cause notice, if the Agency requests for inspection of any relevant document in possession of CEL, necessary facility for inspection of documents may be provided. The relevancy of the documents asked by the agency will be decided by the Competent Authority. The Competent Authority may refuse inspection or supply of any document(s) asked for by the agency, without giving any reason to the agency.
- g. On receipt of reply to show-cause, committee will examine the case and explanation, if any, given by the vendor and if required may give personal hearing to the vendor, before taking a decision on banning of business.
- h. Personal hearing of the vendor will be held in the presence of the committee
- i. Based on the deliberations of the committee and after personal hearing, if required recommendations for banning of the vendor or/otherwise will be put forward by the committee to the Competent Authority.



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- j. During the above course of action, if it is observed by the committee at any time that matter needs to be forwarded for investigation to vigilance or to any other authority for any reason whatsoever, committee shall refer the case to CVO and further action, if required as per directives of CVO, shall be taken up thereafter. However, any other matter related to vendors which is against the terms of the tender for which it is felt that no vigilance investigation is needed and brought to the notice by any concerned division, committee may continue the actions for banning.

7.2 The Competent Authority will take the final decision regarding banning of business and may direct removal from List of Approved Agencies -Suppliers / Contractors, etc. or as the case may be. If it is decided to ban, the period for which it would be operative shall be mentioned in the order. The order may also mention that the banning would extend to the interconnected agencies of the vendor apart from uploading the same on CEL website.

7.3 If the Competent Authority decides that the charges against the Agency are of minor nature which may have financial implications up to Rs.1.00 Lakh, it may decide not to remove its name from the list of approved agencies – supplier/contractors, etc. rather only issue a warning to the agency to be cautious in future business dealings with CEL. However, if instance/case/offence/fault/fraud is repeated by the Agency, charges against the agency shall not be considered as minor. Past performance of the agency may be taken in to account while processing the approval of the Competent Authority for awarding contract to such agency. All other charges which may have financial implications of more than Rs.1.00 Lakh shall be considered of major nature and final decision for banning of business dealings shall be taken.

7.4 The period of banning of business dealing will be decided by the Competent Authority on case to case basis, considering the recommendations of the committee.



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Appeal against the Decision of the Competent Authority

8.1 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. Upon receipt of appeal, appellate authority shall call for comments from the competent authority.

8.2 Appellate Authority would consider the appeal, along with comments of the Competent Authority and pass appropriate order which shall be communicated to the Agency as well as the Competent Authority.

Review of the Decision by the Competent Authority

Any petition / application filed by the Agency concerning the review of the order passed originally by the Competent Authority under the existing guidelines, before filing of appeal before the Appellate Authority, 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 petition to the same Committee (as per 7.1a.) for examination and recommendation and pass orders after receipt of recommendations from the Committee.

Circulation of the names of Agencies with whom Business Dealings have been banned

10.1 Depending upon the gravity of misconduct established, the Competent Authority 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.



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- 10.2 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.
- 10.3 If business dealings with any Agency has been banned by the Central or State Government or any other Public Sector Enterprise, CEL may, without any further enquiry or investigation, issue an order banning business dealing with the Agency and its inter-connected Agencies.
