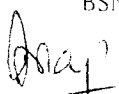


Chapter 19

Guidelines for taking action against vendors who default

As all concerned are aware that the BSNL being an artificial juristic person/ legal entity, does its business through the Directors/ below Board level Executives/ Officers, who exercise the powers vested in the company through appropriate delegation of powers made by the Board of Directors, in accordance with Company's Memorandum of Association and Articles of Association and the Indian Companies Act and other applicable Government instructions/ guidelines issued from time to time.

- 1.1 As part of business, the company enters into various kinds of Memorandum of Understanding (s) (MoUs)/ Agreement (s)/ Contracts (s)/ Tender(s)/ APO(s)/ PO(s) etc., or other types of arrangements with various person (s)/ Bidder (s)/ Entity (ies)/ Supplier(s)/ Vendor(s)/ Contractor(s) etc. as the case be. These Understanding(s) (MoUs)/ Agreements (s)/ Contract(s)/ Tender (s)/ APO(s)/ PO(s) etc., or other types of arrangements may pertain to any of the business activity(ies) of the Company e.g. Procurement/ purchase of Goods/ Materials/ Equipments/ Software/ Services of various types such as Value Added Services, Internet Data Centres, Call Centres, House Keeping and/ or Security Services etc.
- 1.2 All such activities in the company are administered/ managed by Business Heads in the Corporate Office; CGMs/ PGMs/ GMs and other Unit Heads of the field units, who are responsible for Administration/ Management of the particular activity, in the capacity of Risk Management Administrators (RMSs) as designated by the Board of Directors in the ERM Policy of the Company as the Nodal Officers, who are assisted by the Officer-in-charge of contract.
2. While strict adherence to the stipulations of each such contract is a pre-requisite, there are occasions, where deviations also take place. The respective Officer-in-charge of the Contract working under branch head (Nodal Officer), in whose jurisdiction a particular Agreement/ Understanding etc. falls, is expected to monitor the progress of implementation of the particular Agreement/ Understanding etc. to avoid a situation where BSNL stands to lose its strength in getting the best performance from any such contract.
3. Needless to reiterate that "Time is essence of each contract".
- 3.1 Therefore, for initiating action against any errant/ defaulting bidder/ vendor/ contractor it is required that details of the tender/ APO/ PO/ Contract are available with the respective nodal Heads in the Corporate Office; CGMs/ PGMs/ GMs and other Unit Heads of the field units who are assisted by the respective Officer-in-Charge of Contract and are responsible for



Administration/ Management of the particular activity to substantiate or make it a fit case for taking action against any defaulting contractor/ supplier etc.

4.0 In case any default is committed by a bidder/ vendor/ contractor, effort need be made to notify him and give him chance to present his view point i.e. hear his side. Adequate opportunity of hearing should be given and the explanation, if tendered, should be considered before passing any order keeping in view the facts and circumstances of the case.

4.1 In case his explanation is not found satisfactory then action need be taken to safeguard the interest of BSNL and prevent participation of fraudulent/ non-performing vendors to ensure smooth operations of our procurement process.

5.0 Different type of defaults committed by the vendors & actions to be taken thereof:

The various types of defaults committed by the vendors and the actions to be taken are indicated in **Appendix-1** to Section 4A Chapter 4 of Procurement Manual.

5.1 The actions against defaulting vendors can be broadly classified as:-

- (i) Forfeiture of EMD/ SD/ PG;
- (ii) Termination of contract;
- (iii) Withdrawal of TSEC/ IA;
- (iv) Banning of business dealings.

5.2 Banning of business with a defaulting vendor is warranted in case of

- (i) breach of any contractual obligation;
- (ii) Detection of an offence involving moral turpitude in relation to business dealing; or
- (iii) An offence of malpractices, etc. which, if established, will warrant banning of business dealing.

6.0 Implementation of the guidelines:

6.1 The actions as given in column (C) for various defaults mentioned in column (B) of **Appendix-1** to section 4A of Chapter 4 will supersede all other provisions mentioned in the Procurement Manual 2012.

6.2 These guidelines shall be applicable for all telecom Units of BSNL. These may be followed by Civil, Electrical & Architectural Wing also wherever they are not in contravention of the provisions given in CPWD Manual.

6.3 After issue of business banning order,

- (a) In case any tender is under process of finalization then the offer/ bid of the debarred vendor shall be rejected summarily and necessary action shall be taken to finalize the tender (for full tendered quantity) with the remaining vendors.
- (b) In case APO had been issued, then the APO shall be cancelled and necessary action shall be taken to procure the tendered items/ material/ services (including L-1 quantity) from the remaining vendors.

(c) In case PO/ WO had been issued, then the PO/ WO shall be cancelled and necessary action shall be taken as per relevant clause in **Appendix-1** to section 4A of Chapter 4.

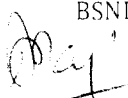
- 6.4 The business banning order issued by any tender inviting/ approving authority will be effective for the area under his jurisdiction only.
- 6.4.1 However, if the tender inviting/ Approving authority finds that the defaulting vendor should be barred for business in the area of his controlling officer also, he shall send a self contained note, enclosing all relevant papers along with his recommendations to his controlling officer for further action at their end.
- 6.4.2 The controlling officer shall examine the case from the point of view that the default committed by the vendor justifies the action of his subordinate officer. If satisfied, controlling officer will examine whether the default committed by the vendor justifies banning in his area of operation also. In that case he will take action to implement the business banning order in his area of operation.
- 6.5 Any complaint which has been investigated by the CBI, Vigilance wing or any other Govt. investigating agency, on its own or as per the direction of the competent authority and it is found that there is a need to ban the vendor, the recommendation in this regard will be sent to the MM branch of the Circle/ BSNL corporate office through the Vigilance wing or the CVO BSNL, as the case may be, for further necessary action.
- 6.6 The Court cases arising out of the banning orders issued will be dealt by the tender inviting /approving authority (officer of his MM unit or any other officer nominated by tender inviting/ approving authority).

7.0 Procedure for taking action against the defaulting vendor:

The procedure to be followed listing steps to be taken before proceeding against the vendor is enclosed in **Annexure-1**. The required action shall be taken by the unit in which the default is committed/ noticed. The tender approving/ inviting authority will be the competent authority for approving the action as mentioned in **Appendix-1** to section 4A of Chapter 4.

8.0 Revocation of Orders:

- 8.1 A banning order passed for a specified period 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, except that a banning order passed on consideration for defaults at S. No. 2, 6 & 7 of Appendix-1 to section 4A of Chapter 4 and shall continue to remain in force until it is specifically revoked by concerned tender inviting/ approving authority or his controlling officer.
- 9.0 If a banning order has been issued by an SSA then the appeal against banning order shall lie with the CGM In charge of that Circle and if a banning order has been approved by a Circle then appeal against the banning order shall lie with CMD BSNL.



10.0 Maintenance of Up-to-date List:

Database in respect of all banned vendors, either banned by tender inviting / approving authority (TIA) in the SSA, Circle or pan India basis, shall be available on BSNL intranet portal.

- 10.1 Tender inviting authority while issuing orders for banning of business (and/ or its revocation) shall endorse a copy to GM (MM) of BSNL C.O. who will be responsible for updating/ maintaining the upto date list of banned vendors along-with the period and area of banning on BSNL intranet portal.

11.0 Non Extension of Banning Orders to Allied/ Sister Concerns of a vendor:

The fact that a vendor is an allied concern of a banned vendor should not be taken as a ground to prevent the allied/ sister concern of that vendor from participation in BSNL tenders.

