

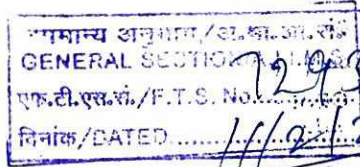


No. Z-28016/25/2018-PMSSY-I (EO-3144936)

Government of India
Ministry of Health and Family Welfare
(PMSSY-I Section)

3rd Floor, IRCS Building, New Delhi-110001

Dated the 3rd February, 2021



To

1. Director, AIIMS – Delhi ; Director, PGI, Chandigarh ; Director, JIPMER, Pudducherry.
2. Director, AIIMS Bhopal / Bhubaneswar/ Jodhpur/ Patna/ Raipur/ Rishikesh Mangalagiri/Nagpur.
3. Executive Director, AIIMS - Bathinda /Bibinagar/ Kalyani / Deogarh / Raebareli/ Gorakhpur.
4. Deputy Director- Admin, AIIMS, Bilaspur

Subject: Provision of fall clause quoted in tender documents for procurement of drugs. – regarding.

Sir,

I am directed to enclose a copy of the OM dated 25.11.2020 of Procurement-I (EPW) Section of MoHFW on the subject mentioned above forwarding therewith a copy of OM dated 12.11.2020 of Department of Pharmaceuticals, Ministry of Chemicals and Fertilizers on the above subject for necessary action and compliance.

2. You are requested to take further necessary action and to ensure compliance in the matter.

Encl: As above.



Yours faithfully,

S. K. Sudhakar
2/2/21
(S. K. Sudhakar)

Under Secretary to the Government of India

Tel: 011 23736974

Pl. circulate to all
T.S.
19/2/2021

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15/2/21
DS
Dr So (DO)

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15/2/21

h
15/2/21

No. Z.28015/25/2020-Proc.I(EPW)
 Government of India
 Ministry of Health & Family Welfare
 Department of Health and Family Welfare
 [Procurement-I (EPW) Section]

Nirman Bhawan, New Delhi

Date: 25.11.2020

OFFICE MEMORANDUM

Subject : Provision of fall clause quoted in tender documents for procurement of drugs -reg.

The undersigned is directed to forward herewith a copy of O.M. No. 31026/1/2019-Policy dated 12.11.2020 received from Department of Pharmaceuticals (DoP) on the above subject for compliance.

Encl: As Above

Digitally signed by SUREND
 KASHYAP
 Date: Wed Nov 25 13:23:29 IST
 2020
 Reason: Approved

(Surender Kashyap)
 Section Officer(Procurement-I)
 Tele. No. : 23061212

To

1. PPS to DGHS, Nirman Bhawan, New Delhi
2. PPS to AS&FA, AS(H), AS(VG), AS(MA) MOHFW, Nirman Bhawan, New Delhi.
3. JS(NV)/ JS(LA)/ JS(VS)/ JS(NACO)/ JS(PP)/ JS(MKB)/ JS(SS)/ JS(GM)/ JS(AS)/ JS(RS)/ JS(PS)/ JS(IFD)/ EA (AK)/ EA(NS).
4. The Director, AIIMS, New Delhi/ Patna/ Bhubaneswar/ Raipur/ Bhopal/ Jodhpur/ Rishikesh.
5. The Director, National Institute of TB and Respiratory Diseases, New Delhi
6. The Director, Vallabhbhai Patel Chest Institute, North Campus, University of Delhi
7. The Medical Superintendents, Safdarjung/Dr.RML/SSKH/KSC Hospital, New Delhi
8. The OSD, Central Medical Services Society, New Delhi
9. The CMD, HSCC (INDIA) Ltd., Corporate Office: E-6(A), Sector-1, Noida (U.P.)-201301.
10. The Chairman & Managing Director, HLL Lifecare Ltd.,

27/11/2020

E-1969215/20

OFFICE MEMORANDUM

The undersigned is directed to refer to the above subject and say that it has been brought to the notice of this department that many Government procuring agencies are quoting the provision of fall clause in their tender documents for procurement of drug - despite the fact that the Manual for Procurement of Goods, 2017 in para 8.1.14 of Chapter-8 (copy enclosed) provides for exception of fall clause on sale of goods such as drugs, which have an expiry date.

3. This issues with the approval of Secretary Pharmaceuticals.

(Byasadev Naik)
Deputy Director
Tel. 23071162

(i) Secretary, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi. [Email: secyh@nic.in]

(ii) Secretary, Ministry of Defence, South Block, New Delhi. [Email: defsec@nic.in]

(iii) Secretary, Ministry of Railways, Rail Bhawan, New Delhi. [Email: secyrb@rb.railnet.gov.in]

(iv) [Secretary, Ministry of Labour and Employment, Shram Shakti Bhawan, Rafi Marg, New Delhi Email: secy-labour@nic.in]

- (i) Pharma Industry Associations
- (ii) Pharma PSUs

10/11
2/2
Dir (Rev)

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MANUAL FOR PROCUREMENT OF GOODS 2017



Government of India
Ministry of Finance



& Disposal (DGS&D) to resort to negotiation and counter offering as indicated below: To start with, the rate contract may be awarded to L1 tenderer. Then the price of L1 is to be counter offered to the higher quoting responsive tenderers under intimation to L1 asking them to send their revised tenders in sealed covers/through fax or email or online on e-bidding platform to be opened in public at a specified place, date and time (as per the standard procedure). L1 may be specifically informed that it may, if it so desires, reduce its price and send its revised tender accordingly as above. The tenderers, who accept the counter offered rate or rate lower than that, are to be awarded parallel rate contracts. If L1 lowers its rate in its revised offer, same may also be accepted with effect from that date and its rate contract amended accordingly. There may also be a situation where parallel rate contracts are necessary, but even the price of the lowest responsive tenderer (L1) is not reasonable. In that case, price negotiation may be conducted with L1 in the first instance. If L1 agrees to bring down the price to the desired level, rate contract may be concluded with it and that price counter offered to other responsive tenderers under intimation to L1 for further action in identical manner as indicated in the above paragraph. If, however, L1 does not agree to reduce its price in the first instance itself, then the price, which has been decided as reasonable may be counter offered to all the higher quoting responsive tenderers (including L1) for further action on above lines. In respect of items where single bid has been received, the same may be re-tendered, i.e. if consequent to invitation of tender/bid only one bid/tender is received or consequent to technical evaluation if only one bid/tender is found eligible, such bid/tender shall be termed as single bid in respect of that item.

8.1.13 Cartel Formation/Pool Rates/Bid rigging/Collusive bidding etc.: Quoting of pool rates/Cartel formation, bid rigging/collusive bidding is against the basic principle of competitive bidding and defeats the very purpose of open and competitive tendering system. Such practices should be severely discouraged with strong measures. Suitable administrative actions like rejecting the offers, reporting the matter to Competition Commission of India, Registering Authority e.g. DGS&D/DGQA/NSIC etc. should be initiated against such firms, on case to case basis, as decided by the competent authority. Ministries/Departments may also bring such unhealthy practice to the notice of the concerned trade associations like FICCI, ASSOCHAM, NSIC, etc. requesting them, inter alia, to take suitable strong actions against such firms. The Ministries/Departments may also encourage new firms to get themselves registered to break the monopolistic attitude of the firms giving pool rate/forming cartel. Purchaser may also debar the tenderers indulging in cartel formation/collusive bidding/bid rigging for a period of two years from participation in the tenders of the Purchaser.

8.1.14 Fall Clause: Fall clause is a price safety mechanism in rate contracts. The fall clause provides that if the rate contract holder reduces its price or sells or even offers to sell the rate contracted goods or services following conditions of sale similar to those of the rate contract, at a price lower than the rate contract price, to any person or organization during the currency of the rate contract, the rate contract price will be automatically reduced with effect from that date for all the subsequent supplies under the rate contract and the rate contract amended accordingly. Other parallel rate contract holders, if any, are also to be given opportunity to reduce their price as well, by notifying the reduced price to them and giving them 07 (Seven) days time to intimate their revised prices, if they so desire, in sealed cover to be opened in



public on the specified date and time and further action taken as per standard practice. On many occasions, the parallel rate contract holders attempt to grab more orders by unethical means by announcing reduction of their price (after getting the rate contract) under the guise of Fall Clause. This situation is also to be dealt with in similar manner as mentioned in the preceding paragraph. It is however, very much necessary that the purchase organizations keep special watch on the performance of such rate contract holders who reduce their prices on one pretext or other. If their performances are not up to the mark, appropriately severe action should be taken against them including deregistering them, suspending business deals with them, debarring them for two years from participating against the tender enquiry floated by concerned purchase organization etc.

The provisions of fall clause will however not apply to the following:

- i) Export/Deemed Export by the supplier;
- ii) Sale of goods or services as original equipment prices lower than the price charged for normal replacement;
- iii) Sale of goods such as drugs, which have expiry date;
- iv) Sale of goods or services at lower price on or after the date of completion of sale/ placement of order of goods or services by the authority concerned, under the existing or previous Rate Contracts as also under any previous contracts entered into with the Central or State Government Departments including new undertakings (excluding joint sector companies and or private parties) and bodies.

8.1.15 Performance Security: Depending on the anticipated overall drawal against a rate contract and, also, anticipated number of parallel rate contracts to be issued for an item, the Central Purchase Organization (e.g. DGS&D)/user Department shall consider obtaining Performance Security @ 5% (Five percent) of the value of supply order in the supply orders issued against rate contracts on the rate contract holder.

8.1.16 Renewal of Rate Contracts: It should be ensured that new rate contracts are made operative right after the expiry of the existing rate contracts without any gap for all rate contracted items. In case, however, it is not possible to conclude new rate contracts due to some special reasons, timely steps are to be taken to extend the existing rate contracts with same terms, conditions etc. for a suitable period, with the consent of the rate contract holders. Rate contracts of the firms, who do not agree to such extension, are to be left out. Also, while extending the existing rate contracts, it shall be ensured that the price trend is not lower.

8.1.17 Placement of online Supply Orders: Supplies are to be obtained against a rate contract by placing on the rate contracted firm online supply order containing the quantity of the goods to be supplied and incorporating the prices and other relevant terms and conditions of the rate contract. The officials placing such online supply orders should be duly competent and authorized to do so. An online supply order should generally contain the following important details:

- i) Rate Contract No. and date;
- ii) Quantity. (Where there is more than one consignee, the quantity to be despatched to each consignee is to be indicated);