



અમદાવાદ મ્યુનિસિપલ કોર્પોરેશન

લીગલ ખાતુ

સરક્યુલર નં. ૨ તા.૨૪/૦૮/૨૦૨૪

અમદાવાદ મ્યુનિસિપલ કોર્પોરેશનની વિવિધ વિભાગીય કચેરીઓ/ઝોનલ કચેરીઓ સહિત વિવિધ ખાતાઓ દ્વારા પ્રસિધ્ધ કરવામાં આવતા ટેન્ડર બાબતે કોન્ટ્રાક્ટરો દ્વારા યોગ્ય કામગીરી કરવામાં ન આવે ત્યારે સંબંધીત ખાતા દ્વારા આવા કોન્ટ્રાક્ટરોને નોટીસ આપી બ્લેકલીસ્ટ તથા ટર્મીનેટ કરવામાં આવે છે. અ.મ્યુ.કો. ના વિવિધ ખાતાઓ દ્વારા આ પ્રકારના કીસ્સાઓમાં અલગ-અલગ કાર્ય-પદ્ધતિ અપનાવવામાં આવતી હોય છે જેથી સમયાંતરે આવા પ્રકારના કીસ્સાઓમાં અ.મ્યુ.કો.ની વિરુદ્ધમાં હુકમો થતા હોય છે જેથી આવા તમામ પ્રકારના કીસ્સાઓમાં એક-સુત્રતા જળવાય તે જરૂરી છે જેના અનુસંધાને કોન્ટ્રાક્ટરોને આપવાની થતી નોટીસ થી શરૂ કરીને કોન્ટ્રાક્ટરને બ્લેકલીસ્ટ કરવામાં આવે અને આર્બિટ્રેશન પ્રક્રિયા પુર્ણ થાય ત્યાં સુધી સંબંધીત ખાતા-અધિકારીશ્રી/એચ.ઓ.ડી.શ્રી દ્વારા પેનલ એડવોકેટશ્રીએ આપેલ અભિપ્રાય/સુચન મુજબ તૈયાર કરવામાં આવેલ SOP પ્રમાણે કામગીરી કરવાની રહેશે.

[A] Arbitration Process

As soon as AMC determines that a contractor is not complying with the terms of the tender/agreement executed between it and AMC, expeditious steps, preferably within 7 working days, must be taken to issue a detailed notice to the said contractor, *inter alia*, specifying the following:

- nature of dispute(s)
- specific reference to clauses of the tender/agreement which the contractor has violated
- a detailed rendition of facts culminating in the violation/breach on the part of the contractor
- specific reference to letters/correspondence that AMC may have addressed in the past
- strict timelines within which the contractor must remedy its defaults/breaches
- the quantification of the damages/losses being suffered by AMC along with any other non-monetary harm being caused to AMC
- reference to documentary evidence available with AMC (report of Project Management Consultant, site surveys by AMC, etc.)
- liquidated damages under the contract, which are payable by the contractor along with detailed computation thereof
- any other pertinent information, contention, or claim that AMC may be desirous of specifying
- This first, detailed notice, as mentioned herein above, must be followed by periodic/weekly reminders/warnings to the contractors. AMC may even address daily communications to the contractor wherever circumstances so warrant.

- If the contractor does not honor its obligations within the timeline prescribed by AMC; and AMC determines that the case at hand is a fit one for termination, a notice of termination (as per the terms and conditions of the respective contracts), must be issued to the contractor within a time-bound manner. The notice of termination must contain all details which evidence the reasons leading to termination.
- If a Security Deposit / Bank Guarantee / Fixed Deposit (called by any name whatsoever) is to be forfeited, AMC must ensure that the said exercise is initiated at the very outset, no sooner AMC internally determines that the contractor is in breach. Strict confidentiality must be maintained at all times. The banker who has furnished the Security Deposit / Bank Guarantee / Fixed Deposit (called by any name whatsoever) must be issued an Encashment Letter in the form and manner prescribed in the contract, containing the stipulations of the said Security Deposit / Bank Guarantee / Fixed Deposit (called by any name whatsoever) and encashment must be insisted forthwith to protect AMC's financial interest. Parallel thereto, Caveats must be filed by AMC in the concerned Hon'ble Court(s) to ensure that the contractor may not seek any *ex parte* stay against AMC's encashment of the Security Deposit / Bank Guarantee / Fixed Deposit (called by any name whatsoever). At this stage, another issue also deserves consideration. At the time of drafting tenders/contracts, AMC must ensure that the contractors furnish unconditional and irrevocable bank guarantees that AMC can encash forthwith. Appropriate conditions in this regard must be incorporated in the Tender Document/agreement as also the Format of Bank Guarantee that AMC may provide along with the Tender Document.
- Parallel thereto, if deemed fit and proper, AMC may also evaluate the requirement of initiating arbitration against the contractor by issuing the required notice under section 11 of the Arbitration and Conciliation Act, 1996.
- Thereafter, promptly, steps should be taken to appoint independent, neutral arbitrators, either by appointing AMC's nominee-arbitrator (in the event of the arbitration clause stipulating the constitution of a Tribunal); or approaching the Hon'ble High Court under Section 11 of the Arbitration and Conciliation Act, 1996 for appointing a sole arbitrator.
- Where AMC anticipates legal action against it by the contractor, Caveats must be filed in all Hon'ble Courts where legal action is anticipated, to reduce the possibility of passing of *ex parte* orders. If *ex parte* orders are passed against AMC, steps should be taken forthwith to make the necessary application to vacate the said *ex parte* orders.

[B] Procedure for Blacklisting

If AMC determines that the contractor must be blacklisted, the following procedure should be followed:

- A detailed Show Cause Notice (SCN) must be issued to the contractor, citing the defaults/breaches by the contractor as also clearly specifying that it is proposed to blacklist the said contractor. The SCN must contain all necessary particulars about the breach as also the proposed period for which the contractor is to be blacklisted.
- Thereafter, the contractor must be provided adequate opportunity to show cause as to why it should not be blacklisted. The contractor must be accorded the opportunity to make written and oral representation before the concerned officer/authority; and if adjournment is sought, reasonable adjournment may be granted in the interest of justice. However, the exercise of receiving written and oral representation(s) of the contractor must be endeavoured to be completed within 30 days.
- After receiving the written response to the SCN (if any) and after taking note of the oral submissions by the contractor (if made), AMC must decide whether the case at hand is a fit one to blacklist the contractor.

- If the contractor is to be blacklisted, a detailed Order of Blacklisting, containing detailed reasons must be served on the contractor. Caveat(s) may be filed in the concerned Hon'ble Court(s) in connection with the said Order of Blacklisting. The Order of Blacklisting must stipulate the period for which the contractor is blacklisted.

[C] Roles and Responsibilities of AMC Officials; Documentation Requirements and Communication Protocols:

- It is advised that all communications with contractors must, in addition to physical service, be electronically addressed (by way of email) so as to reduce to possibility of the said communications being missed out when the disputes arise months or years later. Furthermore, email communications will also virtually negate the possibility of contractors denying receipt of AMC's communications. Therefore, at the stage of admission/denial of documents in any trial proceeding, no communication addressed by AMC would be denied for want of receipt by the contractor.
- AMC must also maintain a detailed, sequential, numbered record of all communications addressed to and received from a contractor under a given contract. This record, which is advised to be maintained in digital and physical formats, must be contract-specific, so as to ensure that at the time of dispute resolution (either in arbitration or before the Hon'ble Courts), all documentation is available and AMC's defense can be adequately placed on record. This would also reduce the possibility of documents being misplaced or missed out when Suits, Replies, Claims, Counter-Claims, etc. are being prepared by AMC against the contractors.

[D] In Order to remove the arbitration Clause from the future tender process, following procedure maybe undertaken :

- The Arbitration Clause may be removed from Tender Documents, Contracts, and Agreements (called by any name whatsoever); and regular civil remedies (i.e. remedy of preferring Civil Suits) may be resorted to, so as to avoid the costs of arbitration. This modality can be adopted in the new Tenders / Contracts of AMC that are to be published/executed henceforth. The concerned Department of AMC may identify specific categories of contracts/works where the Arbitration Clause may be removed.

ઉપરોક્ત તમામ બાબતો ધ્યાને લઈ સદર એસ.ઓ.પી. નો તાત્કાલીક અસરથી અમલ કરવાનો રહેશે.

સહી : એમ.થેન્નારસન
મ્યુનિસિપલ કમિશનર