

- o) The performance and conduct of every registered supplier are to be monitored by the relevant department. Procuring Entity should also reserve the right to remove firms who do not perform satisfactorily, even during the validity of registration (after giving due opportunity to the supplier to make a representation), if they fail to abide by the terms and conditions of the registration or fail to execute contracts on time or supply substandard goods or make any false declaration to any Government agency or for on public interest considerations;
- p) The procuring entity shall retain its option to reassess firms already registered at any later date to satisfy itself with the current financial soundness/creditworthiness, facilities available, and so on. Thereafter, the Procuring Entity may decide to retain them as registered suppliers for the requirements and monetary limit that were earlier considered or with necessary changes as deemed fit. In case of adverse reports from the team of Procuring Entity officers who reassess the firm, Procuring Entity shall delete such firm from the registered suppliers' list;

(Rule 150 of GFR 2017)

3.7. Debarment of Suppliers

3.7.1 GFR Provisions

Registration of suppliers and their eligibility to participate in Procuring Entity's procurements is subject to compliance with the Code of Integrity for Public Procurement and satisfactory performance in contracts. Rule 151 of General Financial Rules (GFR), 2017 states the following regarding the 'Debarment from Bidding': -

- a) A bidder shall be debarred if he has been convicted of an offence-
 - i) under the Prevention of Corruption Act, 1988, or
 - ii) the Indian Penal Code⁵² (IPC), 1860 or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of the execution of a public procurement contract.
- b) A bidder debarred under sub-section (a), or any successor of the bidder shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date of debarment.
- c) A procuring entity may debar a bidder or any of its successors from participating in any procurement process undertaken by it for a period not exceeding two years if it determines that the bidder has breached the code of integrity.
- d) The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment.

3.7.2 Current Guidelines for Debarment

1. PPD DoE did consultations on the issue of Debarment with major procuring Ministries/ Departments and issued the following 'Debarment Guidelines' in suppression of all earlier instructions on this subject⁵³. Public Procurement organisations who have existing guidelines for Debarment (by any name) should revise their guideline in conformity with these guidelines issued by PPD, DoE.

⁵² This law has been replaced by Bhartiya Nyaya Sanhita (BNS), 2023 from 1st July 2024

⁵³Notified vide OM No. F.1/20/2018-PPD issued by Department of Expenditure dated 02.11.2021.

2. Guidelines on Debarment of Firms from Bidding:

- a) The guidelines are classified under the following two types: -
 - i) In cases where debarment is proposed to be limited to a single Ministry, the Ministry itself can issue the appropriate Orders, thereby banning all its business dealing with the debarred firm.
 - ii) Where it is proposed to extend the debarment beyond the jurisdiction of the Ministry, i.e., covering all central Ministries/ Departments, the requisite Orders shall be issued by the Department of Expenditure (DoE), Ministry of Finance (MoF).
- b) **Definitions:**
 - i) Firm: The term 'firm' or 'bidder' has the same meaning for the purpose of these Guidelines, which includes an individual or person, a company, a cooperative society, a Hindu undivided family and an association or body of persons, whether incorporated or not, engaged in trade or business.
 - ii) Allied firm: All concerns which come within the sphere of effective influence of the debarred firms shall be treated as allied firms. In determining this, the factors listed in its definition in the 'Procurement Glossary' section may be kept in view.
 - iii) The terms "banning of a firm," 'suspension,' 'Black-Listing' etc. convey the same meaning as "Debarment".
- c) All ministries/departments must align their existing debarment guidelines with these guidelines. Further, tender documents must also be suitably amended if required.

3. Debarment by a Single Ministry/ Department: Orders for Debarment of a firm(s) shall be passed by a Ministry/ Department, keeping in view the following:

- a) A bidder (including its successors/ allied firms) may be debarred from participating in any procurement process for a period not exceeding two years (along with such other actions as may be permissible under law) for the following reasons:
 - i) If it is determined that the bidder has breached the code of integrity as per Rule 175 of GFRs 2017. (Refer to para 3.2 of this Manual for Code of Integrity).
 - ii) False declaration of local content by Class I/ Class II local suppliers under Public Procurement (Preference to Make in India, Order 2017, dated 16/09/2020 or later, i.e., the Make in India Order) shall also be treated as a breach of the code of integrity. A supplier who has been debarred by any procuring entity as per this sub-para:
 - 1) The fact and duration of debarment for this reason by any procuring entity must be promptly brought to the notice of the Member-Convenor of the Standing Committee (Joint Secretary DPIIT, under the Make in India order) and the Department of Expenditure through the concerned Ministry /Department or in some other manner.
 - 2) The Standing Committee shall consolidate such cases, and a centralized list or decentralized list of such suppliers with the period of debarment must be maintained on a periodical basis and displayed on the website(s).
 - 3) Such suppliers, though debarred by a single Ministry/ Department, shall not be eligible for preference under the Make in India Order for procurement by any other procuring entity for the duration of the debarment. This shall be effective from the date of uploading such debarment to the website(s).

- iii) For any other actions or omissions⁵⁴ by the firm that, in the opinion of the Ministry/ Department, warrants debarment.
 - b) The debarment order shall not be circulated to other Ministries/ Departments. It will only be applicable to all the attached/ subordinate offices, Autonomous bodies, Central Public Sector Undertakings (CPSEs), etc. of the Ministry/ Department issuing the debarment Order. Please refer to Annexure 38 for a format for debarment order.
 - c) The concerned Ministry/ Department, before issuing the debarment order against a firm, must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including a personal hearing if requested by the firm). Please refer to Annexure 37 for the format of the Show-cause notice for debarment.
 - d) The Secretary of Ministry/Department may nominate an officer at the rank of Joint Secretary/Additional Secretary as competent authority (CA) to debar the firms.
 - e) The Ministry/Department will maintain a list of such debarred firms, which will also be displayed on its website. Such a list on the website shall be automatically binding on the departments, subordinate and attached offices, autonomous bodies, and CPSEs under the Ministry, but in case of doubt, it can be confirmed by the issuing authority.
 - f) More than one Ministry/ Department may concurrently debar the same firm.
 - g) Debarment is an executive function and should not be allocated to the Vigilance Department.
 - h) The period of debarment starts from the date of issue of the debarment order; therefore, the process of debarment should be conducted expeditiously. Considering the quasi-judicial nature of such proceedings and the need to afford a fair hearing to the firm, the following timeline is suggested, which may be suitably modified considering the specifics of an organisation:
 - i) Noticing of delinquency of the firm by the Procuring Entity – zero-day
 - ii) Evaluation of evidence and proposal to CA for debarment of the firm - 2 Weeks
 - iii) Issue of Show Cause Notice to the firm calling for written and oral submission. – 1 week.
 - iv) Time for submission, including reminders, etc – 3 weeks.
 - v) Evaluation of firm's submission and giving oral hearing to the firm – 3 weeks
 - vi) Final Order, indicating an opportunity to the firm, 2 weeks to appeal to the Secretary of Ministry/ Department as an appellate authority – 2 weeks.
 - vii) Total 12 weeks from zero-day, after which the debarment period starts.
 - viii) Receipt of Appeal and disposal of the same by the appellate authority – 4 weeks.
4. **Debarment by CPSEs, Attached Offices/ Autonomous Bodies, GeM:** Ministries/ Departments, at their option, may also delegate powers to debar bidders to their CPSEs, Attached Offices/ Autonomous Bodies, etc. In such cases, broad principles for debarment in sub-paras 3-a) to h) above are to be kept in mind. Debarments by such bodies shall be applicable only to the procurements made by such bodies. Similarly, the Government e-Marketplace (GeM) can also debar bidders for up to two years on its portal.

54 [Supply of substandard material; non-supply of material; abandonment of works; substandard quality of works; failure to abide by "Bid Securing Declaration"; conviction under the Prevention of Corruption Act, 1988; conviction under any law for causing any loss of life or property or causing a threat to public health as part of executing a public procurement contract; employs a government servant who has been dismissed or removed on account of corruption; employs a non-official convicted for an offence involving corruption or abetment of such an offence in a position where he could corrupt government servants, or employs a government officer within one year of his retirement who has had business dealings with him in an official capacity before retirement.]

5. **Debarment across All Ministries/ Departments:** In the following situations, the Ministry/ Department may consider debarring the firm from taking part in any tendering procedure floated by all the Central Government Ministries/ Departments:
- a) If the bidder has been convicted of an offence (Rule 151 (i) of GFRs, 2017), for debarment upto three years:
 - i) under the Prevention of Corruption Act, 1988, or
 - ii) the Indian Penal Code⁵⁵ (IPC), 1860 or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of the execution of a public procurement contract.
 - b) The Ministry/ Department concerned should, after obtaining the approval of the Secretary concerned, forward to DoE a self-contained note setting out all the facts of the case and the justification for the proposed debarment, along with all the relevant papers and documents.
 - c) Ministry/ Department, before forwarding the proposal to DoE, must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including a personal hearing if requested by the firm). If DoE realizes that sufficient opportunity has not been given to the firm to represent against the debarment, such debarment requests received from Ministries/ Departments shall be rejected.
 - d) The firm shall remain debarred during the interim period till the final decision is taken by DoE, only in the Ministry/ Department forwarding such proposal. For this purpose, the proposing Ministry shall issue an interim order debarring the firm from taking part in tendering procedures floated by their Ministry/ Department following the procedure laid down in sub-para 3) above. Such order inter-alia must mention that the Government reserves its right to further debar the firm from taking part in any tendering procedure floated across all the Central Government Ministries/ Departments, following due procedure.
 - e) DoE can also give additional opportunity, at their option, to the firm to represent against proposed debarment. DoE can also take suo-moto action to debar the firms in certain circumstances. DoE shall complete the process of Debarment within 12 weeks after receiving the proposal from the concerned Ministry/ Department.
 - f) DoE will issue the necessary orders for debarment for a period not exceeding three years for offences mentioned in Rule 151 (i) of GFRs, 2017, after satisfying itself that the proposed debarment across all the Ministries/ Departments is in accordance with the said rule. This scrutiny is intended to ensure uniformity of treatment in all cases.
 - g) DoE will maintain a list of such debarred firms, which will be displayed on the GeM-Central Public Procurement Portal (CPPP). This list on CPPP shall be applicable to all Ministries/ Departments, Attached and Subordinate Offices, CPSEs, and Autonomous bodies, but in case of doubt, they may confirm it from issuing authority.
 - h) No contract of any kind whatsoever shall be placed on the firm debarred by DoE, including its allied firms, during the period of debarment by any Ministry/ Department/ Attached/Subordinate offices of the Government of India, including autonomous bodies, CPSEs, etc., after the issue of a debarment order.

⁵⁵ This law has been replaced by Bhartiya Nyaya Sanhita (BNS), 2023 from 1st July 2024

6. Review and Revocation of Orders:

- a) An order for debarment passed shall be deemed to have been automatically revoked on the expiry of the period of debarment specified therein, and it will not be necessary to issue a specific formal order of revocation.
- b) The authorised entity (DoE, Ministry/ Department or CPSEs, Attached Offices/ Autonomous Bodies, GeM, etc.) that issued the order of debarment can review or revoke the debarment order before the period of debarment is over, suo-moto (based on new facts that come to light) or on an appeal by the debarred bidder. After a review, an Order for modification of the period of debarment or revocation of debarment, if there is adequate justification for the same, can be issued. Ordinarily, such modification/ revocation of the Order should be done with the approval of the Secretary concerned of DoE or the Ministry/Department that issued such orders. In case of debarments done by CPSEs, attached offices/autonomous bodies, GeM, etc., such modification/ revocation of the debarment orders should be done only with the approval of at least a board-level officer.

7. Other Provisions (common to both types of debarments):

- a) The debarment order shall mention the reason(s) in brief that led to the debarment of the firm and the jurisdictional extent to which the order shall be applicable, besides the validity period of debarment.
- b) No contract of any kind whatsoever shall be placed with a debarred firm, including its allied firms, after the issue of a debarment order by the entities in the jurisdiction mentioned in the order. Bids from only such firms shall be considered for placement of contract, which are neither debarred on the date of opening of tender (opening of first bid, normally called as technical bid, in case of two packet/two stage tendering) nor debarred on the date of contract (i.e., date of issue of Letter of Acceptance). Even in the cases of risk purchase, no contract should be placed on such debarred firms.
- c) If any debarred firm submits the bid, it will be ignored. In case such firm is lowest (L-1), the next lowest firm shall be considered as L-1. Bid security submitted by such debarred firms shall be returned to them.
- d) Contracts concluded before the issue of the debarment order shall not be affected by the debarment Orders.
- e) The Debarment shall be automatically extended to all its allied firms. In case a joint venture/ consortium is debarred, all partners will also stand debarred for the period specified in the Debarment Order. The names of partners should be clearly specified in the “Debarment Order.”
- f) Debarment in any manner does not impact any other contractual or other legal rights of the procuring entities.
- g) The period of debarment shall start from the date of issue of the debarment order for the issuing entity. In respect of procuring entities other than the one that has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in such a manner that ongoing procurements are not disrupted.
- h) Ordinarily, the period of debarment should not be less than six months.
- i) It is noticed that many procuring entities take undertakings from the bidders with respect to their debarment status/ period. Such undertakings, if taken, must be in conformity with the Debarment Guidelines, as above, to avoid any possible confusion.

8. Safeguarding Procuring Entity’s Interests during Debarment of Suppliers: Suppliers are important assets for the procuring entities, and punishing delinquent suppliers should

be the last resort. It takes a lot of time and effort to develop, register and mature a new supplier. In case of a shortage of suppliers in a particular group of materials/equipment, such punishment may also hurt the interest of the Procuring Entity. Therefore, the Procuring Entity may always seek the views of the concerned department regarding the repercussions of such punitive action on the continuity of procurements. Procuring Entity may give due weightage to the past performance of the supplier. In case of a shortage of suppliers and in cases of less serious misdemeanours, the Procuring Entity may pragmatically analyse the circumstances, reform the supplier, and get a written commitment from the supplier that his performance will improve. If this fails, efforts should be made to see if a shorter period of debarment can serve the purpose. (*Rule 151 of GFR 2017*)

3.8. Enlistment of Indian Agents

Ministries/ Departments, if they so require, may enlist Indian agents who desire to quote directly on behalf of their foreign principals⁵⁶. (*Rule 152 of GFR 2017*)

⁵⁶Rule 52 of GFR, 2017 amended vide OM No. F.26/2/2016-PPD issued by Department of Expenditure dated 25.07.2017.