

**THIRTIETH REPORT
COMMITTEE ON PETITIONS
(SEVENTEENTH LOK SABHA)**

**MINISTRY OF DEFENCE
(DEPARTMENT OF DEFENCE PRODUCTION)**

(Presented to Lok Sabha on 28.03.2022)



सत्यमेव जयते

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ANNEXURE

Minutes of the 19th sitting of the Committee on Petitions held on 22.12.2021. *(Not enclosed)*

COMPOSITION OF THE COMMITTEE ON PETITIONS

Shri Harish Dwivedi - *Chairperson*

MEMBERS

2. Shri Anto Antony
3. Shri Hanuman Beniwal
4. Dr. Sukanta Majumdar
5. Shri Sanjay Sadashivrao Mandlik
6. Shri P. Ravindhranath
7. Shri Brijendra Singh
8. Shri Sushil Kumar Singh
9. Shri Manoj Tiwari
10. Shri Prabhubhai Nagarbhai Vasava
11. Shri Rajan Vichare
12. Vacant
13. Vacant
14. Vacant
15. Vacant

SECRETARIAT

1. Shri T.G. Chandrasekhār - Joint Secretary
2. Shri Raju Srivastava - Director
3. Shri G. C. Dobhal - Additional Director
4. Shri Anand Kumar Hansda - Assistant Executive Officer

THIRTIETH REPORT OF THE COMMITTEE ON PETITIONS
(SEVENTEENTH LOK SABHA)

INTRODUCTION

I, the Chairperson, Committee on Petitions, having been authorised by the Committee, present on their behalf this Thirtieth Report (Seventeenth Lok Sabha) of the Committee to the House on the Action Taken by the Government on the recommendations made by the Committee on Petitions (Seventeenth Lok Sabha) in their Seventeenth Report on the representation of Shri Yogesh Sarda alleging consideration of ineligible bidder, *i.e.*, M/s. Mehta Tubes Limited by the Mazagon Dock Shipbuilders Limited by awarding of contract(s) and Tender(s) for procurement of Cu-Ni Pipes and Copper Pipes of Project P15B and other important issues related therewith.

2. The Committee considered and adopted the draft Thirtieth Report at their sitting held on 22 December, 2021.
3. The observations/recommendations of the Committee on the above matters have been included in the Report.

NEW DELHI;

HARISH DWIVEDI,
Chairperson,
Committee on Petitions.

22 December, 2021

1 Pausha, 1943 (Saka)

REPORT

ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS MADE BY THE COMMITTEE ON PETITIONS (SEVENTEENTH LOK SABHA) IN THEIR SEVENTEENTH REPORT ON THE REPRESENTATION OF SHRI YOGESH SARDA ALLEGING CONSIDERATION OF INELIGIBLE BIDDER, *i.e.*, M/s. MEHTA TUBES LIMITED BY MAZAGON DOCK SHIPBUILDERS LIMITED BY AWARDING OF CONTRACT(S) AND TENDER(S) FOR PROCUREMENT OF Cu-Ni PIPES AND COPPER PIPES OF PROJECT P15B AND OTHER IMPORTANT ISSUES RELATED THEREWITH.

The Committee on Petitions (Seventeenth Lok Sabha) presented their Seventeenth Report to Lok Sabha on 12 February, 2021 which had dealt with a representation of Shri Yogesh Sarda alleging consideration of ineligible bidder, *i.e.*, M/s. Mehta Tubes Limited by the Mazagon Dock Shipbuilders Limited by awarding of contract(s) and Tender(s) for procurement of Cu-Ni Pipes and Copper Pipes of Project P15B and other important issues related therewith.

2. The Committee made certain observations/recommendations in the matter and the Ministry of Defence (Department of Defence Production) were asked to implement the recommendations and requested to furnish their action taken replies thereon for further consideration of the Committee.

3. Action Taken Replies have been received from the Ministry of Defence (Department of Defence Production) in respect of all the observations/recommendations contained in the aforesaid Report. The recommendations made by the Committee and the replies furnished thereto by the Ministry of Defence (Department of Defence Production) are detailed in the succeeding paragraphs.

4. In paras 18 to 23 of the Report, the Committee had observed/recommended as follows:-

"Need for improving the Tender process in Mazagon Dock Limited

The Committee on Petitions, Lok Sabha while examining the representation of Shri Yogesh Sarada alleging consideration of ineligible Bidder, i.e., M/s. Mehta Tubes Limited, by the Mazagon Dock Shipbuilders Limited, by awarding of Contract(s) and Tender(s) for procurement of Cu-Ni Pipes and Copper Pipes of Project P15B, have meticulously analysed the preliminary comments submitted by Mazagon Dock Shipbuilders Limited, wherein, it was categorically stated that M/s. Mehta Tubes Limited was considered for giving contract in accordance with the tender provisions and the allegations made by the representationist were factually incorrect. The Committee also painstakingly put together the initial comments with the subsequent detailed comments received from the Ministry of Defence as well as Mazagon Dock Shipbuilders Limited in response to the structured List of Points formulated by the Committee on Petitions and forwarded to them for furnishing of appropriate response, wherein, it was surreptitiously stated that the said Tender was cancelled and scrapped as the L1 bidder, namely, M/s. Mehta Tubes Limited formally informed about their inability to accept/execute the order at the quoted price citing reason of increase in price of raw material.

The Committee also note that that Clause 3(a), Section-I of the Tender indicates only the documents that a Bidder should submit along with their offer. It does not have any provision of rejection of bid in case any of the document, a Bidder fails to submit along with their offer. The Committee further note that the firms who had not submitted various technical details, viz., the make of pipe, manufacturing process, details of previous supply, clause wise compliance of TSP, draft Quality Assurance Plan (QAP), quoted deviation to warranty period, conformity certificate duly filled, signed and stamped, deviation form duly filled in, etc., and the firms who had quoted deviation towards Eddy current test and NES standard for dimensions of pipe which were not acceptable to the MDL were placed under the 'Liable Rejection Criteria'.

In the aforementioned chronology, the Committee also find that M/s. Mehta Tubes Limited had been shortlisted by Mazagon Dock Shipbuilders Limited for the supply of Cu-Ni Pipes and Copper Pipes of Project P15B. Since all

the Bidders whose Bids were incomplete, were advised to submit deficient documents within stipulated time and M/s. Mehta Tubes Limited was also one of such Bidder, later on, submitted the audited Balance Sheet of 2018-19 within the stipulated time and had met all the qualification criteria and the same was scrutinised by the Authority before qualifying their Bid.

Going into the various technical aspects of the Tender Document and the Bidding Process, Committee also find that the bid rejection criteria is broadly divided into two parts viz. 'Categorical Rejection Criteria' and 'Liable Rejection Criteria' and Clause 5(a) & 5(b) are incorporated in the Tender Document in accordance with the Guidelines of the Purchase Manual of the Organisation. The aspects falling under the 'Categorical Rejection Criteria' are the basic requirements of the Tender, such as, timely filing of Tender on e-portal, submission of EMD, acceptance of provisions of PPP Make in India and dealing with the debarred bidders, etc., which are applicable for total compliance and are treated as non-negotiable. The Bids not complying with the terms of the Tender relating to 'Categorical Rejection Criteria' are straightway rejected. The aspects falling under the 'Liable to Rejection Criteria' are for the information, observance, adherence, compliance to the terms of the Tender for which appropriate opportunity are provided to the Bidders so that reconciliation measures are taken for acceptance of the Bids towards promoting the competition and bringing economy in the entire procurement process. Straightway rejection on the non-compliance of the terms under the 'Liable to Rejection Criteria' could result in procurement on non-competitive basis and could also be classified as restrictive. In such cases, Bidders are informed in advance in respect of these binding conditions in the Tender document and they are given optimum opportunity during the technical evaluation to bring them techno-commercially at par prior to opening of price Bids.

Despite the fact that bid rejection criteria is divided into two parts, viz., 'Categorical Rejection Criteria' and 'Liable Rejection Criteria', the Committee are of the considered view that there should be clear distinction with respect to the Bid rejection criteria in terms of 'Categorical Rejection Criteria' and 'Liable Rejection Criteria' in the Tender document so as to avoid any misinterpretation or ambiguity amongst the Bidders. The Committee also

observe that Clause 5(a) and 5(b) have been ingeniously drafted, which do not convey the same meaning to the Firms who are participating in the Tender process. In order to obviate the impasse of awarding the contract to a specific Firm and thereafter, rescinding the Tender which is not a welcome step for a premier defence-related Organisation like Mazagon Dock Shipbuilders Limited, the Committee would like to recommend that the Purchase Manual should be formulated in a discernible manner and should not contain such technical terminology which could otherwise be mentioned in a simple manner so that the entire Tender Process is hassle free and more bidder friendly.

While acknowledging the need to improve the entire Tender Process system as enumerated in the General Financial Rules as amended, the Committee also recommend the Ministry of Defence (Department of Defence Production) to make the entire Tender Process System transparent, self-contained and hassle free which would enable the bidding Firms to understand the inherent Terms and Conditions of the Tender unambiguously. The Committee further recommend the Ministry to explore the modalities of evolving a uniform Tender Process System, while keeping in view all the stipulations as enumerated in the Chapter on Tendering Process of the General Financial Rules as amended to be followed by all the Organisations/PSUs under the administrative control of the Ministry."

5. The Ministry of Defence (Department of Defence Production), in their action taken replies, have submitted as under:-

"It is submitted that cancellation of the aforesaid tender by Mazagon Dock Shipbuilders Limited (MDL) was undertaken as per their extant purchase procedure, wherein a tender is liable to be cancelled, in case the bidder withdraws/modifies/amends/impairs or derogates from the tender conditions. M/s. Mehta Tubes Limited had formally informed MDL about their inability to accept/execute the aforesaid order on 13.07.2020 i.e., before the receipt of the representation of Shri Yogesh Sarda in MDL. Thus, the cancellation of the said tender is not linked to the quoted petition of Shri Yogesh Sarda.

It is further submitted that the bid rejection criteria was specified separately by the MDL in tender Clauses 5(a) and 5(b), which included all the terms of rejection.

The Committee's recommendation in regard to formulation of Purchase Manual in a discernible manner, without containing technical terminology has been noted for compliance by the MDL. Distinction between 'Categorical Rejection Criteria' and 'Liable Rejection Criteria' and the procedure to be followed to deal with bids falling under these criteria would be further elaborated in the tenders.

In regard to formulation of a transparent, self-contained, hassle free and uniform Tender Process System, it is submitted that a draft Standard Bidding Document (SBD) for procurement of goods has been circulated by the Ministry of Finance/ Department of Expenditure and the same will be implemented in the DPSUs on finalization of SBD.

As per the latest guidelines issued by Ministry of Finance vide O.M. No. F.9/4/2020.PPD dated 12.11.2020, a 'Bid Security Declaration' is being obtained from the bidders which empowers the purchaser to debar the bidders from bidding for a period of one year in case they withdraw /modify /amend, impair or derogates from the tender during the period of bid validity. MDL has already implemented the above guidelines."

6. In paras 24 to 26 of the Report, the Committee had observed/recommended as follows:-

"Penalty Clause to be incorporated in the Tender Document in case the successful Bidder deviates from the Terms of Contract

The Committee note from the submission made by the Ministry of Defence (Department of Defence Production) that the Mazagon Dock Shipbuilders Limited is having established procurement system and sound mechanism for grievances redressal and checks & balances for monitoring, procurement and awarding of contracts and tenders as per their Purchase Manual Guidelines. The Committee also note that various measures for systemic

improvements in procurement process are being taken, from time to time, to improve transparency and minimise the ambiguity.

Notwithstanding this, the Committee are dismayed to note that the entire Tender Process which ultimately led to scrapping of the said Tender on 17 August 2020 on the premise that the L1 Bidder, i.e., M/s Mehta Tubes Limited had vide email dated 13 July, 2020 about their inability to accept/execute the order at the quoted price citing the reason of increase in raw material price, has resulted in wastage of resources on the one hand and the probable rigors which they have to face while re-tendering for procurement of specified items for Project P15B on the other hand. The Committee, therefore, urge the Ministry to go through all the related facts to arrive at a logical conclusion to the effect that had the Committee on Petitions not taken up the instant representation for detailed examination, Authorities of Mazagon Dock Shipbuilders Limited would have awarded this Tender to M/s. Mehta Tubes Limited.

On the aspect of withdrawing of any Firm who has been awarded the Tender, the Committee are of the considered view that in case the successful Bidder deviates from the agreed terms after the award of the Contract, it would result in wastage of resources of the Government machinery and unnecessary financial burden on the public exchequer, besides causing avoidable delay in completion of the requisite work/projects. Therefore, in order to put a check on the non-serious Bidders or the Bidders who have been participating in the Tender Process just for the sake of participation, in an Organisation of strategic importance having connotation of National Security, the Committee, therefore, recommend that there should be stringent punitive Clause in the Tender Document to be scrupulously followed by all the Organisations/PSUs under the Ministry of Defence (Department of Defence Production)."

7. The Ministry of Defence (Department of Defence Production) in their action taken replies, have submitted as under:-

"It is submitted that M/s. Mehta Tubes Limited had formally informed MDL about their inability to accept/execute the aforesaid order on 13.07.2020 i.e.,

before the receipt of the representation of Shri Yogesh Sarda in MDL. Thus, the cancellation of the tender by MDL is not linked to the aforesaid petition of Shri Yogesh Sarda. The price of Copper and Nickel are volatile and M/s. Mehta Tubes was unable to maintain the quoted price/s and thus withdrew from the acquisition process.

As per the latest guidelines issued by Ministry of Finance vide O.M. No. F.9/4/2020.PPD dated 12.11.2020, a 'Bid Security Declaration' is being obtained from the bidders which empowers the purchaser to debar the bidders from bidding for a period of one year in case they withdraw /modify /amend, impair or derogates from the tender during the period of bid validity. MDL has already implemented the above guidelines.

Further, MDL has initiated action against M/s. Mehta Tubes Limited as per the Purchase Manual and the firm has been debarred from bidding for a period of 3 years."

OBSERVATIONS/RECOMMENDATIONS

Improving the Tender Process System in Mazagon Dock Shipbuilders Limited

8. The Committee on Petitions, Lok Sabha while meticulously examining the representation of Shri Yogesh Sarda alleging consideration of ineligible Bidder, i.e., M/s. Mehta Tubes Limited by the Mazagon Dock Shipbuilders Limited and awarding of Contract(s) and Tender(s) for procurement of Cu-Ni Pipes and Copper Pipes of Project P15B, had gone through various technical aspects of the Tender Document and the Bidding Process and *inter alia* found that the 'Bid Rejection Criteria', which is broadly divided into two parts, viz., 'Categorical Rejection Criteria' and 'Liable Rejection Criteria' under Clause 5(a) and 5(b) respectively, had been incorporated in the Tender Document in accordance with the Guidelines of the Purchase Manual of the Organisation. The Committee had however, highlighted that there should be clear distinction with respect to the 'Bid Rejection Criteria' in terms of 'Categorical Rejection Criteria' and 'Liable Rejection Criteria' in the Tender document so as to avoid any misinterpretation or ambiguity amongst the Bidders/Firms which are participating in the Tender/Bidding Process. In order to obviate the possibility of awarding the contract to a specific Firm and, thereafter, rescinding the Tender which is not a welcome step for a premier defence-related Organisation like Mazagon Dock Shipbuilders Limited, the Committee had recommended that the Purchase Manual should be formulated in a discernible manner and should not contain such technical

terminology which could otherwise be mentioned in a simple manner so that the entire Tender Process is hassle free and more bidder friendly.

9. The Committee, while acknowledging the need to improve the entire Tender Process system as enumerated in the General Financial Rules as amended, had also recommended the Ministry of Defence (Department of Defence Production) to make the entire Tender Process System transparent, self-contained and hassle-free which would enable the bidding Firms to understand the inherent Terms and Conditions of the Tender unambiguously. The Committee had further recommended the Ministry to explore the modalities of evolving a uniform Tender Process System, while keeping in view all the stipulations as enumerated in the Chapter on Tendering Process of the General Financial Rules as amended to be followed by all the Organisations/PSUs under their administrative control.

10. While accepting the Committee's recommendation for compliance by the Mazagon Dock Shipbuilders Limited, the Ministry of Defence (Department of Defence Production), in their action taken reply, have submitted that the distinction between 'Categorical Rejection Criteria' and 'Liable Rejection Criteria' and the procedure to be followed to deal with bids falling under these criteria would be further elaborated in the Tender(s). The Ministry of Defence (Department of Defence Production) have further informed the Committee that a draft Standard Bidding Document (SBD) for procurement of goods has been circulated by the Ministry of Finance (Department of

Expenditure)vide O.M. No. F.9/4/2020.PPD dated 12.11.2020 and the same would be implemented in the Defence PSUs on finalisation of SBD.

11. The Committee are happy to note that the Ministry of Defence (Department of Defence Production) have acknowledged the need for improving the Tender process in Mazagon Dock Shipbuilders Limited (MDL) and have also assured the Committee that their recommendation(s), in this regard, would be complied with by the MDL while floating all future Tenders. The Committee, however, urge the Ministry of Defence (Department of Defence Production) to work out modalities by way of evolving a uniform, transparent and bidder friendly Tender Process System in accordance with the relevant provisions contained in the General Financial Rules which are invariably followed by all the Organisations/PSUs under the administrative control of the Ministry of Defence (Department of Defence Production). The Committee would like to be apprised of the steps taken or proposed to be taken in this regard. The Committee would also like to know about the status of incorporation of Standard Bidding Document (SBD) for procurement of goods as circulated by the Ministry of Finance (Department of Expenditure) vide O.M. No. F.9/4/2020.PPD dated 12.11.2020 to Defence PSUs.

Inclusion of Penalty Clause in Tender Document(s)

12. On the aspect of withdrawing of any Firm which has been awarded the Tender, the Committee had expressed their concerns that in case, the successful Bidder/Firm deviates from the agreed terms after the award of the

Contract, it would result in wastage of resources of the Government machinery and unnecessary financial burden on the public exchequer, besides causing avoidable delay in completion of the requisite work/projects. With a view to keeping a check on the non-serious Bidders or the Bidders who have been participating in the Tender Process only for the sake of participation, in an Organisation of strategic importance having connotation of National Security, the Committee had also recommended that there should be stringent punitive Clause in the Tender Document itself for all such Firms, to be scrupulously followed by all the Organisations/PSUs under the Ministry of Defence (Department of Defence Production).

13. In response to the above recommendation, the Ministry of Defence (Department of Defence Production), in their action taken reply, have submitted that as per the latest Guidelines issued by the Ministry of Finance vide O.M. No. F.9/4/2020.PPD dated 12.11.2020, a 'Bid Security Declaration' is being obtained from the bidders which empowers the purchaser to debar the bidders from bidding for a period of one year in case they withdraw/modify/amend, impair or derogates from the tender during the period of bid validity and the Mazagon Dock Shipbuilders Limited has already implemented these Guidelines. The Ministry of Defence (Department of Defence Production) have also submitted that the Mazagon Dock Shipbuilders Limited has initiated action against M/s. Mehta Tubes Limited as per the Purchase Manual and the Firm has been debarred from bidding for a period of 3 years.

14. The Committee are not satisfied with the reason given of the Ministry of Defence (Department of Defence Production) in support of quitting Bidder, i.e., M/s. Mehta Tubes Limited that the Bidder was unable to maintain the quoted price(s) on the ground of volatile price(s) of Copper and Nickel and thus withdrew from the acquisition process. In this regard, the Committee are of the view that the Firm, i.e., M/s. Mehta Tubes Limited was not a first time Bidder in similar Tenders floated by the Mazagon Dock Shipbuilders Limited and, therefore, the quitting Firm should have been aware of various market-driven variable factors which may lead to cost overrun before participating in the competitive bids particularly when the Tender is floated by such a premier Defence Organisation. Nevertheless, the Committee appreciate the action taken by the Mazagon Dock Shipbuilders Limited against M/s. Mehta Tubes Limited as per the conditions prescribed in the Purchase Manual and barred the Firm from bidding for a period of three years.

15. The Committee are, however, glad to note that the Mazagon Dock Shipbuilders Limited have implemented the Guidelines issued by the Ministry of Finance in regard to 'Bid Security Declaration' which is required to be obtained from the Bidders which *inter alia* empowers the Purchaser to debar the Bidders from bidding for a period of one year, in case they withdraw/modify/amend, impair or derogates from the Tender during the period of bid validity. The Committee trust that the Ministry of Defence (Department of Defence Production) would ensure strict adherence to the

relevant Guidelines issued by the Ministry of Finance by the all Organisations/PSUs under their control.

NEW DELHI;
22 December, 2021
1 Pausha, 1943 (Saka)

HARISH DWIVEDI,
Chairperson,
Committee on Petitions