

## **DOs and DON'Ts for Mineral Blocks E-auction by State Governments**

### **DOs**

- ✓ The State Government (or its designated office) should delegate specific responsibility to specific officers for carrying out various activities involved in the e-auction process viz.
- ☑ preparation of Geological Reports in line with MEMCR, 2015.
- ☑ thoroughly reviewing each of the clauses of the auction related important documents like Notice Inviting Tender, Tender Documents, Corrigendum/Addendum, response to bidders' queries, Notices etc.
- ☑ collection, handling and safekeeping of auction related documents (bid security, affidavits, letter of authorisation etc.) in fire proof safes
- ☑ expeditiously handling auction related litigation or court cases, if any
- ☑ regularly check the email ids which will be used for correspondence with the bidders and stakeholders and respond to the same in a timely manner.
- ✓ Decision on key parameters pertaining to the e-auction viz. reserve price, permissible end use (if any), bid security amount, price of the tender document, composition of Technical Evaluation Committee, sizing of mineral blocks etc. should be finalized after due diligence and utilising available mathematical and analytical methods for arriving at the best possible solutions.
- ✓ In case the State Government decides to reserve a Mineral Block for Specified End-Use, the Tender document should clearly specify the eligibility criteria and ensure adequacy of competition pool and avoid cartelization.
- ✓ State Government should prepare Geological Reports (in conformance with Minerals (Evidence of Mineral Contents) Rules, 2015) based on latest available data to increase the confidence level of prospective bidders.
- ✓ Maintain symmetry of information and provide maximum data possible to the prospective bidders - digitisation of reports, drawings etc. may be done and made available through virtual database as part of the Tender Document.
- ✓ A preliminary stakeholder meeting should be conducted for consultation with the industry to take their inputs and feedback on the tender process.
- ✓ Prior to issuing the Notice Inviting Tender, the State Government should prepare a blue print for smooth implementation of the e-auction process wherein the roles of all stakeholders in the e-auction process including, inter-alia, State Government, Transaction Advisor (if any), Technical Advisor (if any), Auction Platform Provider, Legal Advisor (if any) etc. should be clearly defined.
- ✓ The State Government should clearly define the communication protocol to be adopted during the entire e-auction process for adequate security and integrity of the sensitive information. It should be strictly defined as per need to know basis only.
- ✓ The State Government should ensure adherence to communication protocol during the entire auction process to avoid any controversies or litigations at a later stage.
- ✓ Official email ids should be provided to such officers/teams who are involved in the e-auction process to ensure confidentiality of sensitive information.
- ✓ The State Government should also formulate an access control protocol so that sharing of sensitive information is restricted to the designated officers/stakeholders only.
- ✓ Ensure to educate bidders and make them conversant with the auction process, auction platform as well as system compliance with auction platform requirements such as enabling of Active – X, installation of Java etc., by providing demonstrations and mock training.

- ✓ State Government should take all necessary approvals from the Central Government timely.
- ✓ Members of the Technical Evaluation Committee (TEC) should be constituted in a manner to facilitate pragmatic and prudent decision making so that the interests of the State Government are not compromised.
- ✓ Preparation of a checklist which may be approved by TEC and carry out evaluation based on the checklist.
  - Deviations from the required format (as provided in the Tender Document) may be classified as substantive and non-substantive deviations by TEC.
  - It is important to carry out verification of Bank Guarantees submitted by the bidders from the issuing banks and similarly getting other statutory auditors' certificates verified.
- ✓ Timeline of the auction process should be designed in a manner which gives sufficient time to the
  - State Government, to carry out all activities without jeopardizing the transparency of the process
  - Bidders, to submit the required documents and meet obligations under the tender document, rules, etc.
- ✓ While responding to the queries on the tender document raised by the bidders, responses should be specific (yes or no), as far as possible, so that there is no scope for ambiguity which may result in litigation at a later stage.
- ✓ Timely issuance of corrigendum and addendum to the tender document, any other modifications and communication like venue of pre-bid meeting etc.
- ✓ State Governments should have a team of standing legal counsel in all readiness to ensure that the auction process does not get hampered on account of any litigation that may arise due to court cases by prospective bidders. Sometimes, the bidders may file court cases across multiple jurisdictions; it is important to ensure that all these litigations are taken care in timely manner for uninterrupted conduct of auctions.
- ✓ State Government should consider bidders as their partners and provide adequate handholding so that they face minimum challenges during the auction process as well as during mine development.

#### **DON'Ts**

- ✗ No private email Id or personal email id should be used for any important/sensitive communication.
- ✗ Confidential information/emails should not be shared/ disclosed to anyone other than the designated officers of the State Government or the stakeholders as prescribed in the Communication Protocol and Access Control mechanism designed by the State Government.
- ✗ Designated officers should not disclose password of their email ids to anyone.
- ✗ State Government should not stipulate a reserve price which may hamper participation by prospective bidders.
- ✗ Tender documents should not have onerous/ambiguous/subjective clauses.
- ✗ Sizing of blocks should not be done in a manner which discourages participation of industry players.
- ✗ Timeline of the e-auction process should not create a potential for cartelization by industry players.