

Roc.No. 48233 /2006 / R-3

Date: 17.02. 2009

Revised Circular

**Sub: LEASE – Annual Lease in respect of  
Municipalities and Corporations – rules not  
adhered to – instructions issued.**

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This is the time when Municipal Councils are finalising the annual lease / licence of Municipal properties and the licence of right to collect the fees, etc. Lot of representations are being received indicating flouting of statutory provisions and executive instructions, violation of lease conditions, delay in confirming the leases, etc. The leasing of Municipal properties is a routine exercise done by the local bodies for quite a long time and there should be no confusion in adhering to the procedures and the formalities. However, the following instructions are issued for strict adherence:-

- i) After getting lease / licence conditions approved by the Council, wide publicity shall be given while calling for bids during public auction – cum – tender. Invariably information shall be published in one or two of the local leading dailies (and not in obscure dailies) and in Tender Bulletin to the District / State and the lease / licence conditions (besides the notice boards and websites) and other required particulars shall be printed / cyclostyled and got ready in advance.
- ii) In the notification, the authority competent to accept the offer for lease / licence, the date, time, venue of auction / tender, the amount of security deposit / Earned Money Deposit to be paid, the details of solvency to be produced and other specific conditions, which have necessarily to be made known to the intending bidders shall be given in the notification itself. The details of lease / licence offered for bid shall also be indicated in specific terms.
- iii) In a recent case, while approving the lease / licence conditions, the Municipal Council had incorporated and additional condition to the effect that the intending bidders shall remit the security deposit and produce solvency for the required amount, 2 days in advance of the date of auction. This condition, which is an important one has not been indicated in the Newspaper. The intending bidders came to bid on the auction date only to be rejected quoting the new condition. The protest of the bidders that they did not know the new condition were also rejected stating that, the notification in the paper indicates that the "intending bidders" can have further details from the Municipal office". Such kind of not furnishing important condition and

misleading conditions will reduce the competition resulting in substantial loss of revenue and motive will also be attributed for including additional condition without suitably informing the public in advance as to favour a few. Such malpractice will be viewed seriously and action will be taken on the concerned officials. Hence, the notification should contain whatever specific information is required for completion of formalities and participation in the public auction – cum – tender.

- iv) Specific instructions have been issued in Government letter No.872 / MAIV / 94-2, dated 28.1.94 that Municipal properties / licence for right to collect shall be leased out by adopting auction – cum – tender procedure.
- v) Separate Earned Money Deposit / security deposit shall be insisted for bidders, who intend to participate in both public auction and tender.
- vi) The right to collect the fees is only a licence to be decided, once in 3 years and it cannot be renewed by enhancing the licence amount after 3 years. This is clearly made known to the licencees, while issuing licence to collect the fee.
- vii) Lot of cases are pending in Courts at lower level, inspite of specific direction by the Honourable High Court that the right to collect fees, charges cannot be extended even for a day after the expiry of licence period. A copy of the judgment in the case of Madurai Corporation has already been communicated in this office Ir. K.Dis 3995 / 97 / R3 date. 28.2.97 and the cases pending in the lower Courts in this regard shall be got disposed off, quoting the High Court judgement as early as possible.
- viii) It is clarified that the right to collect fees in the case of Bus stands, pay and use toilets, market fees, Cycle stand, Lodges, Kalyana mandapam, Daily / weekly shandy Market etc, (the fresh licence period) commences only from 2009-10 onwards and will be valid upto 2011-12. Hence, the existing licence as from 2008 - 09 shall not be renewed.
- ix) Once the public auction-cum-tender process is completed, the subject should be placed before the council immediately after the time allowed for offering higher amount than that offered during public auction-cum-tender duly paying the amount and fulfilling the conditions specified in the lease conditions approved by the council.

- x) If the last date for offering higher bid seeking reauction / retender falls on a holiday, the next working day will be the last date by which the offer can be accepted. In some lease conditions, the period by which the re auction can be solicited is mentioned as 24 hours, 48hours, etc. This condition should be very specific so that it does not create confusion among the bidders.
- xi) When sufficient time is given and auction-cum-tender is conducted, the re- auction-cum-tender can be fixed allowing shorter duration depending on the time available for the for the expiry of the current lease / licence. As a minimum time of 10 days is required for the office to get the formalities completed, it is always better to complete the auction – cum – tender process, approval of council confirming the highest bid before 20<sup>th</sup> March every year, Immediately after the time prescribed for soliciting reauction-cum-tender is over, the subject shall be prepared with comparative statements, etc. for placing before the council.
- xii) When an ordinary meeting could not be convened for any reason, urgent meetings shall be convened and the issues decided well in advance. Instances have come to the notice of this office, where even in respect of leases conducted in early January and February, the confirmation notice has not yet been served on the highest bidder duly approved by the council. Such delay will lead to unnecessary complications. As soon as the decision is taken by the council the highest bidder shall be informed to complete the formalities like execution of agreements, production of additional security, If any, required and for fulfillment of other conditions, that may be necessary. If the highest bidder does not comply with the notice and fails to fulfil the conditions or fails to execute the agreement in time, immediate action shall be taken to cancel the provisional confirmation and forfeit the deposit paid by the highest bidder and to conduct reduction – cum – tender duly informing him of his liability for any loss, that may occur due to reauction.
- xiii) In no case, the lease / licence should be handed over possession without getting agreement duly executed and checking solvency and deposit.
- xiv) Persons having outstanding dues to the Municipality be made ineligible to participants in this auction. This condition may be included as part of tender condition and strictly enforced.

- xv) For conducting auction – cum – tender, in sensitive issues, wherever the Commissioner feels that adequate police protection is necessary he should inform the local police to provide protection to avoid unnecessary problems: If necessary, the entire proceedings should be videographed. On auction dates, invariably, the Commissioner should be present and conduct the auction. To ensure transparency, he should also inform the Mayor / Chairman and Councillors about the proposed auction time and date.
- xvi) Once the lease is confirmed, no partnership shall be allowed as this invariably leads to sub – lease or subletting the Municipal properties.
- xvii) While placing the subject before the Council, the municipal Commissioner, should ensure that there is no loss to the Municipality. wherever the bids are either higher than the last year's bid amount or higher than average of last 3 years income on the particular lease item, there is no objection for confirming the highest bid. Otherwise, invariably reauction – cum- tender shall be suggested and reasons for lower offer shall be probed. If there is any unhealthy cartelisation bids suitable steps shall be taken to prevent such cartelisation in the interest of Municipal finance.
- xviii) The lease / licence shall be handed over possession to the new lessee/ licence in time. Wherever the Executive Authority feels that there is likely to be a problem in taking over the possession from old lessee/ licencee he should take adequate precautionary measures to prevent such happenings including filing of caveat in local Courts, Police protection etc.
- xix) The side open spaces including open spaces under stair, cases in Commercial Complexes shall be kept as such for free public use and they shall not be let out in public auction.
- xx) Revised guidelines shall be followed as ordered in GO (Rt) No.92, Municipal and Water Supply (MA 4) Department, dated: 3.07.07 and GO (Rt) No.181, Municipal and Water Supply (MA 4) Department, dt.19.9.08. regarding Lease / license.

All the Municipal commissioners and commissioners of corporations should review the existing lease conditions (Both general and special) with reference to above guidelines and, if necessary suitably amend them with the approval of the Council and execute agreements of leases with the lessees before handing over the possession of properties.

All the Municipal Commissioners are requested to ensure that the above guidelines are scrupulously followed and that the leases / licences are auctioned in a prompt and transparent manner, without giving room for any complaints.

A report indicating the lease / licence items, last year's highest bid, current years bid, problem if any, shall be sent on or before 5.4.09 in the enclosed proforma

The receipt of this circular shall be acknowledged by return of post.

**Sd/- P.SenthilKumar**  
**Director of Municipal Administration**

// Forwarded By Order //

*[Handwritten Signature]*  
17/2/09

For Director of Municipal Administration

*[Handwritten Signature]*  
17/2/09

