



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

CONVENIENCE TRANSLATION - ACCURACY NOT GUARANTEED

Republic of the Union of Myanmar

President's Office

Directive No. 1/2017

14th Waxing Day of Thagu, 1378

(10th April, 2017)

Tender procedures to be followed by government departments and organizations in construction, purchase, procurement of services, lease and sale

1. Rules with which the Union, Region and State government departments and organizations had to comply in construction, purchase, procurement of services, lease and sale were already made in directive no. 1/2013 of the President's Office ("Tender Rules for Investment and Business Activities") dated 5/4/2013.
2. In addition, the Ministry of Construction issued a "Business Directive for Implementing a Business under a Contract System" on 9/1/2014 and 6/9/2014 concerning construction works implemented by the Union, Regional and State departments and organizations.
3. This procedure is issued for tender processes undertaken by the Union, Region and State government departments and organizations in order to prevent any waste of public funds, corruption, a tender monopoly of any individuals or groups as well as to create fair competition, transparency, responsibility, accountability and to cause such kind of construction, purchases, procurement of services, lease and sales that are beneficial to and effective for the country and the public.
4. The Union, Region and State government departments and organizations shall notify the Union Government to avoid any doubts from the public related to the construction, purchase, procurement of services, lease and sales if entrepreneurs or companies which won the tender have a family, social, business or project-related relationship with the competent authority from the Union ministry. Moreover, the tender selection process shall be conducted fairly and transparently without abuse of power, authority and influence.
5. Tenders called for the construction, purchase, procurement of services, lease and sales made by the Union, Region and State government departments and organizations shall comply with this directive in addition to the Business Directive for Implementing Business under a Contract System issued by the Ministry of Construction.



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6. For calling tenders related to national projects, Union level departments and organizations shall require permission from the Union government and the President's Office, and Regional and State departments and organizations shall require permission from the relevant Region or State government.
7. Union, Region and State government departments and organizations shall require permission for tenders paid for from the Union, Region or State budget as follows:
 - (a) Capital-intensive projects and businesses that will be tendered shall be included in the national budget of the relevant fiscal year.
 - (b) Machines, office equipment, office vehicles and other capital expenditure shall be included in the budget of the competent department or organization.
 - (c) Matters that are paid for from the ordinary budget, such as raw materials, medicine, medical equipment and educational materials and maintenance expenses from projects and businesses which are capital-intensive, shall be put into the annual budget of the relevant department or organization.
 - (d) Construction and purchases that will be funded with foreign currency shall be included in the annual record of foreign currency usage of the relevant department or organization.
8. A "Tender Committee", "Committee for Calculating the Floor Price", "Tender Acceptance and Evaluation Committee" and "Tender Quality Assurance and Acceptance Committee" shall be established for the Union, Region and State government departments and organizations for construction, purchases, procurement of services, lease and sales.
9. The Tender Committee for Union level departments/organizations shall be composed of the heads of the relevant department/organization; the deputy minister or permanent secretary shall be the chairman of the Tender Committee. The Tender Committee for tenders called in Regions/States and paid for from the Union budget shall be composed of the heads of the relevant Region/State department/organization and representatives of the relevant Union departments; the relevant Region/State minister shall be the chairman of the Tender Committee. The Tender Committee for tenders called in Regions/States and paid for by the Region/State budget shall be composed of representatives from the relevant departments; the relevant Region/State minister shall be the chairman of the Tender Committee.
10. The Tender Committee shall act with regard to construction, purchase and procurement of services as follows:-



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- (a) Calling a tender is not required for the construction, purchase and procurement of services with a value of less than Ks. 10 million, but the Tender Committee must request fee proposals from at least three trustworthy companies among suppliers or service providers and may purchase or procure the services from the supplier offering the lowest price.
 - (b) When calling an open tender for the construction, purchase and procurement of services with a value from Ks. 10 million to Ks. 100 million, it shall be necessary to prominently announce this two weeks prior to the specified tender opening date on the notice board of the relevant ministry, general administration department, district and township administration office. Moreover, at least 3 persons from the relevant department or organization shall be included when establishing the Tender Acceptance and Evaluation Committee in addition to the authorized persons from the competent department.
 - (c) An open tender for the construction, purchase and procurement of services with a value of more than Ks. 100 million shall be prominently announced at least twice in the state-owned media one month prior to the tender opening date. Likewise, it shall also be announced at least one month prior to the opening date on the ministry's website.
 - (d) A tender shall only be called on Myanmar kyats basis for goods, services, lease and sales if domestic procurement is possible except where foreign currency must be used or an international tender is called.
 - (e) If there is no authorized representative to provide the goods and services in the Union, procurement shall be done by calling an international competitive tender based of foreign currency and payment shall be made in the foreign currency.
11. The Tender Committee shall conduct tenders for a lease or sale as follows-
- (a) If the value of the floor price of the lease or sale is less than Ks. 10 million for one year, the Tender Committee shall prominently announce the lease or sale of the type of business two weeks in advance before the specified tender opening date on the notice board of the relevant ministries, general administration department, district administration and township administration office. Furthermore, in addition to the authorized persons from the competent department, at least 3 persons from other related departments and organizations shall be included when establishing the Tender Acceptance and Evaluation Committee.



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- (b) If the value of the floor price of the lease or sale is Ks. 10 million or more for one year, a tender shall be called, stating the project for lease or sale, and announced prominently at least twice in the state-owned media one month prior to the specified tender opening date. Likewise, an announcement shall be made on the ministry's website at least one month prior to the opening date.
12. The Tender Committee shall do the following:-
- (a) Shall screen whether there is permitted budget for the project, construction, purchase, consultation service or procurement of non-consultation service.
 - (b) Specifying tender forms and contract forms required for the construction, purchase, procurement of services, lease and sale.
 - (c) Specifying the quality standard for the goods to be purchased.
 - (d) Specifying information on the proposed contract, criteria for quality evaluation and financial information (information about the contract, payment plan, goods delivery plan, tax, etc.) that shall be included in tender.
 - (e) Specifying the screening method for high technology and complex purchases, and conferring the respective authority to technical experts.
 - (f) Specifying the place and time for the tender submission, place and time for the tender opening and the date of the announcement of the list of tender winners.
 - (g) Conferring the respective authority to the Tender Acceptance and Evaluation Committee.
 - (h) Paying back the tender guarantee to the persons who did not win the tender and requesting payment of the performance guarantee from the tender winner.
 - (i) Announcing the tender winner.
 - (j) If the purchase tender asks for samples, arrange for the samples and their registration.
 - (k) Specifying the floor price for the lease and sale.
13. The Tender Committee shall form the Committee for Calculating the Floor Price according to the procedure below.
- (a) The Tender Committee shall establish and confer the respective authority to the Committee for Calculating the Floor Price which shall comprise at least 3 representatives



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- from the competent departments who are well-versed in the market of the lease and sale of the state-owned property.
- (b) The Committee for Calculating the Floor Price shall calculate the floor price of the lease and sale of the state-owned property and report it to the Tender Committee.
14. The Tender Committee shall establish the Tender Acceptance and Evaluation Committee as hereunder:-
- (a) The Tender Committee shall establish the Tender Acceptance and Evaluation Committee which shall comprise at least 3 and at most 5 representatives from the relevant departments that are well-versed in the construction, purchase and procurement of services in addition to the representatives from the purchasing department.
- (b) The Tender Acceptance and Evaluation Committee shall do the following:-
- (i) Accepting and opening the tenders.
 - (ii) Evaluating the tenders.
 - (iii) Preparing an evaluation report together with its suggestions and notifying the Tender Committee accordingly.
15. The Tender Committee shall establish and confer the respective authority to the Quality Evaluation and Acceptance Committee as follows:-
- (a) The Tender Committee shall establish and confer the respective authority to the Quality Evaluation and Acceptance Committee which shall comprise at least 3 representatives from the purchasing department or organization.
- (b) The Quality Evaluation and Acceptance Committee shall do the following:-
- (i) Testing and screening the quality of the goods if required.
 - (ii) Evaluation and screening of the goods and services as to whether their quality and standards met the descriptions specified in the contract.
 - (iii) Accepting or rejecting the goods or services on behalf of the purchasing department or organization.
 - (iv) Issuing receipts for the goods.



Tender procedure

16. The construction, purchase, consultation services and non-consultation services, lease and sales procured by the Union, Region and State government departments and organizations shall comply with the following procedure:-
- (a) Screening whether there is permitted budget.
 - (b) Making a purchasing plan and obtaining confirmation.
 - (c) Developing tender documents including the documents related to the contract.
 - (d) Calling and announcing the tender.
 - (e) Screening and accepting the tender.
 - (f) Notifying the reports which shall include suggestions for the contents of the contract and an evaluation of the tender.
 - (g) Announcing the tender winner.
 - (h) Concluding the contract and amending the contract.
 - (i) Managing the contract including the payment.

Screening whether there is permitted budget

17. The Tender Committee shall screen whether there is permitted budget for the business that requires the calling of a tender as follows.
- (a) Shall screen whether a capital-intensive project and business that requires the calling of a tender is included in the national budget of the relevant fiscal year.
 - (b) Machines, office equipment, office vehicles and other capital expenditure shall be included in the budget of the competent department or organization.
 - (c) Matters that are paid for from the ordinary budget, such as raw materials, medicine, medical equipment and educational materials and maintenance expenses from projects and businesses which are capital-intensive, shall be put into the annual budget of the relevant department or organization.



- (d) The construction and purchase that will be paid for with foreign currency shall be included in the annual record of foreign currency usage of the relevant department or organization.

Making the purchasing plan

- 18. The departments and organizations wishing to purchase shall create a purchasing plan with the items below after checking the approved budget, and shall submit the purchasing plan to and obtain approval from the relevant Union ministry, heads of the organizations or the Region or State chief minister.
 - (a) Description of the business or project for which the tender will be called.
 - (b) Proposed budget and permitted budget.
 - (c) Purchasing plan.
 - (d) Estimated tender opening date.
 - (e) Estimated date of the tender award.
 - (f) Estimated completion date.

Developing tender documents

- 19. The purchasing department or organization calling an open tender with the permission of the Tender Committee shall prepare documents as follows:-
 - (a) Tender announcement or invitation.
 - (b) Tender form.
 - (c) Standard specifications.
 - (d) Directive to the tender bidder.
 - (e) Tender quality specification.
 - (f) Plan for the evaluation of the tender.
 - (g) Information that shall be included in the contract.



Tender announcement or invitation

20. The following information shall be included when announcing the tender.
- (a) Name and address of the purchasing department or organization.
 - (b) Quality specifications and content for calling the tender.
 - (c) Required capacity of the tender bidder.
 - (d) Specified fee for the tender documents.
 - (e) Place, procedure and last date to bid.

Bidding

21. Bidding shall be done in accordance with the procedure, place and time described in the tender documents. Bids shall be submitted in a sealed envelope. The tender period shall be described in the tender documents. This period shall allow for sufficient time for the purchasing department or organization to evaluate and obtain permission. The tender period shall not exceed 3 months starting from the submission date except for large and complex projects. The Tender Committee shall set the tender period for large and complex projects.
22. The tender bidder may submit the tender guarantee by obtaining a guarantee from a bank that is recognized by the Central Bank of Myanmar. The tender guarantee is 1% of the value of tender and its term is 28 days after the end of tender period. A tender guarantee shall not be required for the calling of a price quotation, expression of interest and direct contracting.

Opening and evaluation of a tender for construction, purchase and procurement of services

23. The tender shall be opened in front of the tender bidders in compliance with the procedure, place and time stated in the tender documents. The following shall be announced when opening the tender:-
- (a) Names of the tender bidders
 - (b) Bidding price
 - (c) Tender period and the amount of the tender guarantee.
24. The purchasing department or organization shall evaluate the tender in accordance with the evaluation standards prescribed in the tender documents. The evaluation of the tender bidders shall be done as follows:-



- (a) Documents complete?
- (b) Tender guarantee.
- (c) Whether the bidder meets the specified capacity.
- (d) Permission from the producer if required.
- (f) Experience of the tender bidder.
- (g) Compliance with the specified standards.
- (h) Compliance with the specification of the business.

Whether the bidder will win or lose the tender shall be decided based on these criteria.

25. Bids for large and complex projects shall be evaluated with a rating point system as follows:-

- | | |
|--|-----------------|
| (a) Experience and capacity of the tender bidder | 0 to 10 points |
| (b) Methodology | 0 to 10 points |
| (c) Compliance with important standards | 0 to 20 points |
| (d) Employees | 0 to 10 points |
| (e) Offered price | 50 to 70 points |

In the calculation, the lowest price submitted by a bidder shall result in the highest points, and the remaining points shall be awarded as per the ratio, so that the total of the points will not exceed 100. If most of the bidders meet the criteria and requirements provided in the tender documents, the bidder offering the lowest price shall be selected, provided that the bid complies with the technical standards.

Acceptance and evaluation of a tender for the procurement of consultation services

26. Permission from the competent Union minister shall be obtained for the procurement of consultation services in accordance with the policy; permission from the Union government is only required in special circumstances. After obtaining the permission from the Union minister relating to the hiring of consultants, the department or organization that will hire the consultants shall request an expression of interest and act as follows:-

- (a) The purchasing department or organization shall give the consultant company at least 30 days for the preparation of their proposals.



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- (b) The technical and financial proposals shall be separated in sealed envelopes and submitted together on the tender submission date.
 - (c) The Tender Acceptance and Evaluation Committee shall open all received technical proposals. The financial proposals shall not be opened in front of the public and shall remain sealed.
27. The proposals shall be evaluated in two steps. First, the technical proposals shall be evaluated and after that the financial proposal shall be evaluated. The financial proposal shall not be opened without the technological proposal having been evaluated.
28. The Tender Acceptance and Evaluation Committee shall evaluate each of the technical proposals in accordance with the standards provided hereunder:-
- (a) Experience related to the tasks that will be given to the consultant.
 - (b) Method how he/she will act on the task.
 - (c) Involvement of senior expertise.
 - (d) Delivery of technology and expertise as prescribed in the ToR.
 - (e) Inclusion of local experts among the senior experts for the tasks to be assigned.
29. Not more than 100 points shall be given as follows:-
- | | |
|--|-----------------|
| (a) Experience of the consultant | 0 to 10 points |
| (b) Method how he/she will act on the task | 20 to 50 points |
| (c) Senior expertise | 30 to 60 points |
| (d) Delivery of technology and expertise | 0 to 10 points |
| (f) Inclusion of local experts | 0 to 10 points |

Opening of the financial proposal

30. The Tender Acceptance and Evaluation Committee shall only open and screen the financial proposal of bidders that acquired sufficient points for their technical proposal after its evaluation, and screen and accept the bidder that proposed the lowest price.



Negotiation and awarding a contract

31. Tasks, methodology, number of employees and the terms and conditions set by the purchaser shall be discussed and the minutes of the meetings shall be communicated. If the negotiations by the Tender Acceptance and Evaluation Committee with the bidder that scored the highest points fail, the committee shall negotiate with the consultant with the second-highest points in accordance with their evaluation result.

Selecting an individual consultant

32. An individual consultant shall be selected by comparing at least 3 consultants as to their experience and capacity related to the task. These 3 consultants shall emerge either from expressions of interest or from direct contact by the Tender Acceptance and Evaluation Committee. The consultants meeting the criteria as to experience and capacity related to the task shall be selected. The Tender Acceptance and Evaluation Committee shall obtain permission from the Tender Committee and contract with the best consultant.

Lease and sale of state-owned property

33. The Tender Committee shall comply with the following procedure with regard to the sale of property, plots of land and industrial plots situated on state-owned land:
- (a) Detailed description and list of the state-owned property for sale;
 - (b) The Committee for Calculating the Floor Price shall calculate the floor price for each item;
 - (c) the Tender Committee shall prominently announce *[the tender]* at least one month prior to the tender opening date in state-owned newspapers and the website of the respective ministry;
 - (d) An interested party shall file the proposal in a sealed envelope before the deadline specified in the announcement. 10% of the proposed price or the price specified by the Tender Committee shall be deposited as tender guarantee. The term of the tender guarantee is 60 days from the date of the tender opening date;
 - (e) The Tender Committee shall, after opening the envelope, announce the name of the item, the buyer and the price offered;
 - (f) The buyer who offered the highest price and deposited the tender guarantee shall be selected;



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- (g) The Tender Committee may cancel the sale for good reason if the price offered in all tender submissions is below the floor price.

Payment for the purchase

34. Payment for the purchase of state-owned property shall be made to the account no. MD-012672, Myanma Economic Bank, Nay Pyi Taw according to the procedure below.
- (a) 30% of the purchase price within one month after the receipt of the acceptance notice;
- (b) The remaining 70% shall be paid as hereunder:
- (1) If the purchase price is up to Ks. 1 billion, the remaining 70% shall be paid within six months after the receipt of the acceptance notice;
- (2) if the purchase price is higher than Ks. 1 billion, the remaining 70% shall be paid within nine months after the receipt of the acceptance notice;
- (c) The tender guarantee shall be confiscated as state-owned property if the initial payment is not made. The initial payment shall also be confiscated as state-owned property if the remaining outstanding amount is not paid.
35. The lease of state-owned property shall be done in accordance with the above procedure for sale.

Payment for the lease

36. The relevant government organization shall collect the rent according the contractual rate and pay it to the account of the relevant department or organization. The payment with regard to the lease of state-owned property shall be made according to the procedure below.
- (a) One month's rent shall be deposited on the date of signing the contract;
- (b) 12 months' rent shall be paid in advance before the commencement of the lease term;
- (c) The remaining amount shall be paid according to the contractual terms.

Announcing the tender winner

37. The Tender Acceptance and Evaluation Committee shall report the evaluation to the Tender Committee together with its suggestion. Details of the losing bidders and an explanation for not selecting them shall be included in the report. After obtaining the permission from the competent authority, the Tender Committee shall announce the tender winner and award the



contract. The committee shall notify the losing bidders listed in the report and pay back the tender guarantee within 7 days. The winning bidder shall obtain a performance guarantee from a bank that is recognized by the Central Bank of Myanmar and shall submit it within the period prescribed in the tender documents. After the performance guarantee is paid, he/she shall sign the contract and the tender guarantee paid by the winning bidder shall be paid back. The amount of the performance guarantee is 10% of the value of the contract. A performance guarantee is not required if a price quotation was solicited.

Contracting and amending the contract

38. The following hereunder shall be included in the contract that shall be concluded by the purchasing department or organization and the winning bidder.
- (a) Details of the two contracting parties.
 - (b) Description of the goods and services to be delivered, their quantity and scope.
 - (c) Place and time for the delivery of the goods or services.
 - (d) The value of contract and tax payment.
 - (e) Currency (kyat or specified foreign currency)
 - (f) Payment period and plan.
 - (g) Other conditions and information prescribed in the contract.
 - (h) Service and guarantee period.
 - (i) Plan for the repayment of the performance guarantee.
 - (j) Plan for force majeure events.
 - (k) Copyright and intellectual property rights.
 - (l) Termination of and amendments to the contract.
 - (m) Delay and penalties.

Specification for the payment

39. It shall be stated whether payment is to be made in kyats or the specified foreign currency and the payment method and payment procedure shall be included in the contract. Payment methods are: advance payment; payment when the goods from abroad are loaded on the ship;



payment when the goods are delivered and payment when the goods are checked. Advance payment shall not exceed 10% the value of the contract. The supplier of the goods shall give an advance payment guarantee equivalent to 10% of the value of the contract.

40. Payment for professional services and the procurement of security services shall be made as follows:-
- (a) Monthly payment depending on the working days of consultant or professional.
 - (b) Making 25% of the payment when contracting depending on the retention period. Installment payment for the remaining period and payment of the remaining amount of the contract when the project is done.

Capacity of the bidder

41. Local bidders shall be in compliance with the following:-
- (a) The company must be officially registered in the Union.
 - (b) The company must have paid the specified tax in the Union.
42. International companies must be registered in the Union before contracting the winning tender for purchasing from abroad.

Recording the purchase

43. The purchasing department or organization shall record all tender procedures and maintain the following for at least 3 years.
- (a) Received bids.
 - (b) Evaluation report.
 - (c) Record of the Tender Committee.
 - (d) Contracts that are signed.
 - (e) Payment information.
 - (f) Receipts.
 - (g) Other related documents.



Rejecting a tender

44. The Tender Committee shall reject all or some of the tenders in the following cases:-
- (a) There is no bidder.
 - (b) Suspicion that there is collusion among the bidders.
 - (c) Suspicion of the bidders corrupting the persons screening the bids.
 - (d) The minimum price of the bid that is in compliance with the specified technological standards is higher than the permitted budget.
 - (e) The Tender Committee shall record sufficient reason for rejecting all or some of the tenders.
 - (f) Shall not call a new tender after rejecting all or some of the tenders with the only intention of saving money.
 - (g) If the lowest price is noticeably higher than the specified floor price, the reason of the higher price shall be stated and the tender shall be called again in accordance with the tender procedure.

Restrictions

45. All persons involved in the sale of state-owned property, tendering or purchasing goods, procurement of services and procurement of non-consultation services shall be ethical and avoid bribery and corruption. If there is bribery and corruption, the following shall be done:-
- (a) Cancellation of the contract and the tender.
 - (b) Taking action against the employees from the purchasing departments and organizations in accordance with the existing rules and regulations.
 - (c) Banning the bidders, suppliers or purchasers from other tenders.

Complaint resolution

46. The Tender Committee shall investigate if a bidder complains about a grievance stemming from the tender selection process with sufficient evidence. If he/she is not satisfied with the decision of the Tender Committee, the Ministry of Planning and Finance shall establish a complaint resolution team with the permission of the Union government comprising at least 3 representatives from the ministries.



47. The complaint resolution team shall perform the following tasks:-
- (a) Accepting, recording and screening the complaints related to purchasing.
 - (b) Discussion with the bidders who complained.
 - (c) Deciding on the complaints.
 - (d) The decision of the complaint resolution team shall be final and binding.

Miscellaneous

48. The Union, Region and State government departments and organizations shall comply with the following with regard to tenders for the construction, purchase, procurement of services, lease and sales.
- (a) If spare parts for the replacement of machines and equipment that are currently used for operating a business can be bought from the original supplier, a direct purchase shall be made from the original supplier or manufacturer.
 - (b) The tender opening shall be recorded on photo and video for tenders where the purchase amount is higher than Ks. 1 billion.
 - (c) Limiting eligible bidders in a tender for, and direct contracting for, state defence, state security and electronic security matters may be done in accordance with the policy of the Ministry of Defence and the Ministry of Transport and Communication; other purchases shall be done in accordance with this directive.
 - (d) Particular tender procedures shall be issued for public private partnership (PPP) investments such as petroleum and natural gas, license for communication and mining conducted with the permission of the Union government.
 - (e) If goods and services are provided by state-owned enterprises and match the criteria, ministries shall purchase them by negotiating a contract directly.
 - (f) The sale of gems in a gems show with a competitive bidding system shall be done in accordance with the rules for gems shows issued by the Ministry of Natural Resources and Environmental Conservation with the permission of the Union government.
 - (g) The purchasing, procurement of services and hiring of consultants shall be done in compliance with the rules and regulations specified by the international or partner



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organizations that provide the corresponding loan or grant; if there are no such rules and regulations, this directive shall be complied with.

- (h) The contract shall be amended with the permission of the competent ministry if *[the other party]* provides sound evidence of force majeure such as natural disaster, war, instability, strike, temporary business shut-down and chaos.
 - (i) If the winning bidder does not supply the goods or operate the business within the specified period after contracting, the contract shall be cancelled and the winning bidder shall pay back all the money paid by the government departments and organizations.
 - (j) Disputes arising from contract implementation shall be decided by the court.
49. Notification no. 1/2003 dated 5/4/2003 of the President's Office "Tender Rules When Allowing Investment and Economic Activities" is abolished by this directive.
50. The Union, Region and State government departments and organizations shall follow this procedure when calling tenders for construction, purchase, procurement of services, lease and sales.

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The President Office

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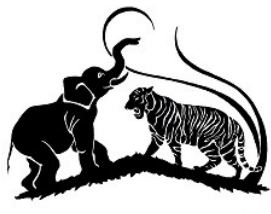
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