



BRIEF ON CONTENTS OF REFERENCE BOOK

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- This reference book is divided into three parts.
 - The first part gives gist of all the CVC instructions on procurement, works and contracts.
 - The second part contains copies of all the instructions referred in the first part.
 - The third part contains copies of the internal instructions regarding systemic improvements issued by NMPT.



GIST OF CVC INSTRUCTIONS ON PROCUREMENT, WORKS AND CONTRACTS

PRE BID STAGE

INTEGRITY PACT

- ▶ CVC recommends IP concept and encourages its adoption and implementation in respect of all major procurements.
- ▶ Independent External Monitors (IEMs) to review independently and objectively whether and to what extent parties have complied with their obligations under the Pact.
- ▶ Entering into IP would be a preliminary qualification to participate in the bidding.
- ▶ Adoption of Integrity Pact in an organization is voluntary, but once adopted, it should cover all tenders / procurements above a specified threshold value, which should be set by the organization itself.
- ▶ Maximum age limit for IEM for initial appointment of three years or further extension of two years is 70

EOI

- ▶ It would be prudent to invite Expression of Interest and proceed to finalise specifications based on technical discussions / presentations with the experienced manufacturers / suppliers in a transparent manner.
- ▶ During the first stage of tendering, acceptable technical solutions can be evaluated after calling for EOI from the leading experienced and knowledgeable manufacturers / suppliers in the field of the proposed procurement.
- ▶ Once the technical specifications and evaluation criteria are finalized, the second stage of tendering could consist of calling for techno-commercial bids as per the usual tendering system under single bid or two bid system as per the requirement of each case

TURNKEY CONTRACTS & SPECIFICATIONS

- ▶ In turnkey contracts for networking of computer systems a lot of unrelated products are being included in the contracts which are either not required or which are stand alone in nature and can be procured separately at much lower cost. Inclusion of these unrelated items creates opportunities for malpractices.
- ▶ it will be advisable to take an independent third party view about the scope of turnkey projects so that the tendency to include unrelated products as part of the turnkey project is avoided.
- ▶ the items with standard specifications only should be stipulated in the bid documents. In case, items with non-standard specifications are to be procured, reasoning for procuring such items may be recorded and reasonability of rates must be checked before placing order.

IT PRODUCTS

- ▶ To insist on undertaking from OEM that all the components / parts / assembly / software used in the Desktop and Server are original / new components and that not refurbished / duplicate / second hand components / parts / assembly / software are being used or would have been used. (To control counterfeit products).
- ▶ some departments / organisations are issuing tenders for purchase of computers where they mention and insist on international brands. This not only encourages the monopolistic practices but also vitiates the guidelines issued by the Ministry of Finance, D/o Expenditure vide its OM No. 8(4) - E.II (A) 98 dated 17.12.1998.

PQC

- ▶ It is necessary to fix in advance the minimum qualification, experience and number of similar works of a minimum magnitude satisfactorily executed in terms of quality and period of execution.
- ▶ It should be ensured that pre-qualification criteria, performance criteria and evaluation criteria are incorporated in the bid documents in clear and unambiguous terms as these criterions are very important to evaluate bids in a transparent manner.
- ▶ For civil/Electrical works: Average annual financial turnover during last three years – 30% of estimated cost and experience during last seven years (40% - 3, 50% - 2 and 80% - 1)
- ▶ For store/purchase contracts – Experience last 2 years, equipment and manufacturing facilities, Financial standing.

TENDER CLAUSE (SAMPLE)

- ▶ While it is recognized that samples may be required to be approved to provide a basis in respect of indeterminable parameters such as shade, feel, finish & workmanship for supplies of such items but system of approving / rejecting tender samples at the time of decision making is too subjective and is not considered suitable, especially for items which have detailed specifications. The lack of competition in such cases is also likely to result in award of contracts at high rates.
- ▶ It is thus advised that Government Departments / Organizations should consider procurement of such items on the basis of detailed specifications. If required, provision for submission of an advance sample by successful bidder(s) may be stipulated for indeterminable parameters such as, shade/tone, size, make-up, feel, finish and workmanship, before giving clearance for bulk production of the supply. Such a system would not only avoid subjectivity at the tender decision stage but would also ensure healthy competition among bidders and thus take care of quality aspect as well as reasonableness of Prices.

TIMEBOUND PROCESSING

- ▶ It is essential that tenders are finalized and contracts are awarded in a time bound manner within original validity of the tender, without seeking further extension of validity. While a short validity period calls for prompt finalization by observing specific timeline for processing, a longer validity period has the disadvantage of vendors loading their offers in anticipation of likely increase in costs during the period. Hence, it is important to fix the period of validity with utmost care.

MAKE IN INDIA

- ▶ Chief Vigilance Officers (CVO) to exercise oversight on all contracts over an amount of Rs. five crores so as to ensure that restrictive and discriminative clauses against domestic suppliers are not included in the tender documents for procurement of goods and services and that the tender conditions are in sync with the PPP-MIII Order, 2017

TENDERING STAGE

NIT CLAUSE

- ▶ Notice Inviting Tenders (NITs) have a clause that the tender applications could be rejected without assigning any reason. This clause is apparently incorporated in tender enquiries to safeguard the interest of the organisation in exceptional circumstances and to avoid any legal dispute. The Commission has discussed the issue and it is emphasized that the above clause in the bid document does not mean that the tender accepting authority is free to take decision in an arbitrary manner. He is bound to record clear, logical reasons for any such action of rejection / recall of tenders on the file

LEVERAGING TECHNOLOGY



- ▶ All Govt. Organisations discharging regulatory / enforcement functions or service delivery of any kind, which cause interface with the general public / private businesses, etc., shall provide complete information on their websites regarding the laws, rules and procedures governing the issue of licenses, permissions, clearances, etc.
- ▶ The status of individual applications / matters should be made available on the organisation's website and should be updated from time-to-time so that the applicants remain duly informed about the status of their applications.

USE OF WEBSITE

- ▶ There is system of short-term Tenders (by whatever name it is called in different organizations), wherein works below a particular value are undertaken without resorting to publicity as is required in the open tenders. This practice is understandable because of cost and time involved in organizing publicity through newspapers. In all such cases, notice can be put on the web-site of the department as it does not take any time compared to giving advertisements in the newspapers and it practically does not cost anything.
- ▶ If the organization desires to limit the access of the Limited Tender documents to only registered contractors / suppliers, they can limit the access by issuing passwords to all registered contractors / suppliers.
- ▶ CVOs to ensure that details of the tenders awarded above the threshold value by the organizations are uploaded in time on the organisation's official website and are updated every month.

E-TENDERING/E-PROCUREMENT SYSTEM

- ▶ All organisations should invariably follow a fair, transparent and open tendering procedure to select the application service provider for implementing their e-tendering solutions.
- ▶ In order to ensure proper security of the e-procurement system all departments / organisations are advised to get their system certified by Department of Information Technology (DIT).
- ▶ DIT in turn requested its attached STQC (Standardisation, Testing and Quality Certificate) Directorate to establish necessary processes and systems to enable certifications of e-procurement systems.

CONTRACTS ON NOMINATION BASIS

- ▶ All works awarded on nomination basis should be brought to the notice of the Board of the respective PSUs for scrutiny and vetting post facto.
- ▶ The reports relating to such awards will be submitted to the Board every quarter.
- ▶ The audit committee may be required to check at least 10% of such cases
- ▶ It is needless to state that tendering process or public auction is a basic requirement for the award of contract by any Government agency as any other method, especially award of contract on nomination basis, would amount to a breach of Article 14 of the Constitution guaranteeing right to equality, which implies right to equality to all interested parties.
- ▶ Further, the Commission directs that details of all tenders awarded on nomination basis shall be posted on the website in the public domain as per Commission's Office Order of 5th July 2007 along with brief reasons for doing so.
- ▶ The Commission has observed that there have been instances where government organisations / PSUs obtain contract from other government organisations / PSUs and further award the same to private entities on 'back to back tie up' basis without competitive tendering mechanism and without any significant value addition by the procuring government organisation / PSU. Their practice subverts the Commission's emphasis on integrity, transparency, fairness and equity in decision making.

POST TENDER NEGOTIATION

- ▶ If the tender is for sale of material by the Government or the Government company, the post-tender negotiations are not to be held except with H-1.
- ▶ Negotiations if at all shall be an exception and only in the case of proprietary items or in the case of items with limited source of supply. Negotiations shall be held with L-1 only. Counter offers tantamount to negotiations and should be treated at par with negotiation.
- ▶ Negotiations can be recommended in exceptional circumstances only after due application of mind and recording valid, logical reasons justifying negotiations. The Committee shall be responsible for lack of application of mind in case its negotiations have only unnecessarily delayed the award of work / contract.
- ▶ Convincing reasons must be recorded by the authority recommending negotiations. Competent authority should exercise due diligence while accepting a tender or ordering negotiations or calling for a re-tender and a definite timeframe should be indicated so that the time taken for according requisite approvals for the entire process of award of tenders does not exceed one month from the date of submission of recommendations.

POST TENDER NEGOTIATION (Contd...)

- ▶ In cases where a decision is taken to go for re-tendering due to the unreasonableness of the quoted rates, but the requirements are urgent and a re-tender for the entire requirement would delay the availability of the item, thus jeopardizing the essential operations, maintenance and safety, negotiations would be permitted with L-1 bidder(s) for the supply of a bare minimum quantity.
- ▶ Quantity to be ordered is far more than what L-1 alone is capable of supplying and there was no prior decision to split the quantities, then the quantity being finally ordered should be distributed among the other bidders in a manner that is fair, transparent and equitable.
- ▶ It is essentially in cases where the organisations decide in advance to have more than one source of supply (due to critical or vital nature of the item), the Commission insists on pre-disclosing the ratio of splitting the supply in the tender itself.
- ▶ Counter-offers to L-1, in order to arrive at an acceptable price, shall amount to negotiations. However, any counter-offer thereafter to L-2, L-3, etc., (at the rates accepted by L-1) in case of splitting of quantities, as pre-disclosed in the tender, shall not be deemed to be a negotiation.

POST TENDER NEGOTIATION (Contd...)

- ▶ It is clarified that the Commission's guidelines would not be applicable in projects funded by the World Bank, ADB, etc., if found to be in conflict with the applicable procurement rules of the funding agencies.“
- ▶ If any of the International Agencies while granting aid prescribes certain terms and conditions which are contrary to the existing guidelines of the Government (GFR) or of the Commission relating to the process of procurement/tendering to be adopted, determination of the qualifications, negotiations, other terms and conditions, etc., where the funding is by way of grants-in-aid with no obligation to repay such amounts, the agency receiving the fund may accept such conditions as the International Agency may lay down.
- ▶ However, where such funding is by way of a loan with or without interest and there is a liability on the Government and/or the recipient agency to repay the money in due course, it is essential that prudent norms on making the procurements at best possible rates in a transparent, competitive environment providing opportunity to all eligible and willing bidders, the guidelines/instructions of the Central Vigilance Commission in regard to qualification, criteria, terms and conditions of procurement, negotiations, etc. will have to be followed

AGENTS

- ▶ In a tender, either the Indian agent on behalf of the Principal / OEM or Principal / OEM itself can bid but both cannot bid simultaneously for the same item/ product in the same tender.
- ▶ If an agent submits bid on behalf of the Principal / OEM, the same agent shall not submit a bid on behalf of another Principal / OEM in the same tender for the same item / product.

MOBILIZATION ADVANCE

- ▶ Adequate steps may be taken to ensure stipulation of mobilization advance only for selected works and advance should be interest bearing so that contractor does not draw undue benefit.
- ▶ Mobilization advance should be released only against furnishing of Bank Guarantee (BG). Recovery of such advance could be ensured by encashing the BG for the work supposed to be completed within a particular period of time.
- ▶ The amount of mobilization advance; interest to be charged, if any; its recovery schedule and any other relevant detail should be explicitly stipulated in the tendered document upfront.
- ▶ In case of 'Machinery and Equipment advance', insurance and hypothecation to the employer should be ensured.
- ▶ Utilization certificate from the contractor for the mobilization advance should be obtained. Preferably, mobilization advance should be given in instalments and subsequent instalments should be released after getting satisfactory utilization certificate from the contractor for the earlier instalment.
- ▶ Provision of mobilization advance should essentially be need-based. Decision to provide such advance should rest at the level of Board (with concurrence of Finance) in the organization in respect of interest free advance. However, in case of interest bearing advance, organisation may delegate powers at appropriate levels such as CMD or Functional Directors.
- ▶ A clause in the tender enquiry and the contract of cases providing for interest free mobilisation advances may be stipulated that if the contract is terminated due to default by the Contractor, the mobilisation advance would be deemed as interest bearing advance at the interest rate of % (to be stipulated depending on the prevailing rate at the time of issue of NIT) to be compounded quarterly.

AWARD/EXECUTION STAGE

L-1 BACKS OUT , OUT OF TURN ALLOTMENT & BANNING OF BUSINESS

- ▶ If L-1 Party backs out, there should be re-tendering in a transparent and fair manner. The authority may in such a situation call for Limited or Short Notice Tender if so justified in the interest of work and take a decision on the basis of lowest tender.
- ▶ The details of all such cases regarding tenders or out of turn allotments or discretion exercised in favour of an employee / party to be published on the Notice Board and in the organisation's regular publication(s).
- ▶ The Commission once again reiterates its instructions that banning of business is an administrative matter to be decided by the management of the organization and the CVC does not give its advice in such matters.

ACCEPTANCE OF BG

- ▶ It should be insisted upon the contractors, suppliers etc. that BGs to be submitted by them should be sent to the organisation directly by the issuing bank under Registered Post (A.D.).
- ▶ all BGs should be independently verified by the organisations.
- ▶ In the organisation / unit, one officer should be specifically designated with responsibility for i) verification, ii) timely renewal and iii) timely encashment of BGs.
- ▶ Organizations are advised to follow IT enabled confirmation system which is swift and secured in addition to their existing paper based confirmation system.

E-PAYMENTS

- ▶ The payment to all suppliers / vendors, refunds of various nature, and other payments which the organisations routinely make shall be made through electronic payment mechanism at all centres where such facilities are available in the banks.
- ▶ The Commission has directed that all the CVOs should undertake a review of bills received during the last six months. The review is meant to primarily determine the time taken in clearing the bills. It is suggested that the cut off limit for bills can be Rs. 1 lakh i.e. time taken for payment of all bills above this amount should be seen.
- ▶ Some of the major CPSEs have reported that their bill watch/online bill tracking Systems red flags such delays in payment of bills. However, it is important that monitoring of cases of delay/non-settlement is done at higher levels to achieve efficiency and to reduce delay. The Commission would, therefore, advise the CVOs to examine from vigilance angle all cases of inordinate delay

EMPLOYMENT OF CONSULTANTS

- ▶ Following guidelines be kept in view while finalising the contracts for engaging Consultants:-
 - ✓ Conflict of Interest
 - ✓ Conflict between consulting activities and procurement of goods, works or non-consulting services
 - ✓ Conflict among consulting assignments
 - ✓ Relationship with employer's staff
 - ✓ A consultant shall submit only one proposal. If participates in more than one proposal, all such proposals shall be disqualified.
 - ✓ Professional Liability
- ▶ To ensure adequate accountability, suitable tender terms and conditions for apportioning accountability, between the employer and the consultant, need to be incorporated. Also, there should be suitable provisions to enforce such accountability, in case of improper discharge of contractual obligations / deviant conduct by / of any of the parties to the contract.
- ▶ Before arriving at a decision to engage consultant and in matters of accepting advice / service rendered by the consultant, all organisations should, in the first instance, explore the possibility of using in-house expertise. Proof checking / peer review, in case of advice rendered by a consultant, especially in high value projects, may be advantageous.

BACK TO BACK TIE UP BY PSUs

- ▶ It has been observed during intensive examination of various works/contracts awarded by construction PSUs on back to back basis that the works are being awarded in an ad-hoc and arbitrary manner without inviting tenders and ascertaining the performance, capability and experience of the tenderers. In some cases, the works were awarded on single tender basis/limited tender basis though sufficient time was available with the Organization to invite open tenders.
- ▶ The Commission has observed that there have been instances where Government Organisations / PSUs obtain contract from other Government Organisations / PSUs and further award the same to private entities on 'back to back tie up' basis without competitive tendering mechanism and without any significant value addition by the procuring Government Organisation / PSU. Their practice subverts the Commission's emphasis on integrity, transparency, fairness and equity in decision making.
- ▶ PSUs (when bag the contract from the client Department) as a contractor, has to execute the work by functioning like a contractor instead of sub-letting the 100% work on back to back basis.
- ▶ Open tenders to be invited for selection of sub-contractors as far as possible.

PURCHASE PREFERENCE POLICY

- ▶ The Department of Public Enterprises has issued guidelines vide O.M. No. DPE /13 (15) / 2007-Fin. Dated 21.11.2007 on the subject cited above which reiterates DPE's earlier guidelines dated 18.07.2005 to the effect that the Purchase Preference Policy would stand terminated w.e.f. 31.03.2008.
- ▶ The Commission has desired that if any Ministry/Department has evolved a Purchase Preference Policy pursuant to the DPE Guidelines, the same may be brought to the notice of the Commission.

UNDERTAKING BY MEMEBERS OF TC & RECOVERIES

- ▶ The Commission would advise that the members of the Tender Committee should give an undertaking at the appropriate time, that none of them has any personal interest in the Companies / Agencies participating in the Tender Process. Any Member having interest in any Company should refrain from participating in the Tender Committee.
- ▶ it may be noted that the contracts are primarily between the executing agency and the contractor. Any endorsements that the recoveries are being made at the instance of a third party could weaken the department's case during arbitration or court proceedings.
- ▶ The observations / advice of the Commission are required to be considered by the executing agencies in terms of the Contract and recoveries are to be enforced as admissible as per the conditions of the Contract.

GENERAL

REFERRING CASES OF PROCUREMENT TO THE COMMISSION



- ▶ The Commission has noted a significant rise in the number of references made to it involving procurement at different stages. These relate to specific cases and are not generic in nature. Essentially they belong to the domain of managerial decision making and the matter needs to be decided at that level.
- ▶ The Commission has issued various circulars/guidelines /instructions in order to promote transparency, improve competition and ensure equity among participants. However, if any organization faces difficulty in the application of any of the circulars /guidelines / instructions issued by the Commission, then it may approach the Commission bringing out the difficulties along with a proposed generic solution listing out the ingredients of the special circumstances for examination and review by the Commission.
- ▶ References of a general nature having elements of managerial decision making and concerning a particular procurement should be avoided.



NMPT INSTRUCTIONS ON SYSTEMIC IMPROVEMENT

Procurement of materials without finalizing technical specifications

- If the technical specifications are not finalized properly before starting the process of the procurement, it will not be possible to assess whether the equipments being offered by the participating tenderers are meeting the requirement of the user department.
- if technical specifications are not clearly specified in the tender document, different vendors/suppliers may quote prices for different types/models of equipments that are being supplied by them. All types (high end/low end) may be meeting the requirement but their prices will be different. High end equipments will be costlier.
- Price comparison can be fair and objective only if we compare the prices of only required type/model of equipments.

SOP for clearance of sludge from slop reception facilities

- Non availability of SOP may lead to incorrect assessment of quantity of the sludge in the tanks leading to protracted and irregular tendering process.
- SOP helps in periodic clearance of sludge and disposal of slop oil as per the norms prescribed by KSPCB.
- SOP for disposal of slop oil and sludge from slop tanks has been issued by CME.

Terms of reference to engage consultants

- To ensure adequate accountability, suitable tender terms and conditions for apportioning accountability, between the employer and the consultant need to be incorporated. Also, there should be suitable provisions to enforce such accountability, in case of improper discharge of contractual obligations / deviant conduct by / of any of the parties to the contract”.
- Further, the CVC guidelines also mentions that “Proof checking/peer review, in case of advice rendered by a consultant especially in high value projects, maybe advantageous.”

O & M CONTRACT

- All Operation & Maintenance contracts of any facility are finalized and awarded only through open tendering process and shall not be awarded on nomination basis to any OEMs.

Re-Considering discharged Tender

- It is inappropriate to consider and approve the L-1 in the bids which were invited for the discharged tender.

Re-inviting Price bids

- Only calling revised price bids and that too after opening of the original price bids, may not be appropriate as it may result in syndicate formation among those whose price bids have been opened.
- Not to follow/recommend such an inappropriate procedure of discharging only price bids and re-inviting the price bids alone after opening of the original price bids. If the original price bids cannot be considered due to some unavoidable recorded reasons then discharge the tender and go for re-tendering only.

Long Term Planning of Capital Intensive facilities

- To adopt long term planning by taking all future requirements into consideration while planning any capital intensive facility so that repeat expenses on the same work can be avoided and also there will be no need to go for any immediate augmentation/expansion within few months of commissioning of the new facility/project.
- The concerned department preparing the feasibility report and detailed project report of the capital intensive facility/project shall coordinate scrupulously with all the other departments associated with the facility/project and incorporate all their requirements in these reports.

EMD

- Revision of rate of EMD and cost of tender document

Rate of EMD and cost of tender document are revised in line with the CPWD manual by CE (Civil)

- EMD Refund procedure is streamlined by FA & CAO

THANK YOU

