

# **Bidding for Government Projects in India: An Architect's Handbook**

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## **1. Introduction**

Government projects offer much more prospects to architects as compared to private entities. However, when it comes to procuring the 'consulting services' in government projects, the bidders are expected to oblige certain rules and procedures. The rules pertaining to the topic are documented in two manuals; General Finance Rules 2017, and Manual for the Procurement of Consultancy & Other Services 2017. CPWD Works Manual 2019 lists out the stages of execution of work in government projects. Most practicing architects lack knowledge of these topics and incur financial losses and debts due to uninformed decision-making. Therefore, there is a need to create an awareness that could help them make informed decisions when it comes to bidding for government projects.

The authors presume that the event of emerging architects getting familiar with the rules can help them assimilate data and experience that will render them eligible to pursue the opportunities while ensuring financial stability. The seminar aims to assimilate information from the mentioned sources to empower interested architects to identify and tackle the issues faced in various spheres of the process.

## **2. Literature Review**

To document the information on bidding process, as given in various documents, and to understand the issues at the macro and micro level, the following three documents were studied in detail:

1. CPWD Works Manual, 2019
2. General Finance Rules 2017
3. Manual for the Procurement of Consultancy & Other Services 2017

## **2.1 CPWD Works Manual, 2019**

The CPWD Works Manual clearly lists down the complete process of procurement and execution of a project. The work is divided into two stages as follows:

1. Pre-construction stage
2. Construction stage

### **2.1.1 Pre-Construction Stage**

The co-ordination up to the stage of preparation of detailed estimate / Notice Inviting Tender for the execution of a project/ work shall be done by the Senior Architect/Chief Architect handling the project. The preparation of layout, preliminary and detailed working drawings of buildings shall be done by the Senior Architect/ Chief Architect in consultation with the client Ministry/ Department additionally like the Superintending Engineer (Planning), civil and electrical, after obtaining their proposals and requirements. For this purpose, the Senior Architect/ Chief Architect shall send advance copies of the drawings to all or any the concerned officers and concern their comments. The detailed working drawings shall be finalized by him after taking into consideration such comments/data into consideration and after further mutual discussions as could also be necessary.

These drawings shall be sufficiently detailed to enable the sphere officers to relate it with the schedule of items for the execution of labor with none ambiguity or lack of clarity. In the case of works where architectural input isn't required, like road work, the manager Engineer (Planning) in Circle/ Superintending Engineer (Planning) in Zone shall co-ordinate the work up to the NIT stage.

### **2.1.2 Construction Stage**

The coordination during the development stage shall be done by the concerned Superintending Engineer (Civil) or by the Nodal Officer so appointed by the Chief Engineer from anyone of the three disciplines, namely, civil, electrical and architecture. He shall hold regular co-ordination meetings with the concerned officers of the four disciplines (including horticulture) to review the progress of the work, and to planned out hindrances or bottlenecks wherever these occur. He shall also invite the client's representative to participate within the coordination meetings for normal appraisal of progress of labor, appreciation of the client's needs and desire, and to plan out interdepartmental issues if any.

The Executive Engineers, Civil and Electrical, shall add close coordination to make sure that each one the preceding activities involving work of other disciplines are completed well in time before the subsequent activities as per the program of labor are concerned.

Any change from the provisions within the architectural drawings that becomes necessary during the execution of labor thanks to any practical difficulty etc. shall be dropped at the notice of the Senior Architect/ Chief Architect and his approval obtained.

It was realised that tendering is just a small part of the entire process. Hence, it was taken up and studied in detail.

### **2.1.3 Tendering Process**

- **Definition of Contract**

When two or more persons have a common intention communicated to each other to create some obligation between them, there is said to be an agreement. An agreement which is enforceable by law is a "Contract."

- **Types of Tender**

- **Percentage rate tender**

This form should be used in tenders for a work where the items of work constituting a major part of the estimated cost put to tender are based on the Department's Schedule of Rates, irrespective of the value of the work.

- **Item Rate Tender**

This form should be used in tenders for a work where the items of work constituting a major part of the estimated cost put to tender are not based on the Department's Schedule of Rates.

- **Lump Sum Tender**

This form, as its name indicates, is used for work in which contractors are required to quote a lump-sum amount for completing the works in accordance with the given designs, drawings, specification and functional requirements as the case may be.

The lump sum tender documents shall contain:

- The detailed architectural and structural drawings
- Detailed specifications for the various items and components of the work
- The schedule of quantities for the various items and components of the work
- The inclusions in and exclusions from the scope of the contract, if required, for better clarity
- The various stages of work, and the percentage of the contract value for each stage for release of intermediate and final payments.

For works costing over Rs. 20 Crore, the tenders shall be invited under Two/Three envelope system.

○ **Pre-Bid Conference**

At the discretion of the NIT approving authority a pre-bid conference may be held after sale of tenders with the intending tenderers at least 5 days before the last date of submission of the tenders as per details given in the tender documents for clarification of any doubts of the intending tenderers or for modification on any condition of the contract, specification etc. Minutes of the meeting shall be circulated to all the intending tenderers, whether or not they attend the pre-bid conference.

○ **Tenders with Two/ Three Envelope System**

This system involves prequalifying the parties before opening their financial bids.

- Tenders for all works estimated to cost more than Rs. 20 crores, shall be called on two/three envelope system.
- For works estimating to cost upto Rs. 20 crores also, this system may be resorted to but with prior approval of ADG.
- The definition of similar work is to be spell out clearly in the NIT by NIT approving authority and shall have to be approved from the ADG.

*The definition of similar work should be decided considering the following guidelines:*

- For building works, the number of storeys for the purpose of definition of similar work may be taken as under :

<b>No. of storeys to be constructed in the proposed building</b>	<b>No. of storeys to be mentioned in the definition of similar work.</b>
<b>Upto four storeys buildings</b>	<b>No binding</b>
<b>Five to ten storeys buildings</b>	<b>Minimum Five storeys buildings</b>
<b>Eleven to fifteen storeys buildings</b>	<b>Minimum Eight storeys buildings</b>
<b>More than fifteen storey buildings</b>	<b>Minimum ten storeys buildings</b>

- In case the work involves consists of two or more basements, then it is to be stipulated in the definition of similar work that the agency should have executed one similar work with minimum one basement.
- For any civil work other than building work, if there is a significant component in the work other than normal building work then this component should be considered as main component of the work for the purpose of definition of similar work. The amount of such component can be mentioned in the definition of similar work.

○ **Two Envelope System**

Works for which technical specification is finalized & defined clearly in NIT, tenderers shall be required to submit the bids in two envelopes.

Envelope 1: Documents related to eligibility criteria.

Envelope 2: Financial bid.

Envelope 1 of all tenders shall be opened first. Eligibility related documents shall be evaluated and parties qualified/disqualified by the competent authority. Financial bid of qualified tenderers shall then be opened at notified time, date and place in presence of tenderers or their representatives.

○ **Three Envelope System**

Works for which technical specification has not been finalised and the same is to be finalised on receipt of the details from the tenderers. The tenderers shall be required to submit the bids in three envelopes.

Envelope 1: Documents related to eligibility criterion.

Envelope 2: Technical bid.

Envelope 3: Financial bid.

Envelope-1 of all tenderers shall be opened first. Technical bids of tenderers who satisfy the eligibility criteria shall then be opened at notified time, date and place in presence of tenderers or their representative. If required, a conference in respect of technical bids shall be held on notified date, time and place. After finalisation of technical bid, if required, tenderers may be given chance to modify their financial bids and there after the financial bids.

- **Pre-bid conference**

There shall be a pre-bid conference in which the doubts of the intending tenderers shall be clarified, besides discussions on any additional suggestion proposed by the tenderers. If found necessary, a corrigendum to the tender documents would be issued to all the intending tenderers. Thereafter no further query/condition shall be entertained. There would be no bar to hold the pre-bid conference more than once, especially in more complex types of works.

*The NIT approving authority decides the time gap between pre-bid conference and last date of submission of tender.*

After opening of the Technical bids, Executive Engineer shall prepare a list of deficiencies found in the bids of each bidder vis-a-vis requirements as per NIT within one week and send these lists to individual bidders by Speed Post with a request to furnish required documents within one week of receipt, failing which it will be presumed that they do not have any further documents to furnish and decision on bids will be taken accordingly.

- **Where to find NITs for CPWD Works**

Notices for all the works, irrespective of their value, shall be published on the website [www.tenderwizard.com/cpwd](http://www.tenderwizard.com/cpwd). Once published on [www.tenderwizard.com/cpwd](http://www.tenderwizard.com/cpwd), the tender notices will also become available on [www.eprocure.gov.in](http://www.eprocure.gov.in) through system link.

- **Selling of Tender Documents**

Tenders shall be sold to eligible contractor those fulfil the criteria stipulated in the tender Document.

If the Executive Engineer concerned receives adverse report against any non-CPWD contractor, either from the Department in which he is enlisted or from any other Department, he would stop issue of tenders to that contractor on the basis of such a report. To avoid the possibility of bogus and fake tenders being submitted, tender documents are sold individually and acknowledgements taken from contractors or their accredited representatives in the Register of the Sale of Tender Documents while handing over the tender documents to them.

Given below is the guidelines for determining cost of tender document.

**18.6 Scale of charges for tender documents**

- (1) The following will be the scale of charges for the sale of tender forms to contractors:-
  - (a) Works costing upto Rs.1 lakh: ..... Rs.150
  - (b) Works costing between Rs.1 lakh and Rs.50 lakhs..... Rs. 500
  - (c) Works costing more than Rs.50 lakhs and upto Rs.2 crore..... Rs.1000
  - (d) Works costing above Rs.2 crores: ..... Rs.1500

- **Earnest Money**

General guidelines for determining the value of Earnest Money Deposit is as follows:

- (i) For works estimated to cost upto Rs.Ten crores :  
2% (Two percent) of the estimated cost .
- (ii) For works estimated to cost more than Rs.Ten crores:  
Rs.Twenty lakhs plus 1% (one percent) of the estimated cost in excess of Rs.Ten crores.

In case of petty works costing Rs.5,000/- or less the Executive Engineer may, at his discretion, dispense with the conditions for calling for earnest money.

#### **19.4 Mode of Deposit**

- (1) The earnest money may be accepted only in the following forms:
  - (i) Cash upto Rs. 10,000.
  - (ii) Treasury challan.
  - (iii) Deposit at Call Receipt of a Scheduled Bank guaranteed by the Reserve Bank of India.
  - (iv) Banker's cheque of a Scheduled Bank.
  - (v) Demand Draft of a Scheduled Bank.
  - (vi) Fixed Deposit Receipt (FDR) of a Scheduled Bank.

The Bank Guarantee submitted as a part of Earnest Money shall be valid for a period of six months or more from the date of submission of the tender.

The earnest money given by all the tenderers except the lowest tenderer should be refunded immediately after the opening of the tenders, or latest within a week from the date of receipt of tenders. Entry of Demand Draft/ Bankers' cheque received as earnest money with the tenders may be kept in the Tender Opening Register, and these need not be deposited in the bank except for the lowest tenderer.

- **Receipt, Opening and Acceptance of Tenders**

All the tenders in the power of Executive Engineer and higher officers shall be received in the Divisional Office. Tenders in the power of Assistant Engineer shall be received in the Sub-Division.

- **Witnessing the Opening of Tenders**

- All the tenders should be opened in the presence of such intending tenderers or their representatives as may choose to attend at the time and place, which should be advertised.
- The Divisional Accountant (Sub-Divisional Clerk in Sub-Division) should be encouraged to be present at the time of opening of tenders. The tenderers should also be encouraged to be present at the time of opening of the tenders.
- The tenders that are received after the due date and time of receipt are not to be considered at all. They should neither be opened nor entered in the tender opening register.

- When tenderers sign their tenders in any Indian script or can only write their names in English, the amount of the tender, or rate of percentage above or below offered by them, should be written in the tenderer's own handwriting in Indian script, and in the case of illiterate tenderer, the amount of tenders should be attested by one of the witnesses.
- Percentage and lump sum tenders should be read out to the tenderers as far as possible. In the case of item rate tenders, the total amount worked out by the different tenderers may be read out, if required by the tenderers present.

- **Procedure for Conducting Negotiations**

- In general, there shall be no negotiations on rates with the lowest tenderer. The tender shall either be accepted or rejected depending upon the reasonability of rates assessed on the basis of justification.
- Communication of acceptance/rejection of tenders
- After the tender for the work has been accepted, the same shall be communicated to the contractor in a sample form may be seen for submission of the performance security/guarantee by the contractor.
- After submission of the performance security/guarantee by the contractor in an acceptable form, an intimation to commence the work shall be given in a sample form.
- Copies of these letters should also be endorsed to the following in addition to the concerned departmental officers and the concerned branches.

## **2.2 General Financial Rules, 2017**

### **2.2.1 Consulting Services**

The relevant rules mentioned under this section are elaborated below.

- **Rule 177**

"Consulting Service" means any subject matter of procurement (which as distinguished from 'Non- Consultancy Services' involves primarily non-physical

project-specific, intellectual and procedural processes where outcomes/ deliverables would vary from one consultant to another), other than goods or works, except those incidental or consequential to the service, and includes professional, intellectual, training and advisory services or any other service classified or declared as such by a procuring entity but does not include direct engagement of a retired Government servant. Note: These Services typically involve providing expert or strategic advice e.g., management consultants, policy consultants, communications consultants, Advisory and project related Consulting Services which include, feasibility studies, project management, engineering services, finance, accounting and taxation services, training and development etc.

- **Rule 178**

The Ministries or Departments may hire external professionals, consultancy firms or consultants (referred to as consultant hereinafter) for a specific job, which is well defined in terms of content and time frame for its completion.

- **Rule 179**

This chapter contains the fundamental principles applicable to all Ministries or Departments regarding engagement of consultant(s). Detailed instructions to this effect may be issued by the concerned Ministries or Departments. However, the Ministries or Departments shall ensure that they do not contravene the basic rules contained in this chapter.

- **Rule 180**

**Identification of Services required to be performed by Consultants:** Engagement of consultants may be resorted to in situations requiring high quality services for which the concerned Ministry/ Department does not have requisite expertise. Approval of the competent authority should be obtained before engaging consultant(s).

- **Rule 181**

**Preparation of scope of the required Consultant(s):** The Ministries/ Departments should prepare in simple and concise language the requirement, objectives and the

scope of the assignment. The eligibility and prequalification criteria to be met by the consultants should also be clearly identified at this stage.

- **Rule 182**

**Estimating reasonable expenditure:** Ministry or Department proposing to engage consultant(s) should estimate reasonable expenditure for the same by ascertaining the prevalent market conditions and consulting other organisations engaged in similar activities.

- **Rule 183**

**Identification of likely sources**

- (i) Where the estimated cost of the consulting service is up to Rupees twenty-five lakhs, preparation of a long list of potential consultants may be done on the basis of formal or informal enquiries from other Ministries or Departments or Organisations involved in similar activities, Chambers of Commerce & Industry, Association of consultancy firms etc.
- (ii) Where the estimated cost of the consulting services is above Rupees twenty-five lakhs, in addition to (i) above, an enquiry for seeking 'Expression of Interest' from consultants should be published on Central Public Procurement Portal (CPPP) at [www.eprocure.gov.in](http://www.eprocure.gov.in) and on GeM. An organisation having its own website should also publish all its advertised tender enquiries on the website. Enquiry for seeking Expression of Interest should include in brief, the broad scope of work or service, inputs to be provided by the Ministry or Department, eligibility and the pre-qualification criteria to be met by the consultant(s) and consultant's past experience in similar work or service. The consultants may also be asked to send their comments on the objectives and scope of the work or service projected in the enquiry. Adequate time should be allowed for getting responses from interested consultants.

- **Rule 184**

**Short listing of consultants**

On the basis of responses received from the interested parties as per Rule 183 above, consultants meeting the requirements should be short listed for further consideration. The number of short listed consultants should not be less than three.

- **Rule 185**

- Preparation of Terms of Reference (TOR)**

- The TOR should include

- (i) Precise statement of objectives.
    - (ii) Outline of the tasks to be carried out.
    - (iii) Schedule for completion of tasks.
    - (iv) The support or inputs to be provided by the Ministry or Department to facilitate the consultancy.
    - (v) The final outputs that will be required of the Consultant

- **Rule 186**

- Preparation and Issue of Request for Proposal (RFP)**

- RFP is the document to be used by the Ministry/Department for obtaining offers from the consultants for the required service. The RFP should be issued to the shortlisted consultants to seek their technical and financial proposals.

- The RFP should contain:

- A letter of Invitation
    - Information to Consultants regarding the procedure for submission of proposal.
    - Terms of Reference (TOR).
    - Eligibility and pre-qualification criteria in case the same has not been ascertained through Enquiry for Expression of Interest.
    - List of key position whose CV and experience would be evaluated. \
    - Bid evaluation criteria and selection procedure.
    - Standard formats for technical and financial proposal.
    - Proposed contract terms.
    - Procedure proposed to be followed for midterm review of the progress of the work and review of the final draft report.

- **Rule 187**

- Receipt and opening of proposals**

- Proposals should ordinarily be asked for from consultants in 'Two bid' system with technical and financial bids sealed separately. The bidder should put these two sealed

envelopes in a bigger envelop duly sealed and submit the same to the Ministry or Department by the specified date and time at the specified place. On receipt, the technical proposals should be opened first by the Ministry or Department at the specified date, time and place.

- **Rule 188**

**Late Bids**

Late bids i.e. bids received after the specified date and time of receipt should not be considered.

- **Rule 189**

**Evaluation of Technical Bids:** Technical bids should be analysed and evaluated by a Consultancy Evaluation Committee (CEC) constituted by the Ministry or Department. The CEC shall record in detail the reasons for acceptance or rejection of the technical proposals analysed and evaluated by it.

- **Rule 190**

**Evaluation of Financial Bids of the technically qualified bidders:** The Ministry or Department shall open the financial bids of only those bidders who have been declared technically qualified by the Consultancy Evaluation Committee as per Rule 189 above for further analysis or evaluation and ranking and selecting the successful bidder for placement of the consultancy contract.

- **Rule 191**

**Methods of Selection/ Evaluation of Consultancy Proposals**

The basis of selection of the consultant shall follow any of the methods given in Rule 192 to 194 as appropriate for the circumstances in each case.

- **Rule 192**

**Quality and Cost Based Selection (QCBS)**

QCBS may be used for Procurement of consultancy services, where quality of consultancy is of prime concern.

In QCBS initially the quality of technical proposals is scored as per criteria announced in the RFP. Only those responsive proposals that have achieved at least minimum specified qualifying score in quality of technical proposal are considered further.

After opening and scoring, the financial proposals of responsive technically qualified bidders, a final combined score is arrived at by giving predefined relative weight ages for the score of quality of the technical proposal and the score of financial proposal.

The RFP shall specify the minimum qualifying score for the quality of technical proposal and also the relative weight ages to be given to the quality and cost (determined for each case depending on the relative importance of quality vis-a-vis cost aspects in the assignment, e.g. 70:30, 60:40, 50:50 etc). The proposal with the highest weighted combined score (quality and cost) shall be selected.

The weightage of the technical parameters i.e. non- financial parameters in no case should exceed 80 percent.

- **Rule 193**

- **Least Cost System (LCS)**

- LCS is appropriate for assignments of a standard or routine nature (such as audits and engineering design of non-complex works) where well established methodologies, practices and standards exist. Unlike QCBS, there is no weightage for Technical score in the final evaluation and the responsive technically qualified proposal with the lowest evaluated cost shall be selected.

- **Rule 194**

- **Single Source Selection/Consultancy by Nomination**

- The selection by direct negotiation/nomination, on the lines of Single Tender mode of procurement of goods, is considered appropriate only under exceptional circumstance such as:

- tasks that represent a natural continuation of previous work carried out by the firm;
    - in case of an emergency situation, situations arising after natural disasters, situations where timely completion of the assignment is of utmost importance; and
    - situations where execution of the assignment may involve use of proprietary techniques or only one consultant has requisite expertise

Under some special circumstances, it may become necessary to select a particular consultant where adequate justification is available for such single-source selection in the context of the overall interest of the Ministry or Department. Full justification for single source selection should be recorded in the file and approval of the competent authority obtained before resorting to such single-source selection.

It shall ensure fairness and equity, and shall have a procedure in place to ensure that the prices are reasonable and consistent with market rates for tasks of a similar nature; and the required consultancy services are not split into smaller sized procurement.

- **Rule 195**

**Monitoring the Contract**

The Ministry/Department should be involved throughout in the conduct of consultancy, preferably by taking a task force approach and continuously monitoring the performance of the consultant(s) so that the output of the consultancy is in line with the Ministry /Department's objectives.

- **Rule 196**

**Public Competition for Design of Symbols/Logos**

Design competition should be conducted in a transparent, fair and objective manner. Wide publicity should be given to the competition so as to ensure that the information is accessible to all possible participants in the competition. This should include publication on the website of Ministry/Department concerned, as also the Central Public Procurement Portal. If the selection has been by a jury of experts nominated for the purpose, the composition of the jury may also be notified.

## **2.2.2 Contract Management**

- **Rule 224**

(1) All contracts shall be made by an authority empowered to do so by or under the orders of the President in terms of Article 299 (1) of the Constitution of India.

(2) Rule 224 (2) All the contracts and assurances of property made in the exercise of the executive power of the Union shall be executed on behalf of the President. The words

“for and on behalf of the President of India” should follow the designation appended below the signature of the officer authorized in this behalf.

*Note 1: The various classes of contracts and assurances of property, which may be executed by different authorities, are specified in the Notifications issued by the Ministry of Law from time to time.*

*Note 2: The powers of various authorities, the conditions under which such powers should be exercised and the general procedure prescribed with regard to various classes of contracts and assurances of property are laid down in Rule 21 of the Delegation of Financial Powers Rules*

- **Rule 225**

General principles for contract. The following general principles should be observed while entering into contracts:

- (i) The terms of contract must be precise, definite and without any ambiguities. The terms should not involve an uncertain or indefinite liability, except in the case of a cost plus contract or where there is a price variation clause in the contract.
- (ii) Standard forms of contracts should be adopted wherever possible, with such modifications as are considered necessary in respect of individual contracts. The modifications should be carried out only after obtaining financial and legal advice.
- (iii) In cases where standard forms of contracts are not used, legal and financial advice should be taken in drafting the clauses in the contract.
- (iv) No work of any kind should be commenced without proper execution of an agreement as given in the foregoing provisions.
- (v) Contract document, where necessary, should be executed within 21 days of the issue of letter of acceptance. Nonfulfillment of this condition of executing a contract by the Contractor or Supplier would constitute sufficient ground for annulment of the award and forfeiture of Earnest Money Deposit.
  - a. Cost plus contracts should ordinarily be avoided. Where such contracts become unavoidable, full justification should be recorded before entering into the contract. Where supplies or special work covered by such cost plus contracts have to continue over a long duration, efforts should be made to convert future contracts on a firm price basis after allowing a reasonable

period to the suppliers/contractors to stabilize their production/ execution methods and processes.

- b. Contracts should include provision for payment of all applicable taxes by the contractor or supplier.
  - c. “Lump sum’ contracts should not be entered into except in cases of absolute necessity. Where lump sum contracts become unavoidable, full justification should be recorded. The contracting authority should ensure that conditions in the lump sum contract adequately safeguard and protect the interests of the Government.
- (vi) The terms of a contract, including the scope and specification once entered into, should not be materially varied.
- (vii) Wherever material variation in any of the terms or conditions in a contract becomes unavoidable, the financial and other effects involved should be examined and recorded and specific approval of the authority competent to approve the revised financial and other commitments obtained, before varying the conditions.
- (viii) All such changes should be in the form of an amendment to the contract duly signed by all parties to the contract.
- (ix) Normally no extensions of the scheduled delivery or completion dates should be granted except where events constituting force majeure, as provided in the contract, have occurred or the terms and conditions include such a provision for other reasons. Extensions as provided in the contract may be allowed through formal amendments to the contract duly signed by parties to the contract.
- (x) All contracts shall contain a provision for recovery of liquidated damages for defaults on the part of the contractor. Only in exceptional circumstances to be justified by procuring entity in writing, an exemption from such provision can be made.
- (xi) A warranty clause should be incorporated in every contract, requiring the supplier to, without charge, repair or rectify defective goods or to replace such goods with similar goods free from defect. Any goods repaired or replaced by the supplier shall be delivered at the buyers premises without costs to the buyer.
- (xii) All contracts for supply of goods should reserve the right of Government to reject goods which do not conform to the specifications.
- (xiii) No claim for the payment from contractor shall be entertained after the lapse of three years of arising of the claim.

- **Rule 226**

- Management of Contracts**

- (i) Implementation of the contract should be strictly monitored and notices issued promptly whenever a breach of provisions occurs.
    - (ii) Proper procedure for safe custody and monitoring of Bank Guarantees or other Instruments should be laid down. Monitoring should include a monthly review of all Bank Guarantees or other instruments expiring after three months, along with a review of the progress of supply or work. Extensions of Bank Guarantees or other instruments, where warranted, should be sought immediately.

- **Rule 227**

- Legal Advice**

- Wherever disputes arise during implementation of a contract, legal advice should be sought before initiating action to refer the dispute to conciliation and/or arbitration as provided in the contract or to file a suit where the contract does not include an arbitration clause. The draft of the plaint for arbitration should be got vetted by obtaining legal and financial advice. Documents to be filed in the matter of resolution of dispute, if any, should be carefully scrutinized before filing to safeguard government interest.

## **2.3 Manual for Procurement of Consultancy & Other Services, 2017**

### **2.3.1 Useful Definitions**

- i) “Bid” (including the term ‘tender’, ‘offer’, ‘quotation’ or ‘proposal’ in certain contexts) means an offer to supply services or execution of works made in accordance with the terms and conditions set out in a document inviting such offers;
- ii) “Bidder” (including the term ‘tenderer’, ‘consultant’ or ‘service provider’ in certain contexts) means any eligible person or firm or company, including a consortium, participating in a procurement process with a Procuring Entity;

- iii) “(Standard) Bid(ding) documents” (including the term ‘tender (enquiry) documents’ or ‘Request for Proposal Documents’ – RFP documents in certain contexts) means a document issued by the Procuring Entity that sets out the terms and conditions of the given procurement and includes the invitation to bid.
- iv) “Competent authority” means the officer(s) who finally approves the decision.
- v) “Consultancy services” covers a range of services that are of an advisory or professional nature and are provided by consultants. These Services typically involve providing expert or strategic advice e.g., management consultants, policy consultants or communications consultants. Advisory and project related Consultancy Services which include, for example: feasibility studies, project management, engineering services, Architectural Services, finance accounting and taxation services, training and development. It may include small works or supply of goods or other services which are incidental or consequential to such services.
- vi) “e-Procurement” means the use of information and communication technology (specially the internet) by the Procuring Entity in conducting its procurement processes with bidders for the acquisition of works and services with the aim of open, non-discriminatory and efficient procurement through transparent procedures;
- vii) “Invitation to (pre-)qualify” means a document including any amendment thereto published by the Procuring Entity inviting offers for pre-qualification from prospective bidders;
- viii) “Notice inviting tenders” (including the term ‘Invitation to bid’ or ‘request for proposals’ in certain contexts) means a document and any amendment thereto published or notified by the Procuring Entity, which informs the potential bidders that it intends to procure goods, services and/or works.;
- ix) “Pre-qualification (bidding) procedure” means the procedure set out to identify, prior to inviting bids, the bidders that are qualified to participate in the procurement;

- x) “Pre-qualification document” means the document including any amendment thereto issued by a Procuring Entity, which sets out the terms and conditions of the pre- qualification bidding and includes the invitation to pre-qualify;
- xi) “Procurement” or “Public Procurement” (or ‘Purchase’, or ‘Government Procurement/ Purchase’ in certain contacts) means acquisition by way of purchase, lease, license or otherwise, either using public funds or any other source of funds of works or services or any combination thereof;
- xii) “Procurement Contract” means a formal legal agreement in writing relating to the subject matter of procurement, entered into between the Procuring Entity and the supplier, service provider or contractor on mutually acceptable terms and conditions and which are in compliance with all the relevant provisions of the laws of the country;
- xiii) “Procurement process” means the process of procurement extending from the assessment of need; issue of invitation to pre-qualify or to register or to bid, as the case may be; the award of the procurement contract; execution of contract till closure of the contract;
- xiv) “Procuring authority” means any Ministry or Department of the Central Government or a unit thereof or its attached or subordinate office to which powers of procurement have been delegated;
- xv) “Public Private Partnership” means an arrangement between the central, a statutory entity or any other government-owned entity, on one side and a private sector entity, on the other, for the provision of public assets or public services or both, or a combination thereof, through investments being made or management being undertaken by the private sector entity, for a specified period of time;
- xvi) “Subject matter of procurement” means any item of procurement whether in the form of goods, services or works or a combination thereof;

### **2.3.2 Types of Contracts**

- i) Lump-sum (Firm Fixed Price) contract;
- ii) Time based (Retainer-ship) contracts;
- iii) Percentage (Success Fee) contract;
- iv) Retainer-ship cum Success fee-based contract;
- v) Indefinite delivery contract.

#### **(i) Lump-sum Contract**

Consultant's proposal is deemed to include all prices – no arithmetical correction or price adjustments are allowed during evaluation. Lump-sum consultancy contracts are easy to administer because there is fixed price for a fixed scope and payments are linked to clearly specified outputs/milestones/ deliverables.

#### **(ii) Time Based Contract**

In Time-based (Retainer-ship) contracts payments are based on agreed hourly, daily, weekly or monthly rates for staff (who in consultancy contracts are normally named, but not so in other services) and on reimbursable items using actual expenses and/or agreed unit prices. These are also called as retainer ship contracts, since the consultant/service provider are retained for a pre-decided period.

#### **(iii)Percentage Contract**

Percentage (Success/Contingency Fee) contracts directly relate the fees paid to the consultant/service provider to the estimated or actual project cost, or the cost of the goods procured or inspected. Since the payment is made after the successful realisation of objectives, it is also called success (or contingency) fee contract.

#### **(iv)Retainer and Success Fee Contract**

In Retainer and Success (Contingency) fee contracts the remuneration of the consultant includes a retainer (time based, monthly payment) and a success fee

(Percentage based payment). The latter being normally expressed as a percentage of the estimated or actual Project cost. Thus, this type of contract is a combination of Time Based and Percentage Contracts.

**(v) Indefinite Delivery Contract**

These contracts are used when Procuring Entity need to have “on call” specialized services, the extent and timing of which cannot be defined in advance. This is akin to the system of ‘Rate Contracts’ or framework contracts in the Procurement of Goods. There is no commitment from Procuring Entity for the quantum of work that may be assigned to the consultant/service provider. The Procuring Entity and the firm agree on the unit rates to be paid and payments are made on the basis of the time/quantum of service actually used.

**2.3.3 Systems of Selection of Service Providers**

- i) Selection of consultants, is normally done in a two-stage process. In the first stage, likely capable sources are shortlisted, if need be through an ‘Expression of Interest’ through advertisement. On the basis of responses received, consultants meeting the relevant qualification and experience requirements for the given assignment are shortlisted for further consideration. The shortlist should include a sufficient number, not fewer than three and not more than eight eligible firms.
- ii) In the second stage, the shortlisted consultants are invited to submit their technical and financial (RFP) proposals generally in separate sealed envelopes. Evaluation of the technical proposal is carried out by evaluators without access to the financial part of the proposal. Financial proposals are opened after evaluation of quality.
- iii) Different systems of selection of consultants/service providers are designed to achieve appropriate relative importance (weightage) of Quality and Price aspects. Decision on system of selection is normally preceded by an assessment of the capacity of the user to engage and supervise the implementation of proposed assignment. The selection method chosen depends to some extent on this

assessment. The selection method chosen for selection of service providers should also take into account the likely field of bidders.

- iv) The nomenclature of various selection methods below is in line with generally prevalent nomenclature –
- a) Price based System – Least Cost Selection (LCS)
  - b) Quality and Cost Based Selection (QCBS)
  - c) Direct Selection: Single Source Selection (SSS)

#### **2.3.4 Shortlisting Stage in Procurement of Consultancy Services**

- The Procuring Entity shall evaluate the consultants for shortlisting, inter-alia, based on their past experience of handling similar types of projects, strength of their manpower and financial strength of the firm.
- It is seen that the process of shortlisting is one of the most difficult and time-consuming tasks in the selection process of a consultant. This could be eased by writing a clear Description of Service (objectives and scope) and shortlisting criteria.
- Finally, if the same firm is considered for concurrent assignments, the Procuring Entity shall assess the firm's overall capacity to perform multiple contracts before including it in more than one short list.
- The short list of firms is required for the selection of consultancy services in a competitive process with a minimum of three (Rule 184 of GFR 2017) and generally not more than eight.
- The Procuring Entity may assign scores to the response of each consultant based on weightages assigned to each of the criteria in the EOI.

Sl. No.	Criteria	Weightage	
	Sub-criteria	Criteria Total	Sub-criteria
1	Past experience of the consultant ( track record)	60%	
	<ul style="list-style-type: none"> <li>• Number of years' relevant experience</li> <li>• Past experience of studies of similar nature</li> <li>• Past experience in carrying out <ul style="list-style-type: none"> <li>• Studies in the related sector</li> <li>• Studies carried out in the region</li> </ul> </li> </ul>		20% 50% 20% 10%
2	General profile of qualification, experience and number of key staff (not individual CVs)	25%	
	<ul style="list-style-type: none"> <li>• Qualifications</li> <li>• Relevant experience</li> </ul>		30% 70%
3	Overall financial strength of the consultant in terms of turnover, profitability and cash flow (liquid assets) situation	15%	
	Turnover figure for last three years.		50%
	Net profit figure for last three years		50%
	Totals	100%	

- **The Procuring Entity shall short list all the consultants who secure the minimum required marks (normally 75%). The minimum qualifying requirement shall be specified in the EOI document.**
- This exercise of scoring is not merely for disqualification of firms below a threshold, but to establish the relative strengths and weaknesses of the applicants, in order to arrive at a robust short list of qualified consultants who have the required experience and qualifications to deliver the required services at the desired level of quality.

### 3. The Evaluation Process

- i) Preparation and issuance of the Request for Proposals (RFP);
- ii) Pre-proposal meeting;
- iii) Receipt of proposals;
- iv) Evaluation of technical proposals: consideration of quality;
- v) Public opening of financial proposals;
- vi) Evaluation of financial proposals;
- vii) Selection of the winning proposal;

- viii) Negotiations with the selected bidder, if required; and
- ix) Award of the contract to the selected firm.

In planning to respond to a Request for Proposals, Invitation to Tender, or some other kind of solicitation, one of the crucial steps is to determine the evaluation method the procuring team intends to use to select the suitable candidate to award a contract. In knowing what criteria will be used when submissions are being evaluated, you, as the Consultant, Contractor, or Vendor (of goods and/or services), can properly strategize preparation of your response, to increase your chances of being favourably considered.

Three key, and frequently used, selection/evaluation methods:

- Quality-Based Selection
- Quality-Cost-Based Selection
- Least Cost Selection

### **3.1 Quality-Based Selection (QBS)**

- Typically, QBS is used when the emphasis is on securing the most competent candidate. Selection is thus based on the quality of the proposals submitted, which tends to be limited to the technical proposals only.
- Under QBS, financial proposals (or other similar documentation proposing the project cost) are not immediately included in the evaluation process. If financial proposals must be submitted at the same time as the technical proposals, the two-envelope system is typically used – where, though submitted at the same time, the technical proposal and the financial proposal are placed in separate envelopes.
- Once the highest-ranked technical proposal is determined, the corresponding financial proposal would then be opened, and its owner is invited to negotiate with the procuring team. When those negotiations are successfully concluded, the financial proposals submitted by other bidders, should be returned unopened.

### **3.2 Quality Cost-Based Selection (QCBS)**

Under QCBS, both the technical and financial proposals are used to determine the winning submission. Typically, the technical and financial proposals are submitted at the same time in separate sealed envelopes (two-envelope system).

The evaluation methodology employed aims to identify the strongest technical proposal at the best price. Hence, each submission's technical proposal scores and financial proposal scores are weighted, based on the quality-cost balance the procurement team wants to apply, and the weighted scores summed, to produce the final results. So, for example, the weighting could be as follows:

- Weight assigned to technical proposal = 80%
- Weight assigned to financial proposal = 20%

The technical proposals are evaluated first. The score assigned to each proposal is then weighted as prescribed.

Thereafter, the financial proposals are evaluated. Typically, the lowest-priced financial proposal is awarded the full weighted score. Using the above weights, that would be 20%. The weighted scores of the other financial proposals are calculated as a fraction of the highest scoring proposal. So, if the lowest priced proposal was \$X, the weighted scores for another submission, for which the proposed price was \$A, would be calculated as  $(A/X)$ , multiplied by weight assigned financial proposals (20%). Hence, their final weighted scores will always be less than that of the lowest-priced financial proposal. Once the weighted technical scores and weighted financial scores are determined for each set of submissions, they are summed, to determine the final scores, and which is the winning submission

### **3.3 Least-Cost Selection (LCS)**

For the LCS method, although the financial proposal will be the basis upon which the winning submission is determined, the quality of the technical proposal, is still a crucial consideration. Once again, both the technical and financial proposal are usually submitted using the two-envelope system.

The technical proposals are opened first and evaluated, based on the evaluation criteria specified in the solicitation documents. The proposals that achieve meet or exceed the minimum technical score, will have their financial proposals opened. Those below that score, are rejected, and their financial proposals should be returned unopened. The qualifying financial proposals are opened, and the lowest-priced financial proposal is considered the winner of the contract. However, it should be noted that the strongest technical proposal is not automatically selected. Any of the technical proposals that achieve the minimum score are eligible for consideration, but has the lowest project price will win.

### **3.4 Issues Regarding Tender Document**

A major issue underlying the process is in making architects compete over fee. The design is not given due importance since the winner of the bidding process is declared based on technical and financial bids (General Financial Rules, 2017). While this remains a general issue, architects often encounter issues related to specific aspects of tender process.

Architects have criticised the act of comparing their service to that of contractors in the preparation of tender document. Unlike contractors, architects have to render majority of their service prior to the bidding process. Therefore, the act of levying an Earnest Money Deposit (EMD) from architects, which is a security from a bidder with the intention to avoid the withdrawal or modification of an offer within the validity of the bill (Manual for the Procurement of Consultancy & Other Services, 2017), was heavily criticised.

## **4. Conclusion**

After critical examination and research of different documents related to the bidding process and followed by a questionnaire among practicing architects, it was understood that a gap exists between the documents and the architects' understanding of the same. This impedes their capability to succeed while bidding for government projects, as agreed upon by almost all the architects. Hence, a handbook was prepared for the reference of practicing architects, forewarning them about the structure of the bidding process and its potential risks and drawbacks, thereby empowering them to take more informed decisions.

