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6. NOTICE INVITING TENDER / PREPARATION OF TENDER DOCUMENTS

Commission has issued the following guidelines on notice inviting tender / preparation of tender documents:

(a) Contract Matters - Simplification And Economizing In The Contract Procedure

The Central PWD contracting procedure envisaged preparation and approval of tender documents for sale to tenderers whenever tenders are to be invited. The tender documents inter-alia include the following:-

1. Index
2. PWD Form-6 (Notice Inviting Tenders)
3. Press Notice
4. PWD Form 7 or 8 containing General Rules and directions, Memorandum, Conditions of contract containing Schedules of Plant & Machinery (clause-34) and materials to be issued departmentally (Clause-10).

5. Correction slips to the PWD 7 or 8.
6. Specifications, in addition to stipulating the relevant CPWD Specifications (printed booklet) with Correction Slips, particular specifications for items not covered in the printed booklet or deviations/departures there from are stipulated.
7. Special conditions of contract, in which, conditions not occurring in the PWD Form 7 or 8 or deviations/departures there from are stipulated.
8. Bill of quantities.
9. Drawings (if any to be incorporated).
10. Letters exchanged between the Department/Contractor which are invariably made part of the contract agreement including the acceptance letter.

2. It is felt that every time a tender is to be invited; a lot of avoidable work has to be done in compiling the documents, correcting and attesting each correction initially in the Draft Tender Document and subsequently in the tender documents before stating to contractors. This gives considerable scope for errors and omissions which may result in contractual complications and litigation. Earlier all the printed forms, such as, PWD 6, PWD 7 and PWD 8, used to be printed in Government of India Presses in large quantities (in lakhs) and were available for use by the departmental Engineers and the chance of mistakes occurring in each batch were remote. But in the past few years it is seen that either Government supplies are not forthcoming in required quantity or not being received at all and the Circles and Divisions of the CPWD are resorting to local purchase of such forms from local (unapproved) printers at various stations who have practically no control over the language and accuracy of such an important document which ultimately becomes a legal document. These printers are printing and supplying tender forms to various other Organisations such as DDA, P&T Civil Wing, All India Radio - Civil Wing, Municipal Corporation of Delhi, NDMC including some public sector undertakings that are following CPWD Form and they resort to changes in the forms to suit these agreements. It is often seen that the draft Tender Document approved by the competent authority includes forms printed by different printers or the same printer with a different printing block than those on which the tender documents are prepared by Divisions for sale to contractors. This further leads to avoidable complications. In order to solve this problem, it is suggested that the portion of PWD 7 or 8 containing the general rules and directions and the Conditions of Contract (excluding Schedules for issue of Plant & Machinery) and Materials but including labour regulations, safety codes and Model Rules can be get printed as a standard booklet and made available on sale to contractors and the general public and also issued to Engineers of CPWD.

3. This document (printed book) can be referred in PWD 6 Memorandum or Special Conditions of contract just as the printed specifications booklets are referred to making them a part of the contract. This will not only obviate the necessity of compiling bulky tender documents but will drastically reduce the expenditure on stationery and printing of such contract conditions. The manpower required to do the compilation, checking and correction work can be reduced substantially and will reduce the chances of mistakes creeping in, in the agreement finally entered into with the contractor. Also whenever tender documents are to be sold, the Divisions compile a large number of documents many of which are not sold thus resulting in infructuous avoidable expenditure and wastage of PWD forms 7 or 8. Therefore, it is felt that the above proposal will ultimately be economical to the Government. Also this suggested procedure will save a lot paper work which is at present being used for this purpose.

4. The Schedules of Plant, Machinery and Materials (referred to in Clauses 34 and 10 respectively) can be printed along with and made part of Memorandum which the contractors have to sign, get witnessed and return on the date of opening of tenders. The present system of cyclostyling the correction slips to PWD forms 7 and 8 at Circle/Zonal level, for incorporating in the tender documents can continue till a regular system of making the printed ones available at nominal/reasonable cost is brought into force. This will also ensure that all the correction slips forming part of the agreement are available.

5. It is also seen that each Zone, Circle and Division has formulated special conditions which quite often vary from one office to the other, in language, meaning and interpretation. It is preferable that such special conditions are not drafted in consultation with the Senior Counsel of PWD, and circulated to all offices in order to maintain uniformity in the Department.

6. Lastly, it may be stated that in many PSUs and Government Depts. like the Railways, DGS&D, the suggested system prevalent and functioning satisfactorily.

7. (CVC (CTE's Org) LETTER No 9Q-9-CTE-7 dated 04th Jul 1988)

(b) Contract Matters

1. It is observed that most of the PSUs and Financial Institutions leave the drafting of the standard conditions of contract to their Architects or Consultants. Very often the tender documents are badly drafted and result in serious contractual complications. Sometimes the contract conditions are ambiguous or contradictory to other conditions in the tender documents.

2. Under their letter No Adv(c)/Genl-53/71 Cir-103/73, dated 06 Feb 73 the BPE have issued a standard contract form. Subsequently, certain amendments to this contract form were circulated vide their letter No BPE/GL-019/75.Con/Adv(c)/Genl- 53/71/128 dated 21 Jul 75. Guidelines for adoption of this standard contract form are laid down in Clauses 3.8.7 and 3.18 of the Booklet entitled "Government Policy on Management of PSUs - Volume II" published by SCOPE. The following recommendation has been made:

"The standard contract form evolved by the BPE may be used as far as possible with suitable modifications to meet the local requirements for common types works like townships, simple factory buildings, storage buildings, offices etc."

3. The above guidelines are brought to the notice of all PSUs, Financial Institutions and Cooperative Societies for necessary action. Adoption of such a standard contract form will result in more effective contract management and considerable reduction in disputes with contractors. It is requested that this circular may please be given wide circulation among the Chief Engineer of your Organisation.

CTE's Organisation) letter No 9Q-9-CTE-7 dated 05th Jun 1991)

(c) Short-comings in bid documents

The Commission has observed that in the award of contracts for goods and services, the detailed evaluation/exclusion criteria are not being stipulated in the bid document and at times is decided after the tender opening. This system is prone to criticism and complaints as it not only leads to a non-transparent and subjective system of evaluation of tenders but also vitiates the sanctity of the tender system.

2. The Commission would reiterate that whatever pre-qualification, evaluation/exclusion criteria, etc. which the organization wants to adopt should be made explicit at the time of inviting tenders so that basic concept of transparency and interests of equity and fairness are satisfied. The acceptance/rejection of any bid should not be arbitrary but on justified grounds as per the laid down specifications, evaluation/exclusion criteria leaving no room for complaints as after all, the bidders spend a lot of time and energy besides financial cost initially in preparing the bids and, thereafter, in following up with the organizations for submitting various clarifications and presentations.

3. This is issued for strict compliance by all concerned.

(CVC Office Order No.33/7/03 issued vide letter No.98/ORD/1 dated the 9th July, 2003)

(d) Irregularities in the award of contracts

While dealing with the case of a PSU, the Commission has observed that the qualification criteria incorporated in the bid documents was vague and no evaluation criterion was incorporated therein. It is also seen that the category-wise anticipated TEUs were not specified in the bid documents and the same was left for assumptions by Tender Evaluation Committee for comparative evaluation of financial bids, which led to comparative evaluation of bids on surmises and conjectures. Further, it was also provided as a condition in the tender bid that the tenderer should have previous experience in undertaking handling of similar work and/or transportation works preferably of ISO containers, however, no definition of 'similar works' was, indicated in the bid documents.

2. 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 criteria are very important to evaluate bids in a transparent manner. Whenever required the departments/organisations should follow two-bid system, i.e. technical bid and price bid. The price bids should be opened only of those vendors who were technically qualified by the Deptt./ Organisation. The Commission would therefore advise that the Deptt./ Organisation may issue necessary guidelines in this regard for future tenders.

3. It has also been observed that the orders were allegedly split in order to bring it within the powers of junior officers and that the proper records of machine breakdown were not being kept. It is therefore, decided that in the matters of petty purchase in emergency items all departments/organisations must keep proper records of all machine breakdown etc.
4. All CVOs may bring this to the notice of all concerned.

(CVC Office Order No.44/9/03 issued vide letter No.98/ORD/1 dated the 04.09.2003)

(e) Use of web-site in Government procurement or tender process

Attention is invited to the instructions issued by the Commission vide communication No. 98/ORD/1 dated 28.03.2002 regarding publishing of tender documents on the web-site.

2. The Commission has received a number of references from various departments/organisations expressing reservations in implementation the said instructions in toto. The matter has been reviewed in the Commission and it is observed that it is a fact that use of web-site for accessing the information has so far not picked up in the country and it would not be possible for the vendors to access the web-site of every organisation to know the tender details. There is also no centralised web-site for the tenders 3. Therefore, it has been decided by the Commission that till such time the penetration of Information Technology is adequate and a dedicated web-site for Government tenderers is available, Departments/Organisations may continue with publishing of NIT in newspapers in concise format and put the detailed information in their respective web-sites.

(CVC letter No. 98/ORD/1 (Pt IV) dated 12.3.2003)

(f) Improving Vigilance Administration: Increasing Transparency in Procurement/Sale etc.

The Commission is of the opinion that in order to bring about greater transparency in the procurement and tendering processes there is need for widest possible publicity. There are many instances in which allegations have been made regarding inadequate or no publicity and procurement officials not making available bid documents, application forms etc. in order to restrict competition.

2. Improving vigilance administration is possible only when system improvements are made to prevent the possibilities of corruption. In order to bring about greater transparency and curb the mal-practices mentioned above the Central Vigilance Commission in the exercise of the powers conferred on it under Section 8(1)(h) issues following instructions for compliance by all Government departments, PSUs, Banks and other agencies over which the Commission has jurisdiction. These instructions are with regard to all cases where open tender system is resorted to for procurement of goods and services or for auction / sale etc. of goods and services.

- (i) In addition to the existing rules and practices regarding giving publicity of tenders through newspapers, trade journals and providing tender documents manually and through post etc. the complete bid documents along with application form shall be published on the web site of the organization. It shall be ensured by the concerned organization that the parties making use of this facility of web site are not asked to again obtain some other related

documents from the department manually for purpose of participating in the tender process i.e. all documents up to date should remain available and shall be equally legally valid for participation in the tender process as manual documents obtained from the department through manual process.

(ii) The complete application form should be available on the web site for purposes of downloading and application made on such a form shall be considered valid for participating in the tender process.

(iii) The concerned organization must give its web site address in the advertisement / NIT published in the newspapers.

(iv) If the concerned organization wishes to charge for the application form downloaded from the computer then they may ask the bidding party to pay the amount by draft/cheques etc. at the time of submission of the application form and bid documents.

3. While the above directions must be fully complied with, efforts should be made by organizations to eventually switch over to the process of e procurement/e- sale wherever it is found to be feasible and practical.

4. The above directions are issued in supersession of all previous instructions issued by the CVC on the subject of use of web-site for tendering purposes. These instructions shall take effect from 1st January, 2004 for all such organizations whose web-sites are already functional. All other organizations must ensure that this facility is provided before 1st April, 2004.

(CVC letter No. 98/ORD/1 dated 18th Dec 2003)

(g) Improving Vigilance Administration -Increasing transparency in Procurement/sale - use of website regarding

The Commission has issued a directive vide No. 98/ORD/1 dated 18th December 2003 wherein detailed instructions are issued regarding the use of web-site for tendering process. The objective is to improve vigilance administration by increasing transparency- The instructions were to take effect from 1st January 2004. It is noticed that many authorized whose web-sites are functional are still not putting their tenders on the web-site. The Commission has desired that CVOs should ensure compliance of the above directive. They should regularly peruse the Newspaper advertisements, the web-site of their authorized and in general keep track to ensure that the directives of the Commission on this subject are complied with. Further, the Commission has desired that the CVOs should indicate in their monthly report in the column pertaining to tender notices whether all the tenders have been put on the website, and if not, the reasons for non-compliance. The explanation of the concerned officers who are not complying with these directions should be called and further necessary action taken.

(CVC Office Order 9/2/04 issued vide letter No.98/ORD/1 Dated 9th Feb 2004)

(h) Improving Vigilance Administration -Increasing transparency in procurement/ tender Process - use of website - regarding

In CPWD, MCD, Civil Construction Division of Post & Telecom departments and in many other departments/organizations, 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. This will benefit the department by bringing in transparency and reducing opportunities for abuse of power. This will also help the organizations by brining in more competition.

In view of the reasons given above, the Commission has decided that instructions given in the Commission's circular No. 98/ORD/1 dated 18.12.2003 for the use of web-site will also apply to all such works awarded by the department/PSEs/other organizations over which the Commission has jurisdiction.

(CVC Office Order 10/2/04 issued vide letter No.98/ORD/1 Dated 11th Feb 2004)

(i) Improving Vigilance Administration: Increasing Transparency in Procurement /sale etc. - use of website regarding

The Central Vigilance Commission has issued a directive on the above subject vide its Order No.98/ORD/1 dated 18th Dec. 2003 making it mandatory to use website in all cases where open tender system is resorted to. These instructions have been further extended vide Office Order No.10/2/04 dated 11.2.2004 to tenders of short- term nature (by whatever name it is called in different organizations). Various organizations have been corresponding with the Commission seeking certain clarifications with regard to the above directives. The main issues pointed out by organizations are as follows:

Issue 1 - Size of Tender Documents

In cases of works/procurement of highly technical nature, tender documents run into several volumes with large number of drawings and specifications sheets, etc. It may not be possible to place these documents on website.

Clarification: These issues have been discussed with the technical experts and in their opinion; there is no technical and even practical difficulty in doing the same. These days almost all the organizations do their typing work on computers and not on manual typewriters. There is no significant additional effort involved in uploading the material typed on MS Word or any other word processing software on the website irrespective of the number of pages. The scanning of drawings is also a routine activity.

Moreover if the volume and size of tender document is so large as to make it inconvenient for an intending tendering party to download it, they always have the option of obtaining the tender documents from the organization through traditional channels. The Commission has asked for putting tender documents on web-site in addition to whatever methods are being presently used.

Issue 2 - Issues Connected with Data Security, Legality and Authenticity of Bid Document.

Certain organizations have expressed apprehensions regarding security of data, hacking of websites etc. They have also pointed out that certain bidding parties may alter the downloaded documents and submit their bids in such altered tender documents which may lead to legal complications.

Clarification: This issue has been examined both from technical and legal angles. Technically a high level of data security can be provided in the websites. The provisions of digital signatures through Certifying Authority can be used to ensure that in case of any forgery or alteration in downloaded documents it is technically feasible to prove what the original document was. There are sufficient legal provisions under IT Act to ensure that e-business can be conducted using the website. A copy of the remarks given by NIC on this issue is enclosed herewith.

Issue 3 - Some organizations have sought clarification whether web site is also to be used for proprietary items or items which are sourced from OEMs (Original Equipment Manufacturers) and OESs (Original Equipment Suppliers).

Clarification: It is clarified that Commission's instructions are with regard to goods, services and works procured through open tender system, so these instruction do not apply to proprietary items and items which necessarily need to be procured through OEMs and OESs.

Issue 4 - Do the instructions regarding 'short term tenders' given in the CVC Order No.98/ORD/1 dated 11th Feb 2004 apply to limited tenders also?

Clarification: In many organizations goods, services and works which as per laid down norms are to be procured/executed through open tender system many times due to urgency are done through short term tenders without resorting to wide publicity in newspapers because of time constraint. In all such cases short term tenders (by whatever name it is called) etc. should also be put on the website of the dept. as it does not involve any additional time or cost.

Regarding applicability of these instructions to limited tenders where the number of suppliers/contractors is known to be small and as per the laid down norms limited tender system is to be resorted to through a system of approved/ registered vendors/contractors, the clarification are given below.

Issue 5 - Some organizations have pointed out that they make their procurement or execute their work through a system of approved/registered vendors and contractors and have sought clarification about the implications of CVC's instructions in such procurements/contracts.

Clarification: The Commission desires that in all such cases there should be wide publicity through the web site as well as through the other traditional channel at regular intervals for registration of contractors/suppliers. All the required Proforma for registration, the pre-qualification criteria etc. should be always available on the web-site of the organization and it should be possible to download the same and apply to the organization.

There should not be any entry barriers or long gaps in the registration of suppliers/contractors. The intervals on which publicity is to be given through website and traditional means can be decided by each organization based on their own requirements and developments in the market conditions. It is expected that it should be done at least once in a year for upgrading the list of registered vendors/contractors.

The concerned organization should give web based publicity for limited tenders also except for items of minor value. 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. But it should be ensured that password access is given to all the registered contractors/suppliers and not denied to any of the registered suppliers. Any denial of password to a registered supplier/contractor will lead to presumption of malafide intention on the part of the tendering authority.

CENTRAL VIGILANCE COMMISSION

Technical note from National Informatics Center

Solution for Hosting of Signed Documents

1. Integrity of Document:

The documents should be digitally signed by the person submitting them. The web server to which the documents are submitted for hosting, should verify the signature before hosting each

2. Secure Hosting:

'HTTPS' should be used for both uploading and downloading of documents to avoid alteration of documents over the network.

3. Digital Signing and submission:

The documents submitted for hosting may be in PDF or MS-WORD format. The document is digitally signed at the document submission end by a digital signing tool and by using a private key stored in a smart card. The detached (PKCS#7) signature file is generated. The document and the signature are uploaded to the server. The uploading procedure may be automated through a program. This involves development effort. The web server can verify the digital signatures programmatically when the files are uploaded. The files and their verified signatures are hosted for downloading by end users. This procedure will ensure that the signer is confident of what he/she is signing. The person involved in web hosting is sure that the documents are properly signed. The end users benefit that the document they are downloading is authentic and that the integrity of the document is maintained.

4. Download procedure:

- a. The user verifies the digital signature of the document on the web site.
- b. User downloads both the documents and the signature.
- c. User can verify the signature of the documents by using any standards Compliant Document Signing Tool which can verify a PKCS#7 detached by signature.

5. Certificate for Digital Signature:

- a. The signature should be generated using a certificate issued by a Certification Authority (CA) trusted under Controller of Certifying Authorities (CCA). This is mandatory for legal validity of the digital signature.
- b. The end user should ensure that the certificate used for signing the document is issued by a trusted CA.

(CVC Office Order No.43/7/04 issued vide letter No.98/ORD/1 Dated 2nd Jul 2004)

(j) Improving Vigilance Administration : Increasing Transparency in Procurement/Sale etc.-Use of Web Site

The Central Vigilance Commission has issued a directive on the above subject vide its order no. 98/ORD/1 dated 18th Dec 2003 making it mandatory to use web-site in all cases where open tender system is resorted to. These instructions have been further extended vide office order No. 10/2/04 dated 11.2.2004 to tenders of short- term nature (by whatever name it is called in different organizations). Some of the PSUs and other Govt. organizations dealing with defence and national security related subjects have sought clarification on the following issue:

Issue: Items and works, which are of sensitive nature from the point of view of national security. It has been pointed out that in some cases the tender documents and specifications given therein are of highly sensitive nature and putting such information on the web site can have national security implications or is not in the national interest.

Clarification: It needs to be clarified that instructions of the commission are with regard to open tenders only where organizations are already giving advertisements in newspapers thus it is presumed procurement or works are not of secret nature. However if still CMD/CEO of a PSU or head of an Ordnance factory or head of a sensitive organization in Defence, Atomic Energy or Space sectors or the concerned administrative ministries are of the opinion that it will not be feasible to put detailed tender documents on the website keeping in view their sensitive nature from national security point of view or from the point of view of national interest, they may take the decision not to put those documents or even the tender notice on website. But in all such cases the decision must be taken at the level of CMD or head of a PSU, head of an ordnance factory and in other government organizations at a level to be decided by the concerned administrative ministry. The specific reasons for not putting an open tender on web site should be recorded in the concerned file.

(CVC circular No. 98/ORD/1 Dated 5th Jul 2004)

(k) Central Vigilance Commission's Directives on Use of Website in Public Tenders

A copy of the guidelines on the above mentioned subject and further clarification in this regard are enclosed herewith for information and necessary action.

(Note: CVC Guidelines dated 18.12.2003, 9.2.2004, 11.2.2004, 2nd July 2004 and 5th July 2004 as brought out above refers)

(CVC Office Order No.47/7/04 issued vide letter No.98/ORD/1 Dated 13th Jul 2004)

(l) Improving Vigilance Administration: Increasing Transparency In Procurement / Sale Etc. - Use Of Web Site For Tenders Containing Classified / Secret Documentation.

The Central Vigilance Commission had issued a directive vide order No. 98/ORD/1 dt. 18.12.03 on the use of web site for publicizing open tenders pertaining to the procurement and / or auction / sale of goods and services. The directions included making the complete bid documents (along with drawings etc.) available on the web for the prospective bidders to download and use for tender participation. Certain apprehensions have been received in the Commission regarding providing open web publicity to classified / secret documents. These classified / secret documents may include.

- (i) Overall layouts of strategic installations like nuclear / atomic energy installations, refineries, power plants, research and defence installations etc.
- (ii) Process schemes or process flow diagrams (e.g. for a refinery) which require prior approval of the process licensor before they are provided to the individual bidder.
- (iii) Technology / design details which may be proprietary to a particular firm and require specific approval of the technology provider prior to making them available to the bidders.

2. The Commission has considered the representations and is of the view that for such open tenders which consist of documents of classified / secret nature, the organizations may go in for pre-qualification of the bidders in the first stage of the tender. Once the bidders are pre-qualified the complete tenders including the classified / secret documents which form a part of the tender may be made available to them for submitting their techno-commercial and price bids. The process of pre-qualification will involve publicizing the notice inviting tenders which could include the particulars of the tender along with the complete pre-qualification requirements. This notice inviting tender would follow all the procedures of publicity that are normally followed for open tenders including publicity on the web site. Once the suitability of the bidders has been assessed through the responses received against the pre-qualification notice, complete tenders will be issued to the pre-qualified bidders. The Organizations may adopt / follow their own procedures of maintaining secrecy of the classified / secret documents which form a part of these tenders. Thus only the select group of qualified bidders would be in possession of the classified / secret documentation. It may however be ensured that.

- (i) Such procedure is followed only for the tenders which contain classified / secret documentation, after obtaining the approval of the competent authority for this purpose.
- (iii) The NIT (having pre-qualification conditions) conforms to all extant instructions / guidelines for ensuring a transparent tendering.
- (iv) Adequate opportunity and time is given to the pre-qualified bidders to bid for the work. Once the bidders have been pre-qualified, no further rejection takes place on the grounds of not meeting the prequalification criteria, in the later stages of the tender.

3. The post pre-qualification process of the tender may involve separate technical and financial bids. The pre-qualified bidders may be issued tenders directly or through web. In order to limit the access to the detailed tender documents on the web site at this stage, a password access can be resorted to organizations who need to put the classified / secret documents in their procurement / work tenders must put defined tendering procedures in place for such tenders in consultation with the CVO of the Organization, prior to operating such pre-qualification procedure for tenders containing classified / secret documents.

(CVC circular No. 005/VGL/7 Dated 28th Feb 2005)

(m) Transparency in tendering system- Guidelines regarding

In order to maintain transparency and fairness, it would be appropriate that organisations should evolve a practice of finalizing the acceptability of the bidding firms in respect of the qualifying criteria before or during holding technical negotiations with him. Obtaining revised price bids from the firms, which do not meet the qualification criteria, would be incorrect. Therefore the exercise of shortlisting of the qualifying firms must be completed prior to seeking the revised price bids. Moreover, the intimation of rejection to the firms whose bids have been evaluated but found not to meet the qualification criteria, along with the return of the un-opened price bid, will enhance transparency and plug the loop-holes in the tendering system. All organisations/departments are advised to frame a policy accordingly.

(CVC Office Order No.72/12/04 issued vide letter No.004/QRD/9 dated the 10.12.2004)

(n) Purchase of computer systems by Govt. departments/organization

It has come to the notice of the Commission that some departments/organisations are issuing tenders for purchase of computers where they mention and insist on the 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 (copy enclosed*).

2. It is, therefore, advised that departments/organisations may follow the instructions issued by the Department of Expenditure.

(CVC letter No.98/ORD/1 dated the 5th May 2003)

* Copy of Ministry of Finance, D/o Expenditure vide its OM No. 8(4)-E.II(A) 98 dated 17.12.1998
No.8(4)-E.II(A)/98 Government of India Ministry of Finance (Department of Expenditure)

New Delhi, the 17th December, 1998 OFFICE

MEMORANDUM

Subject: Purchase of Computer Systems by Government Departments.

The undersigned is directed to invite attention to the provisions of GFR 102(1) and the Annexure to the same according to which "Open Tender" system (that is, invitation to tender by public advertisement) should be used as a general rule in all cases in which the estimated value of demand is Rs. 50,000/- and above.

2. It has been brought to the notice of this Ministry by Deptt. of Electronics that certain Ministries/Deptts etc. issue tenders for purchase of personal computers where they specify the international brands like IBM, Compaq, HP, Digital, DELL or Gateway Micron. This vitiates the guidelines for open tender system laid down in GFRs and deprives other brands including domestic manufacturers of an opportunity to participate in the tender. Further, Deptt. of Electronics have pointed out that brand names do not have any great advantage since at the broad level there is hardly any difference between the competing products because they predominantly use Intel microprocessors.

3. Separately, DGS&D have informed that generalised specifications for personal computers have been finalised and the process of concluding rate contract is being initiated.

4. It is, therefore advised that Ministries/Departments should follow the open tender system without vitiating it by specifying brand names in accordance with the provisions in GFRs for purchase of personal computers till a rate contract for computers is concluded by DGS&D. Thereafter, computers could be purchased on rate contract basis.

Sd/- (Narain Das)

Under Secretary to the Govt. of India

To All Ministries/Departments of Govt. of India

(o) Tender Sample Clause

The Commission has received complaints that some Organizations, while procuring clothing and other textile items insist on submission of a tender sample by the bidders though detailed specifications for such items exist. The offers are rejected on the basis of tender samples not confirming to the requirements of feel, finish and workmanship as per the 'Master Sample' through the bidders confirm in their bids that supply shall be made as per tender specifications, stipulated in the bid documents.

While it is recognized that samples may be required to be approved to provide a basis 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.

It is requested that these guidelines may be circulated amongst the concerned officials of your organization for guidance. These are also available on the CVC website, <http://cvc.gov.in>

(No.2EE-1-CTE-3 Dated - 15th Oct 2003) (p) Notice

inviting tenders

The Commission has observed that some of the 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 organization in exceptional circumstance and to avoid any legal dispute, in such cases.

2. 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.
3. This should be noted for compliance by all tender accepting authorities.

(OFF-1-CTE-1(Pt) V Dated the 24th Mar 2005) (q)

Transparency in tendering system- Guidelines regarding.

In order to maintain transparency and fairness, it would be appropriate that authorized should evolve a practice of finalizing the acceptability of the bidding firms in respect of the qualifying criteria before or during holding technical negotiations with him. Obtaining revised price bids from the firms, which do not meet the qualification criteria, would be incorrect. Therefore the exercise of short listing of the qualifying firms must be completed prior to seeking the revised price bids. Moreover, the intimation of rejection to the firms whose bids have been evaluated but found not to meet the qualification criteria, along with the return of the un-opened price bid, will enhance transparency and plug the loop-holes in the tendering system. All authorized departments are advised to frame a policy accordingly.

(No.004/QRD/9 Dated 10th Dec 2004) (r)

Transparency in Tendering System

There have been instances where the equipment/plant to be procured is of complex nature and the procuring organization may not possess the full knowledge of the various technical solutions available in the market to meet the desired objectives of a transparent procurement that ensures value for money spent simultaneously ensuring Upgradation of technology & capacity building.

The Commission advises that in such procurement cases where technical specifications need to be iterated more than once, 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. In such cases, two stage tendering process may be useful and be preferred. During the first stage of tendering, acceptable technical solutions can be evaluated after calling for the Expression of Interest (EOI) from the leading experienced and knowledgeable manufacturers/suppliers in the field of the proposed procurement. The broad objectives, constraints etc. could be published while calling for EOI. On receipt of the Expressions of Interest, technical discussions/presentations may be held with the short-listed manufacturers/suppliers, who are prima facie considered technically and financially capable of supplying the material or executing the proposed work. During these technical discussions stage the procurement agency may also add those other stake holders in the discussions who could add value to the decision making on the various technical aspects and evaluation criteria. Based on the discussions/presentations so held, one or more acceptable technical solutions could be decided upon laying down detailed technical specifications for each acceptable technical solution, quality bench marks, warranty requirements, delivery milestones etc., in a manner that is consistent with the objectives of the transparent procurement. At the same time care should be taken to make the specifications generic in nature so as to provide equitable opportunities to the prospective bidders. Proper record of discussions/presentations and the process of decision making should be kept.

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 systems, as per the requirement of each case. Final selection at this stage would depend upon the quoted financial bids and the evaluation matrix decided upon.

Commission desires that organizations formulate specific guidelines and circulate the same to all concerned before going ahead with such procurements.

(No. 01/02/11 dated 11th Feb. 2011)