Controller General of Defence Accounts
Ulan Batar Road, Palam, Delhi Cantt – 110010
Ph No. 011 – 25665571, 25665572 , FAX No. 011- 25674779.
(IFA WING)
E-Mail : Cgdaifa.dad@gov.in

No.IFA/109/3/GFR-2017/2020 Dated: 16.11.2021

Circular No. 34 of 2021

To

All PCsDA/PIFAs/CsDA/ IFAs
(Through CGDA website & SIFA)

Sub: Guidelines on Debarment of firms from Bidding and General instruction on Procurement and Project Management

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A copy of OM GoI, Ministry of Finance, Department of Expenditure, Procurement Policy Division, New Delhi OM No.F.1/20/2018-PPD dated 02 November 2021 and OM No F.1/1/2021-PPD dt 29/10/2021 on the above subjects respectively , are forwarded herewith for information, guidance and further necessary action please.

Encl: As above.

(Nihar Ranjan)
AO (IFA Wing)

No.F.1/20/2018-PPD
Government of India
Department of Expenditure
Ministry of Finance
Procurement Policy Division

169-A, North Block, New Delhi,
2nd November, 2021.

OFFICE MEMORANDUM

Subject: Guidelines on Debarment of firms from Bidding

Attention is drawn towards Rule 151 of General Financial Rules (GFRs), 2017 regarding 'Debarment from Bidding' which is reproduced as under:

(i) A bidder shall be debarred if he has been convicted of an offence—

(a) under the Prevention of Corruption Act, 1988; or
(b) the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.

(ii) A bidder debarred under sub-section (i) or any successor of the bidder shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date of debarment. Department of Commerce (DGS&D) will maintain such list which will also be displayed on the website of DGS&D as well as Central Public Procurement Portal.

(iii) A procuring entity may debar a bidder or any of its successors, from participating in any procurement process undertaken by it, for a period not exceeding two years, if it determines that the bidder has breached the code of integrity. The Ministry/ Department will maintain such list which will also be displayed on their website.

(iv) The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment.

2. This department has received a reference from Department of Commerce with a proposal that the task of universal banning of firms as per Rule 151 (ii) of GFRs as above may be undertaken by Department of Expenditure or should be decentralized to individual line Ministries/ Departments as DGS&D had been wind up on 31.10.2017. Central Public Procurement Portal (CPPP) or the Department of Expenditure can then maintain a master data of all such banned firms and it can be made available in public domain.

3 In context of above, all issues regarding debarment have been reviewed in consultations with major procuring Ministries/ Departments and it is decided to issue attached 'Debarment Guidelines' in suppression to all earlier instructions on this subject.

4. This issues with the approval of Finance Secretary.

2.11.21

(Sanjay Aggarwal)
Advisor/ Procurement Policy Division
Email: sanjay.aggarwal68@nic.in
Tel: 23093224

To,

Secretaries, All Central Ministries/ Departments.

Secretary/ Department of Public Enterprises with a request to circulate these instructions to all Central Public Sector Undertakings (CPSUs).

Annexure

Guidelines on Debarment of firms from Bidding

1. The Guidelines are classified under following two types:

(i) In cases where debarment is proposed to be limited to a single Ministry, the appropriate Orders can be issued by that Ministry itself, thereby banning all its business dealing with the debarred firm.

(ii) Where it is proposed to extend the debarment beyond the jurisdiction of the particular Ministry i.e. covering to all central Ministries/ Departments, the requisite Orders shall be issued by Department of Expenditure (DoE), Ministry of Finance (MoF).

Definitions

2. Firm: The term 'firm' or 'bidder" has the same meaning for the purpose of these Guidelines, which includes an individual or person, a company, a cooperative society, a Hindu undivided family and an association or body of persons, whether incorporated or not, engaged in trade or business.

3. Allied firm: All concerns which come within the sphere of effective influence of the debarred firms shall be treated as allied firms. In determining this, the following factors may be taken into consideration:

a. Whether the management is common;
b. Majority interest in the management is held by the partners or directors of banned/ suspended firm;
c. Substantial or majority shares are owned by the banned/ suspended firm and by virtue of this it has a controlling voice.
d. Directly or indirectly controls, or is controlled by or is under common control with another bidder.
e. All successor firms will also be considered as allied firms.

4. The terms "banning of firm", 'suspension', 'Black-Listing' etc. convey the same meaning as of "Debarment".

Debarment by a Single Ministry/ Department

5. Orders for Debarment of a firm(s) shall be passed by a Ministry/ Department/ organizations, keeping in view of the following:

a. A bidder or any of its successors may be debarred from participating in any procurement process for a period not exceeding two years.
b. Firms will be debarred if it is determined that the bidder has breached the code of integrity as per Rule 175 of GFRs 2017.

c. A bidder can also be debarred for any actions or omissions by the bidder other than violation of code of Integrity, which in the opinion of the Ministry/ Department, warrants debarment, for the reasons like supply of sub-standard material, non-supply of material, abandonment of works, sub-standard quality of works, failure to abide "Bid Securing Declaration" etc.
d. It shall not be circulated to other Ministries/ Departments. It will only be applicable to all the attached/ subordinate offices, Autonomous bodies, Central Public Sector Undertakings (CPSUs) etc. of the Ministry/ Department issuing the debarment Order.
e. The concerned Ministry/ Department before issuing the debarment order against a firm must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm).
f. Secretary of Ministry/Department may nominate an officer at the rank of Joint Secretary/Additional Secretary as competent authority to debar the firms.
g. Ministry/ Department that issued the order of debarment can also issue an Order for revocation of debarment before the period of debarment is over, if there is adequate justification for the same. Ordinarily, the revocation of the Order before expiry of debarred period should be done with the approval of Secretary concerned of Ministry/Department.
h. The Ministry/Department will maintain list of debarred firms, which will also be displayed on its website.
i. Debarment is an executive function and should not be allocated to Vigilance Department.

6. Code of Integrity as contained in Rule 175 of the GFRs is reproduced as under:

No official of a procuring entity or a bidder shall act in contravention of the codes which includes
(i) prohibition of
(a) making offer, solicitation or acceptance of bribe, reward or gift or any material benefit, either directly or indirectly, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process.
(b) any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefit may be obtained or an obligation avoided.
(c) any collusion, bid rigging or anticompetitive behavior that may impair the transparency, fairness and the progress of the procurement process.
(d) improper use of information provided by the procuring entity to the bidder with an intent to gain unfair advantage in the procurement process or for personal gain.
(e) any financial or business transactions between the bidder and any official of the procuring entity related to tender or execution process of contract; which can affect the decision of the procuring entity directly or indirectly.
(f) any coercion or any threat to impair or harm, directly or indirectly, any party or its property to influence the procurement process.
(g) obstruction of any investigation or auditing of a procurement process.

(h) making false declaration or providing false information for participation in a tender process or to secure a contract;

(ii) disclosure of conflict of interest.

(iii) Disclosure by the bidder of any previous transgressions made in respect of the provisions of sub-clause (i) with any entity in any country during the last three years or of being debarred by any other procuring entity.

7. It is possible that the firm may be debarred concurrently by more than one Ministry/ Department.

8. Ministries/ Departments at their option may also delegate powers to to debar bidders to their CPSUs, Attached Offices/ Autonomous Bodies etc. In such cases, broad principles for debarment in para 5 as above are to be kept in mind. Debarment by such bodies like CPSUs etc. shall be applicable only for the procurements made by such bodies.

9. Similarly, Government e-Marketplace (GeM) can also debar bidders upto two years on its portal.

10. In case of debarments under para 8 as above, revocation the debarment orders before expiry of debarred period should be done only with the approval of Chief Executive Officer of concerned CPSUs etc.

Debarment across All Ministries/ Departments

11. Where a Ministry/ Department is of the view that business dealings with a particular firm should be banned across all the Ministries/ Departments by debarring the firm from taking part in any bidding procedure floated by the Central Government Ministries/ Departments, the Ministry/ Department concerned, should after obtaining the approval of the Secretary concerned, forward to DoE a self-contained note setting out all the facts of the case and the justification for the proposed debarment, along with all the relevant papers and documents. DoE will issue the necessary orders after satisfying itself that proposed debarment across all the Ministries/ Departments is in accordance with Rule 151 of GFRs, 2017. This scrutiny is intended to ensure uniformity of treatment in all cases.

12. The firm will remain in suspension mode (i.e. debarred) during the interim period till the final decision taken by DoE, only in the Ministry/ Department forwarding such proposal.

13. Ministry/ Department before forwarding the proposal to DoE must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm). If DoE realizes that

sufficient opportunity has not be given to the firm to represent against the debarment, such debarment requests received from Ministries/ Departments shall be rejected.

14. DoE can also give additional opportunity, at their option, to firm to represent against proposed debarment. DoE can also take suo-moto action to debar the firms in certain circumstances

15. No contract of any kind whatsoever shall be placed on the debarred firm, including its allied firms by any Ministries/ Departments/ Attached/Subordinate offices of the Government of India including autonomous body, CPSUs etc. after the issue of a debarment order.

16. DoE will maintain list of such debarred firms, which will be displayed on Central Public Procurement Portal.

Revocation of Orders

14. An order for debarment passed shall be deemed to have been automatically revoked on the expiry of that specified period and it will not be necessary to issue a specific formal order of revocation.

15. A debarment order may be revoked before the expiry of the Order, by the competent authority, if it is of the opinion that the disability already suffered is adequate in the circumstances of the case or for any other reason.

Other Provisions (common to both types of debarment)

16. No contract of any kind whatsoever shall be placed to debarred firm including its allied firms after the issue of a debarment order by the Ministry/ Department. Bids from only such firms shall be considered for placement of contract, which are neither debarred on the date of opening of tender (first bid, normally called as technical bid, in case of two packet/two stage bidding) nor debarred on the date of contract. Even in the cases of risk purchase, no contract should be placed on such debarred firms.

17. If case, any debar firms has submitted the bid, the same will be ignored. In case such firm is lowest (L-1), next lowest firm shall be considered as L-1. Bid security submitted by such debarred firms shall be returned to them.

18. Contracts concluded before the issue of the debarment order shall, not be affected by the debarment Orders.

19. The Debarment shall be automatically extended to all its allied firms. In case of joint venture/ consortium is debarred all partners will also stand debarred for the period specified in Debarment Order. The names of partners should be clearly specified in the "Debarment Order".

20. Debarment in any manner does not impact any other contractual or other legal rights of the procuring entities.

21. The period of debarment shall start from the date of issue of debarment order.

22. The Order of debarment will indicate the reason(s) in brief that lead to debarment of the firm.

23. Ordinarily, the period of debarment should not be less than six months.

24. In case of shortage of suppliers in a particular group, such debarments may also hurt the interest of procuring entities. In such cases, endeavor should be to pragmatically analyze the circumstances, try to reform the supplier and may get a written commitment from the supplier that its performance will improve.

25. All Ministries/ Departments must align their existing Debarment Guidelines in conformity with these Guidelines within two months of issue of these Guidelines. Further, bidding documents must also be suitably amended, if required.

xxxxxxxx

No.F.1/1/2021-PPD
Government of India
Ministry of Finance
Department of Expenditure
Procurement Policy Division

264-C, North Block, New Delhi.
29th October, 2021.

Subject: General Instructions on Procurement and Project Management

It has always been a concern and challenge for the Government and its agencies to execute public projects on time, within the approved cost and with good quality. As the Government strives to step up the pace of economic development, the role of procedure and rules, and the incentives and disincentives they create, warrants careful examination.

2. The Central Vigilance Commission (CVC) and the Comptroller & Auditor General (CAG) are among the institutions which have, at various times, had occasion to comment on procurement and project management. Taking cognizance of these issues, CVC issued a Concept Paper on Alternative Procurement Strategy suggesting various reforms. Later after elaborate consultations with various stakeholders and a reform workshop held on 18.12.2020, CVC prepared Draft Guidelines on "Reforms in Public Procurement and Project Management". The draft guidelines inter alia stated: "Endeavour should be to explore the possibility of employing alternative procurement methods and other emerging trends apart from regularly used methods of procurement".

Separately, the CAG held a workshop on 27th February, 2020, soliciting ideas to improve procurement and project management. In that workshop, the then CAG himself observed: "It is also important to examine the information available with the decision maker at the time of taking the procurement decision. Post facto wisdom is easy and costs of indecision high". He hoped that the "focus of the presentations would be on discussing the challenges faced in procurement, especially that of adhering to the L1 requirement and related quality issues and new mechanisms/ strategies of procurement to overcome these challenges".

The National Institution for Transforming India (NITI) Aayog also prepared in August, 2020 a detailed paper entitled "Indian Public Procurement: Alternative Strategies and Way Forward" with various proposals.

3. A common theme arising in all these deliberations was a need to improve procurement and project management rules and procedures, to update them to present day needs, and empower those implementing projects to take better decisions, while adhering to probity and fairness. The fact that two premier institutions overseeing probity and accountability and India's premier policy think-tank felt the need to improve public procurement and project management procedures indicates the importance of the issue.

4. The Draft Guidelines prepared under the aegis of the CVC provided a sound platform for initiating reforms for empowering executing agencies and officers to take effective decisions in public interest, not only without favour but also without fear. These Draft Guidelines were considered by the Committee of Secretaries, and it was decided that the Department of Expenditure (DoE) would consider and issue guidelines, after soliciting and incorporating comments from Ministries/ Departments. Comments were solicited from all Ministries/ Departments and after due and detailed consideration of the comments received, instructions as contained in the subsequent paragraphs are being issued for compliance. While the primary source of these instructions is the draft guidelines prepared by the CVC, the views expressed in the CAG's workshop, by NITI Aayog, and in other comments received have also been duly considered and incorporated wherever appropriate.

5. The instructions below are "general instructions" within the meaning of Rule 6(1) of the GFR. They shall prevail in case of any general or case-specific conflict with the existing provisions of the Manual for Procurement of Goods, 2017, Manual for Procurement of Consultancy and other Services 2017, Manual for Procurement of Works 2019 or any other instruction issued by DoE in the past. For the purpose of these instructions:

(i) Instructions containing 'may' are to be considered desirable or good practices which procuring entities/ project executing agencies are encouraged to implement but not mandatory.

(ii) Instructions containing 'should' are required to be followed in general. However, there may be circumstances where it may not be practical/ desirable to implement them. In such cases, the concerned officer/ agency may deviate by recording reasons in writing for not implementing the same.

(iii) Instructions containing 'shall' are mandatory; any deviation shall require relaxation of rules from the DoE (for Ministries/ Departments etc.) or from the Board of Directors (for Central Public Sector Enterprises).

(iv) Instructions containing "allowed" indicate an optional course of action to be decided upon on merits.

(v) "Procuring Entity" or "Project Executing Authority" or "Project Executing Agency" means Central Government Ministries/ Departments, Attached/ Subordinate bodies including Autonomous Bodies or Central Public Sector Enterprises (CPSEs) (etc) executing projects/ works.

(vi) "Public Authority" means the client organization, which may be asking a "Procuring Entity" or "Project Executing Authority" or "Project Executing Agency" to execute a project or work on their behalf. For example, in case a University executes the works through Central Public Works Department (CPWD), then the said university will be the public authority and CPWD will be the Procuring Entity or Project Executing Authority or Project Executing Agency. (The public authority and the project executing authority may also be the same.)

6. **Feasibility Study/ Ground Survey:** Before undertaking a project Feasibility study/ Preliminary Project Report (PPR) may be prepared by the Project Executing Agency as prescribed in Para 2.2.1 of the Manual for Procurement of Works 2019 (*hereinafter called Manual*). A presentation on the findings of the feasibility study/ PPR may be made by a team (which may include engineers/ consultants/ outside experts, finance officers etc.) before the public authority/ or designated competent authority. This is to provide an opportunity to the public authority to have an overall assessment of the situation, appraisal of various options as well as likely challenges and mitigation measures. In the case of very large projects, such presentation may be made to the head of the public authority. The record of discussions during the presentation may become part of the Detailed Project Report (DPR) and tender file/ project record.

7. Detailed Project Report (DPR):

7.1 As prescribed in Para 2.4 of the Manual, once the project is considered viable and the competent public authority gives approval, a DPR/ Detailed Estimate should be prepared with due care and accuracy, using latest technological tools collecting all relevant ground information including consultation with the field units, wherever applicable.

7.2 Presentation may be made about the DPR before the public authority, for projects above a threshold value, as decided by Project Executing Authorities. The presentation may include salient features of the project including general layout, architectural drawings, broad specifications, cash flow (over the life of the project), composition of the project team, quality management plan for the project, important milestones in the project execution, obligations of the authority and the contractor/ concessionaire (hereinafter referred to as "contractor") and possible risks and mitigation measures. In the case of very large projects such presentation may be made to the head of the public authority. The record of discussions during the presentation shall become part of tender file/project record.

7.3. Wherever consultants are appointed for preparation of DPR, field units of the public authorities should also be associated with the process. The inputs from these field units can be useful in proposing best solutions for design and execution of the work as they are the custodian of legacy data, which may not be available with the consultants, as they may not be operating regularly in that geographical region.

7.4. Endeavour may be made to enlarge the base of the 'Schedule of Rates' published by various organizations to bring a maximum number of items under its ambit. For non-scheduled items, rates may be finalized by a committee constituted by the organization concerned/ consultants as the case maybe.

8. Availability of Land and Statutory Clearances:

8.1 It is desirable to have 100% of the required land in possession before award of contract; however, it may not always be possible to have the entire land due to prevailing circumstances. Also, it may not be prudent to put the entire process of award of contract on hold for want of the remaining portion of land, which in the assessment of public authority or the project executing authority, could possibly be acquired in a targeted manner after award of the contract, without affecting progress.

8.2 Minimum necessary encumbrance free land should be available before award of contract. The minimum may be determined based on the circumstances of each case or general guidelines, issued by the concerned authorities. Only such land, non availability of which, will prevent essential components of work from execution, should be insisted upon.

8.3 Time taken in grant of statutory and other clearances also contributes to the time and cost of public projects. These clearances are required to achieve specific objectives like concern for the environment, aviation safety, preservation of national heritage, conservation of forest and wildlife etc. Public Authorities/ Project Executing Authorities should plan for obtaining all necessary clearances quickly and closely monitor the progress.

9. Pre-Tender activities:

9.1 Architectural and structural drawings: Architectural and structural drawings (fit for construction) are among the core requirements for projects. Finalization of these drawings at the earliest, preferably at the time of preparation of the cost estimate itself, can help to determine quantities of various items of the work. Adverse consequences of not preparing these drawings before invitation of tenders may manifest in the form of delay in execution of the work and deviations in quantities of the items of work. Hence, approved architectural and structural drawings should be available before invitation of tenders. Fit for construction (sometimes called Good for construction) drawings means the architectural and structural drawings approved by the project executing authority as well as by the authority governing the extant rules/ laws, including byelaws, such as local authorities.

9.2 Pre-Notice Inviting Tender (NIT) Conference: In complex and innovative procurement cases or where the procuring entity may not have the required knowledge to formulate tender provisions, a pre-NIT conference may help the procuring entity in obtaining inputs from the Industry. Such conferences should be widely publicised so that different potential suppliers can attend.

9.3 Empanelment of contractors: Public authorities may empanel/ register contractors of those specific goods and services which are required by them regularly. Performance of such empanelled contractors should be reviewed periodically. The list of registered contractors shall be updated on a regular basis. The category/ class of contractors may be upgraded/ downgraded or contractors may be de-listed based on their performance. Empanelment of contractors shall be done in a fair and equitable manner, preferably online after giving due publicity. The practice of inviting bids for works tenders only from empanelled contractors may be confined to tenders up to certain threshold value, as decided by the project executing authorities.

10. Tender documents:

10.1 The tender document is the fundamental document in the public procurement process as after award of the contract it becomes part of the contract agreement. All necessary provisions governing the contract should be clearly provided in the tender document. Examples are technical specifications, drawings, commercial terms and conditions including payment terms, obligations of the procuring entity and the contractor, timeframe/milestones for execution of the project, tax implications, compliance framework for statutory and other norms, reporting on progress/quality of the work, dispute resolution. Provisions/clauses in the tender document should be clear to avoid differences in interpretation and possible time overrun, cost overrun and quality compromises. Comprehensive survey & soil investigation report, area grading & mapping of underground facilities, where project is to be executed, may be made available and made part of tender document. Model Tender Documents issued by the DoE may be used, with due customisation.

10.2 In tenders containing General Conditions of Contract (GCC), additional/ special conditions to be incorporated in the tender document, shall be need based and specific. The GCCs should not be altered and changes, if any, in conditions of contract should only be made through the Special Conditions of Contract.

10.3 Identification of milestones may be done in an optimal and sequential manner and the same may be stipulated in the tender document along with enabling provisions.

10.4 Payment terms prescribed in the tender document should be such that the payment made to contractors at every stage is commensurate to quantum of work done, subject to any requirements for initial mobilisation.

10.5 Procuring entities may issue instructions regarding appropriate delegation of authority for approval of deviations, variations and changes in the scope of the contract.

10.6 Provision of price variation, wherever considered appropriate, as well as methodology for calculation of the same shall be clearly stipulated in the tender document.

10.7 Quality Assurance Plan (QAP) may be incorporated in the tender document/ contract. Schedule of visit by various levels of officials should also form part of the QAP.

10.8 Technical and Financial eligibility Criteria for the bidders are important in the public procurement process. They shall be clear and fair, having regard to the specific circumstances of the procurement. Appropriate parameters should be prescribed in the eligibility criteria for bidders, to enable selection of the right type of bidders in public interest, balancing considerations of quality, time and cost.

10.9 Open online tendering should be the default method to ensure efficiency of procurement. Public authorities should also keep the experience criteria broad based so that bidders with experience in similar nature of works in various sectors can participate.

10.10 Pre-bid conference may be conducted for large value tenders by Procuring Entities. The Place and time of pre-bid conferences should be mentioned in the tender document and/ or publicized through the website of the procuring entity and/ or through newspaper publication.

11. Project Management

11.1 The quality of project works significantly depends on supervision and monitoring. For completion of the projects within the stipulated time and cost and with specified quality standards, periodical review should be done by various levels of the officers.

11.2 Information Technology (IT) enabled project management systems can help in improving efficiency, transparency and aid faster decision making in execution of projects. These systems may be used for maintenance of records for the progress of work (including hindrance register), variations, etc., wherein reasons for delays are also to be captured on real time basis. Such systems may be used for capturing progress and quality of work, site records/ photographs/ videos etc. including geo tagging.

11.3 Wherever applicable, the role of the Project Management Consultant (PMC) should be clearly defined in the contracts. Deployment of the PMC does not absolve the project executing authority of the responsibility to supervise the quality and timelines of the project.

11.4 The credentials and deployment schedule of key and other technical personnel to be engaged by PMC on the work should be taken along with the bid. During execution, adherence to deployment of key and other technical personnel as per the schedule of deployment should be ensured.

11.5 Execution of the work shall primarily be the responsibility of the officials designated with such responsibility. However, for large contracts senior officers shall also review the progress and quality of the work at various stages of construction. To this effect, presentations on the project performance may be made periodically before the senior officers depending upon the value of the project and progress of the project vis-à-vis schedule. Project executing authorities should put in place detailed instructions in this regard.

11.6 Project executing authorities should put in place a system for capturing the photographs and videos of important and critical activities of construction. This may be implemented in projects above a threshold value or, if possible, in all projects. Such photos/ videos may be uploaded in IT based project monitoring system to facilitate monitoring the progress and quality of work as well as assessment of delay in execution of work by stakeholders and senior management. Apart from this, photographs and videos may serve as permanent record of the project for posterity in case needed for any eventuality including litigation or enquiry/investigation.

11.7 **Sub-contracting:** As per Para 6.1.6 of the Manual, the works contract may provide for the contractor to get specified works executed from sub-contractors included in the pre-qualification application or later agreed to by the Procuring Entity, with a caveat that the responsibility for all sub-contract work rests with the prime contractor. Sub-contracting may be for specialized items of work, such as reinforced earth retaining walls, pre-stressing works, and so on. Procurement of material, hiring of equipment or engagement of labour will not mean sub-contracting. The total value of subcontracted work should not exceed the percentage of the contract price specified in the contract (say 25%). Sub-contracting by the contractor without the approval of the Procuring Entity shall be a breach of contract, unless explicitly permitted in the contract.

11.8 **Rejection of Single Bid:** It has become a practice among some procuring entities to routinely assume that open tenders which result in single bids are not acceptable and to go for re-tender as a 'safe' course of action. This is not correct. Re-bidding has costs: firstly the actual costs of re-tendering; secondly the delay in execution of the work with consequent delay in the attainment of the purpose for which the procurement is being done; and thirdly the possibility that the re-bid may result in a higher bid.

Lack of competition shall not be determined solely on the basis of the number of Bidders. Even when only one Bid is submitted, the process should be considered valid provided following conditions are satisfied:

(i) the procurement was satisfactorily advertised and sufficient time was given for submission of bids;

(ii) the qualification criteria were not unduly restrictive; and

(iii) prices are reasonable in comparison to market values.

11.9 **Electronic-Measurement Books(e-MBs):** Project executing authorities should, as early as possible, implement e-MBs and the same should be integrated with IT based project monitoring system, being used by the procuring entities.

11.10 **Extension of time for completion of projects:** Procuring entity may put in place a graded authority structure whereby extension of time for completion of contract, beyond a specified threshold value of contract, may be granted by the next higher authority.

11.11 **Delay in taking timely decisions:** Delay in decision making by the officials of the project executing authority on various changes in the project scheme arising out of emerging situations during execution of the work is also one of the contributors to the delay in completion of projects. Sometimes timely decisions on these changes are so crucial that the next step could only be taken after addressing the change. Delay in decisions by the project executing authority can also lead to litigation due to inadequate utilization/ idling of resources of the contractor. There is frequently a feeling among officials that indecision is safe while a decision may lead to adverse consequences for the decision maker. Therefore, there is a need for project executing authorities to put in place a system of resolution of the issues coupled with timelines for various levels to take decisions.

11.12 Project executing authorities may review the flow chart of decision making and remove redundancies for faster decision making. They may also fix timelines for taking decisions on variations, extra items and changes in scope and specifications, etc. to avoid delay and litigation arising out of delayed decisions.

11.13 **Awarding of works in stalled contracts:** It is noted that in cases, where a contractor abandons or stops the work mid-way, either due to insolvency or a dispute or other reason, engagement of the new contractor takes considerable time and in the meanwhile public money is locked up in assets which cannot be utilized, apart from inconvenience and loss of amenities to the general public due to such half completed works. Notwithstanding anything in the GFR or the Manual, procuring entities should devise methods (including limited/ single tenders) to deal with part completed contracts, wherever the work is abandoned by the contractor mid-way. However, for issuance of limited/ single tenders in such cases, at least 20%, of work should have been billed by the contractor who has abandoned the work. Procurement approval of such limited/ single tender should be at the next higher level or such level as may be prescribed.

12. Delay in payment to the contractors:

12.1 Delay in eligible payments to contractors leads to delay in execution of projects, cost overruns and disputes. Hence, ad-hoc payments of not less than 75% of eligible running account bill/ due stage payment, shall be made within 10 working days of the submission of the bill. This period of 10 days is for completion of all processes including prima facie scrutiny and certification by the engineer in-charge (as declared by procuring entities). The remaining payment is also to be made after final checking of the bill within 28 working days of submission of bill by the contractor. In case the payment has not been released within 10 working days as prescribed above, it shall be made as soon as possible, and after payment a written explanation for the delay shall be submitted to the next higher authority within three working days.

12.2 Public authorities may put in place a provision for payment of interest in case of delayed payment of bills by more than 30 working days after submission of bill by the contractor. Where interest is to be paid, the rate of interest should be the rate of interest on General Provident Fund.

12.3 In case of unwarranted discretionary delays in payments, including failure to authorise / make ad hoc payments as prescribed in para 12.1 above, responsibility shall be fixed on the concerned officers. Project executing authorities should have a system to monitor delays in payments and to identify such unwarranted delays.

12.4 The Final bill should also be paid to the contractor within three months after completion of work.

12.5 All project executing authorities implementing works contracts involving aggregate payments of more than Rs.100 crore per annum shall have an online system for monitoring of the bills submitted by contractors. Such system shall have the facility for contractors to track the status of their bills. It shall be mandatory for all contractors' bills to be entered into the system with date of submission and date of payment. Such system shall be put in place within one year of issue of these instructions.

13. Engineering, Procurement and Construction (EPC) contracts:

13.1 In EPC contracts, since primary responsibility to execute the work lies with the EPC contractor, success of the project also depends upon the quality of the tender document wherein enough clarity on the broad framework for execution of the work and the obligations of the contractor needs to be built in.

13.2 Milestones for payment to the contractor should be fixed in a manner that facilitates smooth cash flow for the contractor as well as for progress of the work. Milestones fixed should avoid excessive front loading or back loading, i.e., amount of payment should be commensurate with stage-wise quantum of work/ cost incurred. Milestones for payment to the contractor should also be linked with the deliverables.

13.3 In case of EPC contracts, only general arrangement drawings and architectural control parameters should be part of the EPC tender document. In case of EPC contracts, timelines for submission of drawings by the contractors and approval thereof by the competent authority should be clearly prescribed in the tender document, wherein, damages for non-adherence of such timelines in this regard may also be incorporated.

13.4 EPC contracts shall specify broad technical specifications and key output parameters. Over-specification of design may lead to increase in cost. Technical specifications shall be framed in such a manner to allow sufficient freedom to the contractor to optimize design. Provisions on the following should be included in commercial conditions:

(i) Limitation of liability for procuring entity as well as contractor.

(ii) Deviation limits and procedure for change of scope.

(iii) Contract closing timelines and procedure to ensure timely closing of the contract.

(iv) Performance parameters and liquidated damages for shortfall in performance.

(v) Risk matrix and responsibilities of the contractor and the procuring entity.

In addition, a latent defect period beyond the defect liability period may be included to protect the procuring entity and public authority interest in case of any design/ engineering defect after the defect liability period is over, wherever appropriate.

13.5 To mitigate the risk involved in the methodology proposed by the contractor, the project executing authority shall either have an in-house engineering, quality assurance and project management expert or alternatively hire an experienced engineer to intensively examine the proposal submitted by the contractor. Project executing authorities are to ensure that optimal technological solutions are provided by the contractor.

13.6 To ensure quality, regular inspection and quality checks must be carried out. The Project executing authority shall carry out stage inspections in manufacturing of critical equipment/ critical activities of the project.

14. Substitution of key personnel during execution of consultancy contract:

(i) Quality in consultancy contracts is largely dependent upon deployment and performance of key personnel, during execution of the contract.

(ii) The following conditions should be incorporated in Tender Documents for procurement of Consultancy Services:

a) Substitution of key personnel can be allowed in compelling or unavoidable situations only and the substitute shall be of equivalent or higher credentials. Such substitution may ordinarily be limited to not more than 30% of total key personnel, subject to equally, or better, qualified and experienced personnel being provided to the satisfaction of the procuring entity.

b) Replacement of first 10% of key personnel will be subject to reduction of remuneration. The remuneration is to be reduced, say, by 5% of the remuneration which would have been paid to the original personnel, from the date of the replacement till completion of contract.

c) In case of the next 10% replacement, the reduction in remuneration may be equal to (say) 10% (ten per cent) and for the third 10% replacement such reduction may be equal to (say) 15% (fifteen per cent). In case such percentages are not relevant, or for some other practical considerations, for a particular contract, the procuring entity may formulate a suitable mechanism following the above logic, which should be specified in the tender documents.

(iii) Public authorities may make use of IT enabled systems at the designated place of deployment to ensure presence of key personnel as per the schedule of deployment.

15. Additional Methods of Procurement:

15.1 Fixed Budget – based Selection (FBS) for consultancy services:

15.1.1 GFRs 2017 provide three methods for selection/evaluation of consultancy proposals viz. Quality and Cost Based Selection (QCBS), Least Cost System (LCS) and Single Source Selection (SSS). The Fixed Budget-based Selection (FBS) method is hereby also allowed for selection of consultants. Under this method, cost of the consulting services shall be specified as a fixed budget in the tender document itself. FBS may be used when:

(i) the type of consulting service required is simple and/or repetitive and can be precisely defined; and

(ii) the budget can be reasonably estimated and set based on credible cost estimates and/ or previous selections which have been successfully executed; and

(iii) the budget is sufficient for the consultant to perform the assignment.

15.1.2 Under FBS, the selection of the consultant shall be made by one of the following two methods:-

(i) By a competitive selection process, based only on quality, using specific marking criteria for quality in the manner indicated in Rule 192(i) of the GFR. The proposal with the highest technical score that meets the fixed budget requirement shall be considered for placement of contract.

(ii) In cases of repetitive or multiple assignments, by empanelling suitable consultants, through an open advertised process with specified quality criteria. Thereafter, selection of a specific consultant for a specific assignment from such panel shall be based on overall considerations of public interest including timeliness, practicability, number of other assignments already given to that consultant in the past, etc. In such cases the budget for each assignment shall also be fixed by the procuring entity.

15.2 Quality-cum-Cost based Selection (QCBS) for Works and Non-Consultancy Services:-

15.2.1 Procuring entities are hereby allowed to use QCBS for procurement of works and non-consultancy services in the following cases:

(i) where the procurement has been declared to be a Quality Oriented Procurement (QOP) by the competent authority or

(ii) for procurement of Non-Consulting Services, where estimated value of procurement (including all taxes and option clause) does not exceed Rs 10 crore.

Note: In cases where estimated value was less than Rs 10 crore, but on tendering, following QCBS process, it is proposed to place contract for more than Rs 10 crore, the following procedure shall be adopted:

(a) In case the difference between estimated value (including taxes etc as above) and value of the proposed contract (including taxes etc) is less than 10% of the estimated value, there will be no bar on placement of contract.

(b) In all other cases, the procurement process is to be scrapped and restarted either as QOP or on non QCBS basis.

The principles of QCBS shall be as provided in Rule 192(i), (ii) and (iii) of the GFR. However, the maximum weight of the non-financial parameters shall in no case exceed 30%.

15.2.2 The Competent Authority for allowing QCBS shall be as follows:-

(i) For declaring a procurement as QOP:

a) Where the procuring entity/ project executing authority is covered by Rule 1 of GFR, the Secretary of the Ministry/ Department, to which the procuring entity belongs.

b) Where the procuring entity is a CPSE, the Board of Directors of the CPSE.

(ii) For Non-consulting Services not exceeding Rs.10 crore in value:

a) Where the procuring entity is covered by Rule 1 of GFR, by the officer or authority two levels above the officer/ authority competent to finalize the particular procurement, or the Secretary of the Ministry/ Department whichever is lower.

b) Where the procuring entity is a CPSE, the authority or officer two levels above the officer competent to finalize the particular procurement, or the Board of Directors of the CPSE whichever is lower.

15.2.3 In all cases of QOP, a Special Technical Committee (STC) shall be constituted with the following composition:-

(i) Two or more persons who have expert knowledge and/or long experience relevant to the procurement in question;

(ii) One or more persons with extensive experience in handling public projects and/or public finance in the Government or State/Central Public Sector;

(iii) One or more persons with experience in financial management/ financial administration/audit/accountancy;

(iv) Not more than one member representing the procuring entity who may *inter alia* provide administrative support to the Committee.

(v) Any person who is a member of the STC shall not associate himself in any manner with any bidder for the procurement concerned.

(vi) The persons referred to in sub paras (i) to (iii) shall be persons not working under the Competent Authority specified in para 15.2.2 and shall not belong to any organization under the control of, or receiving funding from, the procuring entity or the Ministry/ Department to which such procuring entity belongs.

15.2.4 The names of members of the Special Technical Committee shall be decided either by the Competent Authority specified in para 15.2.2 above or by any other authority to whom such power is delegated by the competent authority; however, powers shall not be delegated to the officer or authority competent to finalize the particular procurement. Sitting fee may be paid to the members of the STC. Incidental costs including travel shall be paid by the procuring entity.

15.2.5 The STC shall make specific recommendations on the following matters:-

(i) The weight to be given to non-financial parameters (not exceeding 30%).

(ii) The specific quality/ technical parameters, their weights, their scoring methodology, the minimum qualification score etc. and other relevant criteria necessary for ensuring fair and transparent quality/ technical evaluation of the bids.

The recommendations of the STC shall be followed except where there are special grounds in public interest for deviating from them. However, every case of deviation from the recommendations of the STC shall require approval of the Competent Authority specified in para 15.2.2(i) above who approved the declaration of the procurement as QOP.

15.2.6 In respect of QCBS for Non-Consultancy Services not exceeding Rs.10 crore, a Technical Committee shall be constituted to carry out functions mentioned in para 15.2.5 in lieu of the STC. The composition of the Technical Committee shall follow the provisions of para 15.2.3 (i) to (v). The provisions of 15.2.3 (vi) shall however not be applicable in such cases.

15.2.7 *Grounds for Declaring a Procurement to be Quality Oriented Procurement:* A procurement should be declared as a QOP only if there is enough justification in terms of value addition or enhancement of delivery or paramount importance of quality. Reasons for not adopting two cover/ pre-qualification-based/ least cost system shall be documented.

15.2.8 Tender Documents – Fixing/ Selection of the Evaluation/ Qualification Criteria

(i) To ensure quality, some of the criteria used in marking may be made mandatory and if a bidder does not meet those, then bids shall not be evaluated further.

(ii) Weightage may also be given for timely completion of past projects of similar nature by the bidder.

(iii) In all cases of QOP, a pre-bid meeting shall be held in which the technical criteria including the marking scheme shall be discussed with the potential bidders. If any changes in the criteria are necessitated by such consultation, such changes shall require the recommendation of the STC. In Non-Consultancy Services, pre-bid meetings may be held at the discretion of the public authority.

15.2.9 Fixing of Scoring/ Marking Criteria:

(i) The scoring should not be a variable that relies on the subjective opinion of the evaluating panel. The marking scheme should enable achievement of almost similar scores irrespective of the persons/ experts being involved in the evaluation process. When the outcomes are consistent for the available information, the QCBS parameters are more reliable. Unambiguous description and criteria help to avoid grey areas so as to ensure that there is only one possible score for the item. As far as possible, the criteria should be so specific and clear that bidders can self-mark their own bids.

(ii) It is better to specify minimum marks for meeting the qualifying criteria specified.

(iii) Examples of fixed quality parameters that ought not to be considered for relative scoring include organizations' ISO/ standards' accreditation, etc. These are required to establish the credentials of the service provider but cannot be used for relative comparison between various bidders.

(iv) Bidders should be asked to produce certificates for the past performance. A format may be given in the tender itself outlining the contract details, completion, sustainability of service etc and bidders may be asked to fill it and give evidence to that effect.

(v) Bidders may be asked to submit a detailed presentation on their proposals in the form of soft copy along with the bid so as to facilitate better understanding of their proposal and to ensure commitment.

(vi) Besides the Bill of Quantity (BOQ) output criteria for payment, Key Performance Indicators (KPIs) may be specified with minimum achievement levels for payment so as to ensure quality compliance.

15.2.10 *Evaluation of QCBS Bids*: For evaluation, a suitable committee shall be constituted. However, members of the STC shall not be involved.

15.2.11 Joint ventures in QCBS:

(i) In conventional tenders, some bidders adopt "name borrowing" and Joint Ventures (JV) often do not function in letter and spirit. This results in lack of quality and accountability. JVs often end in one-sided participation, diluting the essence of the tender evaluation during its performance. Since quality is given weightage in the evaluation itself, in QCBS procurement, it is even more important to guard against such tendencies. Therefore, Joint Ventures may be avoided in QCBS procurements as far as possible. Joint Ventures could, however, become necessary in high technology or innovative projects where a single entity may not be able to execute the work alone.

(ii) If JVs are allowed, adequate safeguards should be provided. Since weightage for quality/ experience influences the award itself, measures should be taken to ensure that all the JV partners are present and deliver services all through the contract period. An Implementation Board with participation of all JV partners may be provided for wherein the Project Manager from the procuring entity shall also be allowed audience when required. Meeting of JV partners with the project executing authority for quarterly progress review may be made as a criterion linked to achievement of key dates or even payment.

16. Arbitration and dispute resolution:

16.1 During operation of the contracts, issues and disputes arising due to lack of clarity in the contract become the root cause for litigation. Litigation has adverse implications on the timelines and overall cost of the project. Before resorting to arbitration/ litigation, the parties may opt for mutual discussion, mediation, and conciliation for the resolution of disputes.

16.2 Arbitration/ Court awards should be critically reviewed. In cases where there is a decision against Government/Public Sector Enterprise (PSE), the decision to appeal should not be taken in a routine manner but only when the case genuinely merits going for the appeal and there are high chances of winning in the court/ higher court. There is a perception that such appeals etc. are sometimes resorted to postpone the problem and defer personal accountability. Casual appealing in arbitration/court cases has resulted in payment of heavy damages/ compensation/ additional interest cost, thereby causing more harm to the exchequer, in addition to tarnishing the image of the Government.

16.3 The procuring entity should monitor the success rate of appealing against arbitration awards. There should be a clear delegation to empower officials to accept arbitration/ court orders. A special board/committee may be set up to review the case before an appeal is filed against an order. Arbitration/Court awards should not be routinely appealed without due application of mind on all facts and circumstances including realistic probability of success. The Board/Committee or other authority deciding on the matter shall clarify that it has considered both legal merits and the practical chances of success and after considering the cost of, and arising through, litigation/appeal/further litigation as the case may be, it is satisfied that such litigation/appeal/further litigation cost is likely to be financially beneficial compared to accepting the arbitration/court award.

16.4 Statistics have shown that in cases where the arbitration award is challenged, a large majority of cases are decided in favour of the contractor. In such cases, the amount becomes payable with interest, at a rate which is often far higher than the Government's cost of funds. This results in huge financial losses to the Government. Hence, in aggregate, it is in public interest to take the risk of paying a substantial part of the award amount subject to the result of the litigation, even if in some rare cases of insolvency etc. recovery of the amount in case of success may become difficult. Instructions have been issued in this matter in the past but have not been fully complied with. The GFRs have now been amended accordingly.

16.5 All procuring entities and public authorities are required to comply with Rule 227A of GFRs. The only circumstances in which such payment need not be made is where the contractor declines, or is unable, to provide the requisite Bank Guarantee and /or fails to open escrow account as required. Persons responsible for not adhering to the Rule 227A of the GFRs are liable to be held personally accountable for the additional interest arising, in the event of the final court order going against the procuring entity.

17. Aligning the interest of stakeholders

17.1 The incentive structure for all the key stakeholders of public procurement ought to be such that the system itself will ensure timely delivery of the projects/works in a qualitative manner within approved cost. A balanced framework and work culture, where risks and rewards are properly shared amongst stakeholders and timely completion of quality projects is the common goal, can be the bedrock of efficient project management. An incentive structure, which may include pecuniary as well as non-pecuniary aspects (including public recognition), linked with measurable parameters of outcome/output, can help align the interests of stakeholders. An ethics-based regime, wherein integrity of all the stakeholders is nurtured, can help increase efficiency in all aspects of project management.

17.2 Public authorities may devise strategies to provide incentives to contractors/ concessionaires/ consultants/ architects/ other stakeholders by various means, including bonus, better rating and recognition for early/ timely and quality completion of projects. Similar strategies may be devised for recognition of engineers/ officers/ other team members for early/ timely and quality completion of the projects. The practice of mentioning the names of contractor and the project in-charge publicly at work sites may be implemented. Such recognition may be in a form which has long shelf life so as to associate the contractor and project in-charge with the life of the project.

17.3 "Coming together is a beginning; keeping together is progress; working together is success." It is an accepted fact that the success of any project is dependent on a well-co-ordinated team working towards a common goal. For successful execution of any project within specified time, cost and quality, the interest of all the stakeholders needs to be aligned. Coordinated efforts of all stakeholders such as contractors, consultants, public authority and project executing authority and public representatives will bring about the best possible outcome.

29.10.2021

(Kanwalpreet)
Director (Procurement Policy)
Tel.: 23093811
E-mail: kanwal.irss@gov.in

To

(i) Secretaries to All Central Government Ministries/ Departments
(ii) Secretary, Department of Public Enterprises with a request for reiterating these instructions to all Central Public Sector Enterprises

Copy to:

(i) Cabinet Secretary
(ii) Secretary, Central Vigilance Commission.

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