

**Training Module
on
CONTRACTING**

**Sponsored by
UNDP
&
Department of Personnel & Training Government
of India**

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INTRODUCTION

This training course module on ‘Contracting in Government’ has been prepared under a UNDP funded project for ‘Strengthening of State Administrative Training Institutes in India’ and is sponsored by the Department of Personnel and Training, Government of India. The module addresses the training needs of Indian government officials of the A, B and C levels in respect of entering into and enforcing contracts. Though it has been designed as a four-day course module, instruction sets for the trainer have been designed in a way that facilitates reduction or increase in the time frame to suit the specific requirements of the target participants. The reading material and exercises provided along with, have been developed as an easy reference and are not meant to be the last word in the matter of contracting. Most trainers would want to and perhaps need to add their own additional material, relevant to the rules and procedures obtaining in each state, to make their training relevant to their participants. The course design may also require to be modified and presented appropriate to the local situation.

ORGANISATION OF THE MATERIAL

To facilitate the above, the training course module consists of

- (i) A Trainer’s Guide, and
- (ii) Background Reading Material for the participants.

The *Trainer’s Guide* contains, in addition to a background note for the trainer, which explains the design, a master programme schedule and instructional material (session guide) to the trainer for the conduct of each session. This includes pointers to the trainer to facilitate the sessions and suggestive time allotments for each session. The Trainer’s Guide also includes handouts, sample case studies and exercises for the skill enhancing sessions wherever relevant and scheduled in the course module. Some areas of interest for group discussion have also been introduced. In addition, instructional material for use as visual aids for the theory sessions, have been provided.

It is expected that the instructor / trainer / resource person will incorporate his or her additional training material – be it case studies,

discussion topics, visual aids or handouts - into the programme. The handouts identified are not background material, which provide the theoretical inputs for each session. They are such papers as the course guide for use by the trainer while calling for nominations / participants, evaluation forms and group discussion assignments

The ***Background reading material*** consists mainly of brief write ups for the participants on each of the theory sessions. It is reiterated that the reading material is not exhaustive. Reference has been made to recommended reading material. As this is a generic course module on the subject, the reading material does not include any material on specific orders, rules or provisions obtaining in each state. It is considered necessary or rather imperative, that this background reading material is amplified and supported with extracts of the extant rules, procedures, codal provisions or other government orders relevant to the programmes for each state.

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BACKGROUND AND CONTEXT

In a traditional sense, the term 'contracting' in the government context is by and large synonymous with and has been associated with the execution of public works in the nature of construction, infrastructure creation and repair activity. In a narrower sense, the term has also been applied to activity related to procurement of material, equipment and machinery by various government departments. However, with growing government commitment the world over to improve the quality of delivery of public services, but given the scarcity of public funds for both capital investments and qualitative service delivery, what we see today is a deliberate and radical though highly imaginative move towards Public Private Partnership contracts in Governments. The ultimate responsibility for quality delivery, however, continues to remain with the government.

NEED

In most state governments, the rules and regulations of contracting for public works, both for construction and repair, and the technical requirements of specifications and measurements are contained in the tenets prescribed in the Public Works Department Manuals or Codes. To a large extent these are supplemented by the regulations of the finance and accounts departments on procedural matters relating to tenders, accounting and budgetary requirements and well as delegation of financial powers.

In the context of expanding horizons in contracting in government today, it has become imperative and rather urgently so, that all levels of government functionaries associated with contracting are given adequate grounding in the generic principles and processes of contracting of varied nature.

PERFORMANCE PROBLEM

Contracts in government are made through agreements or purchase orders entered into with vendors or service providers. Contracts, as is commonly known, carry a lot of technical, financial and legal implications. The lack of adequately trained and competent personnel to handle contracts in and for government results in non-adherence to prescribed procedures,

improper and inadequate drafting of contract documents and at times delay in execution of the contracts. This in turn causes tremendous loss of resources, both in terms of time and exchequer to the government, on account of disputes that have arisen between the parties to a contract during enforcement of the contract conditions. The plethora of objections raised by the Auditor General on contracting matters in government bears testimony to this problem.

DESIGN BRIEF

Aim

This training course on 'Contracting' has been designed as a generic module for a four-day programme. Its content is drawn from the rules, regulations and procedures obtaining in government presently. It aims at reinforcing and improving the skills and knowledge of participants in the basic principles, procedures and trends in contracting in government, so that

1. Contracts are made following prescribed procedures
2. The interest of the government is safeguarded in the best possible manner
3. Contract documents are drafted and contracts are enforced keeping rules, procedures, legal implications and government interest in mind, and
4. Requirements of reform are adequately addressed

Training Objectives

At the end of the course, the participants will be able to -

- ✓ Describe the relevant laws and principles governing contracting in government
- ✓ Describe tendering procedures and rules in government
- ✓ List the nature of government contracts
- ✓ Develop tender notices / Invitation for bids, tender schedules, comparative statements / Evaluation reports for bids
- ✓ Prepare contract documents such as Purchase orders, Agreements
- ✓ Conclude technically sound contracts in a manner free from procedural and legal lacunae
- ✓ Handle post contract developments
- ✓ Develop check lists for monitoring contract related processes
- ✓ Respond to on current models of contracting and their applicability

- ✓ Describe the dispute resolution methodologies in government contracts
- ✓ Identify reform enabling mechanisms at their work place

Enabling Objectives

1. Describe the relevant laws and principles governing contracting in government
 - a. To describe the principles of contracting in government
 - b. To define the constitutional responsibilities of government officials in contracting
 - c. To describe the relevant provisions of the Indian Contract Act, 1872 and other laws having implications on government contracts
2. Describe the tendering / contracting methods, rules and nature of contracts in government
 - a. List the main procedural and legal concerns of government in contracting
 - b. Detail the methods of contracting
 - c. Identify the different nature of contracts
3. Finalise contracts in a manner free from procedural and legal lacunae
 - a. To draft tender schedule relevant to the need / work
 - b. To prepare tender notice / tender enquiry / Invitation for bids document
 - c. To describe the procedure of tender opening
 - d. To list out the duties of tender opening officials
 - e. To evaluate responses to tender / bids in terms of extant orders and provisions of government
 - f. To prepare agreements and purchase orders in conclusion of contract
 - g. To interpret the delegation of powers in respect of contractual matters – administrative and financial
4. Monitor post-contract developments with in the framework of the rules

- a. To review progress of contract with reference to contract terms
 - b. To interpret variations in contract in terms of time, scope and resource implications
 - c. To decide closure of contracts
5. Describe dispute resolution methodologies applicable in government contract
- a. To define the scope and powers of the arbitrator under the Arbitration & Conciliation Act, 1996
 - b. To identify the relevant provisions of the contract with facilitate reference to arbitration
 - c. To describe the procedure for arbitration
 - d. To adjudge the reasons for increased reference to arbitration
6. Describe current developments in contracting methodology
- a. To assess the reasons for need for change in scope and methods of contracting
 - b. To detail the various alternative models of contracting in use in government
 - c. To analyse the merits, demerits and relevance of specific clauses contained in such contracts
7. Examine need for reform and improvements in contracting
- a. To assess the benefits of automation of contracting
 - b. To identify concerns / areas for reform in contracting
 - c. To establish public official responsibility
 - d. To review lacunae and areas of improvement in contract procedures

SCOPE

Thus, this training course covers the generic principles and process of contracting in Government, including evaluation of acceptance of offers and entering into agreements (whether for works or for procurement of stores or for outsourcing services), with a view to clearly establishing the responsibilities of each tier of the government machinery in the function of contracting.

While so doing, the course highlights the need for transparency in the contracting process, the methods of bringing about accountability at each level of functioning and the measures of ensuring both transparency and accountability.

It deals with the issues involved in enforcement of contracts and the role of arbitration in resolving contractual litigation.

The course also focuses on the changing perspectives in contracting methodologies in government in the current world economic scenario and stresses on the need for working out strategies and methods of building up acceptable and appropriate systems as well as organizational capabilities, in the discharge of functions in this field of working.

Care has been taken to ensure that the contents of the course are generic in nature and are applicable to government contracts of all nature. The content is drawn from the rules, regulations and procedures obtaining in government presently. Areas involving technical inputs such as preparation of plans or drawings, estimates, specifications, technical and administrative sanctions and project management techniques have not been covered in view of the need to develop a generic module. So too, measurements and inspections or matters of financial scrutiny of contracts, are not included within the scope of this course.

However, this does not in any way imply that the above areas are not pertinent to or relevant to the scope of this course. It is necessary that the course coverage be revisited by the trainer depending on the target participants for each programme and a fair degree of technical inputs relevant to such participants be incorporated, if necessary, by increasing the duration of the programme. For instance, for a target participation mainly consisting of engineers from the public works departments, it would be necessary to include sessions, wherever relevant, on the standard specifications of work and schedule of rates applicable in the state.

CONTENTS

- Contracting in Government – The Contract Law, Interest Act, Law of Limitation, Labour Laws
- Types of contracts – Nature of contracts in government

- Contracting through tenders - Pre-tender formalities such as preparation of tender notice / Invitation for bids, development of bid documents/ tender schedule
- The process of calling for tenders - tender opening and evaluation criteria - principles and procedures
- Drafting of tender committee recommendations
- Drafting and issue of acceptance letters and agreements / purchase orders - Standard /Mandatory/Desirable clauses
- Contract implementation – Post contract developments – Supplementary/ Rider agreements – Variations in quantity and value – Extension of time for completion – Closure / Termination / Breach of contract
- Dispute resolution mechanisms - Arbitration – Role of government as a party to the contract – The Arbitration and Conciliation Act, 1996
- Current contracting models in government – international contracting practice
- Reform initiatives in contracting - public official responsibility to ensure transparency, speed and accountability in contracting.

CLIENT

The course has been designed as a generic and composite one for three target levels of participants, namely Groups A, B and C level officials, who discharge various responsibilities relating to contracting in all departments of government. While hitherto, contracting functions were discharged primarily by engineers responsible for execution of works contracts and by officials handling purchases in government in consultation with their associate finance department in some cases, such a distinction is no more relevant. Public private collaborations in large facets of functioning as well outsourcing of requirements of varied

(especially ancillary) nature have become the norm and hence contracting has become a function inevitable to almost all departments.

Group A has been identified as the decision making level in the process of contracting in government. Groups B and C have been identified as the middle and first levels of management and the senior supervisory support level.

ENTRY BEHAVIOUR

The course keeps such developments in view and in addition recognizes that the entry behaviour of participants is likely to be

- a) Heterogeneous as the functions and responsibilities associated with each level in government in the process of contracting are different.
- b) Heterogeneous as they would belong to different age groups
- c) Homogenous in the sense that all of them will be from Government Departments
- d) All adult learners

Broadly, the course lays emphasis on

- Problem solving and interpretation for Group A
- Interpretation and Analysis/Evaluation of contracts for Group B
- Preparation of documents and Analysis/Evaluation of contracts for Group C.

It is acknowledged that the functional responsibilities of each of these levels are not distinct. Further depending on the value and nature of contract and the delegation of powers obtaining in any state government, it is possible that Group B officials also discharge responsibilities relating to decision making for lower value contracts in addition to being responsible for initiating process related actions on higher value contracts. Regular monitoring of contracts on the basis of jurisdiction by and large falls under the responsibility of the middle management, i.e., level B officials.

On account of the varied functional responsibilities at each level, it is suggested or in fact it may be essential to ensure, that the participants are drawn from homogenous groups, and that the participant expectations and

programme objectives are well synchronized. It is therefore suggested that the profiles of the participants are analyzed and that the suggestive programme schedule enclosed is revisited by the Course Director in order to draw up appropriate programme schedules within the ambit of the training objectives, keeping in mind the entry behavior of the participants.

To assist the Course Director in this effort, a sample questionnaire format - 'How much do you know?' - to be filled in by the participants prior to the programme by prospective participants while forwarding nominations, could be designed. This format would facilitate the Course Director to analyze the knowledge level of participants and draw up a suitable schedule to meet their requirements broadly. Alternatively, participant expectations in terms of anticipated inputs could be obtained through interaction with them after their registration for the course and prior to the commencement of the programme.

COURSE DURATION AND DESIGN

The course has been designed as a four-day program with approximately 20 hours of input. While this may be adequate for Group B and C levels for which the stress would be on procedural matters, the underlying assumption is that for the 'A' group, procedural issues need not be greatly stressed. Instead, the emphasis would need to be on systemic refinements in contracting, current practices and transparency and accountability issues. Any programme designed for just this group could be reduced to 3 days. This modification is in line with the roles and responsibilities assumed for this level, as detailed above.

There are 7 learning units, covered over 22 sessions. Each learning unit is completed in one or more than one sessions. There is also a definite linkage between the learning units. Each learning unit has a stated objective and it is necessary to keep this objective in mind throughout the conduct of the session. The module has been designed providing for equal number of sessions of instructional and practical nature. It is recommended that this balance be maintained between theory and practice. The course has been conceived in 45-minute modules that have been combined into longer periods wherever felt necessary. Where the theory input is followed immediately by a practice or practical session, such combination is worth considering. Sample case studies (case lets) and exercises have been identified and incorporated covering the process life cycle of contracting, to help the participants to identify gap areas of

importance and concern. In addition to lecture cum discussion method, small group exercises followed by presentation, group discussions, case analysis and quiz methodologies, which would greatly encourage trainee participation, have been incorporated.

It will be obvious that the total duration has been tightly condensed and that only the minimum time limit has been allotted to each session. Wherever possible, and more important, wherever necessary, to meet the training requirements of each participant group, it may be necessary for the trainer / course director to extend or modify the programme, in order to incorporate some technical sessions or topics appropriate to the participants needs and concerns as elaborated above.

CONSTRAINTS

1. A large number of officials are required to be trained.
2. The target group is also highly heterogeneous in terms of age, responsibilities and nature of duties.
3. The course requires the active involvement of trainers who have in depth knowledge as well as adequate experience in contracting for government requirements. Such knowledge and experience is also likely to be different for engineering and other nature of contracts. This aspect has to be viewed from a long-range perspective of developing capacity among trainers, as the relevance of training programmes in contracting would continue on a permanent basis in any government.
4. The programme has been designed for a group of approximately twenty participants. In the event of increase in the number of participants, it may be necessary to incorporate additional group exercises and case studies.
5. The duration of the course, as earlier discussed, would require to be amplified to meet the specific technical training needs of each participant group.

VALIDATION

At the end of the course, an immediate reaction questionnaire will be given to the participants to obtain their views on the extent to which the objectives envisaged were achieved, the content, duration, methodology, sequencing of learning units and time allotted for the individual topics in addition to the feedback on faculty (in house and guest faculty).

ASSESSMENT

Assessment has been proposed at various stages:

The Nomination Form is designed to assess entry behaviour of participants so as to facilitate changes or modifications in the course content, if necessary

Formative Assessments have been proposed in each learning unit through quiz, questions, case let discussions and daily feedback of faculty members

The extent of transfer of learning to the workplace can be effectively gauged over a period of time by obtaining feedback subsequent to the conduct of the course from the same set of participants. A questionnaire shall be sent to all the participants as well as the organizations / departments from which the trainee participants were deputed, say after six months to elicit response on the extent to which the training programmed had assisted in sorting out their performance problem. Reduction in the number of audit references on improper contracting would also be a good parameter.

DESIGN OF LEARNING UNITS

The design of the learning units based on objectives discussed above and indicating the sequence, method, media, performance aids, duration, resource person and method of assessment of each, is tabulated hereunder.

COURSE SCHEDULE

<u>Day</u>	<u>Time</u>	<u>Topic / Content</u>
<u>Day 1</u>	10.00 am - 10.30 am	REGISTRATION Introductions, Participant Expectations from programme
	10.30 am - 11.00 am	Programme Overview
	11.00 am - 11.15 am	TEA BREAK
	11.15 am - 11.30 am	How much do you know? – Questionnaire (or) CD's feedback on participants expectations
	11.30 am - 12.15 pm	Contracting in Government – Principles & Constitutional provisions - Indian Contract Act
	12.15 pm – 1.00 pm	Tenders and Contracts - Forms & Nature of Tenders
	1.00 pm - 1.15 pm	Quiz
	1.15 pm - 2.00 pm	LUNCH BREAK
	2.00 pm – 2.45 pm	The tendering process – Principles - Invitation of tenders – Tender schedule preparation
	2.45 pm - 3.30 pm	Exercise
	3.30 pm - 3.45 pm	TEA BREAK
	3.45 pm - 4.30 pm	Tender Notice – Tender opening
	4.30 pm - 5.00 pm	Exercise Quiz Briefing for the following day's schedule

<u>Day</u>	<u>Time</u>	<u>Topic / Content</u>
<u>Day 2</u>	10.00 am - 10.30 am	Recap
	10.30 am - 11.30 am	Consideration of tenders - Preparation of comparative statement – Briefing Note - Bid evaluation – Technical & Financial, Cost of ownership
	11.30 am - 11.45 am	TEA BREAK
	11.45 am - 1.15 pm	Evaluation of bids – Case studies for discussion
	1.15 pm - 2.00 pm	LUNCH BREAK
	2.00 pm – 2.45 pm	Award of contracts - Finalisation of agreements
	2.45 pm – 3.30 pm	Standard, Mandatory, Desirable Clauses in Works / Purchases / Services / Maintenance / Labor contracts Extant delegation of powers on contracting
	3.30 pm - 3.45 pm	TEA BREAK
	3.45 pm - 4.15 pm	Group Exercise on Award of contract – Discussion on Case lets
	4.15 pm – 5.00 pm	Transparency & Accountability in contracts – Public official responsibility
		Briefing for the following day's schedule

<u>Day</u>	<u>Time</u>	<u>Topic / Content</u>
<u>Day 3</u>	10.00 am - 10.30 am	Recap
	10.30 am - 11.30 am	Contract Implementation – Variations - Modification / termination / Breach / closure of contract
	11.30 am - 11.45 am	TEA BREAK
	11.45 am - 1.00 pm	Post Contract Implementation – group exercise on case lets followed by discussion
	1.00 pm - 2.00 pm	LUNCH BREAK
	2.00 pm – 3.00 pm	Dispute resolution - Role of Arbitration in Government Contracts -The Arbitration and Conciliation Act, 1996
	3.00 pm – 3.30 pm	Discussion – Arbitration – Reason for increase
	3.30 pm - 3.45 pm	TEA BREAK
	3.45 pm - 5.00 pm	Dispute Resolution – Group exercise on case lets
		Briefing for the following day's schedule

<u>Day</u>	<u>Time</u>	<u>Topic / Content</u>
<u>Day 4</u>	10.00 am - 10.30 am	Recap
	10.30 am - 11.15 am	Current models in contracting in Government – PPP, DBFO, DBO, BOO models - their relevance and applicability in government
	11.15 am - 11.30 am	TEA BREAK
	11.30 am - 12.15 pm	International contracting procedures – World Bank Aided Contracts
	12.15 pm – 1.00 pm	PPP – A Case study
	1.00 pm - 2.00 pm	LUNCH BREAK
	2.00 pm - 3.30 pm	Reforms in contracting – E procurement initiatives
	3.30 pm - 3.45 pm	TEA BREAK
	3.45 pm – 5.00 pm	Introducing systemic improvements in workplace – Discussion followed by group presentation
	5.00pm to 5.30 pm	Validation & valediction

A. DESIGN OF LEARNING UNITS

The Training Objectives of the course are covered under the following modules

- Contract – Acts, Rules & Regulations
- Contracting – Methodologies & Modalities
- Contracting process – Tendering & Agreements
- Contract enforcement
- Dispute resolution
- Current developments in contracting methodologies
- Reform initiatives & public official responsibility in contracting

Objectives	Content	b. Sequence	Method	Media	Performance Aids	Duration	Facilitator	Assessment
Module 1: Contracts – Acts, Rules & Regulations								
I (a & b)	Contracting in govt.	Principles of govt. contracts Constitutional responsibility of officials	Lecture	OHP/PPT	Handouts	20mts	IRP	Formative Assessment
I(c)	Contract Law	The Indian Contract Law – Relevant provisions	Lecture Disc	OHP/PPT	Handouts Copy of 'The Indian Contract Act'	25mts	IRP	-do
Module 2: Contracting – Nature, Methodologies and Modalities								
2(a & b)	Tendering methods, procedures & rules in government	Tenders & Contracts – Extant orders Methods of contracting in government	Lecture Disc. Quiz	OHP/PPT FC	Handouts	20mts	IRP	-do
2 (c)	Types of tenders	Nature of tenders in govt	Lecture	FC	Handouts	25mts	IRP	-do
Objectives	Content	c. Sequence	Method	Media	Performance Aids	Duration	Facilitator	Assessment
Module 2: The contracting process – Tendering and Agreements								
3 (a)	Preparation for tendering – Tender schedule	Identification of Pre – tender requisites Develop tender schedule - Mandatory clauses and optional clauses	Lecture Gp. Disc. Exer.	OHP/PP T FC	Handouts	1.30 hrs	IRP	-do
3 (b, c, d)	Tender Notice and Tender Opening	Preparation and issue of tender notice Procedure for tender opening Responsibility of tender opening officials Tender opening records to be maintained	Lecture Gp. Exer.	OHP/ PPT	Handouts Checklist	1.15 hrs	IRP/ ERP	-do
3 (e , g)	Evaluation of bids	-Procedure for preparation of Comparative Statement -Briefing notes - Responsibilities in preparation of CS / Briefing notes Evaluate Tenders -Technical / Commercial bids -Assess Cost of maintenance	Lecture Disc. Exer. – Case study	OHP/PP T FC	Handouts Checklist	2.30 hrs	IRP/ ERP	-do

		-Assess Total cost of ownership Record of decisions / recommendations						
Objectives	Content	d. Sequence	Method	Media	Performance Aids	Duration	Facilitator	Ass
3 (f)	Entering into agreement	Drafting an agreement / Purchase order / contract - Mandatory and Optional clauses	Lecture Gp.Disc on caselets	OHP/PPT T FC	Handouts Checklists	1.30 hrs	IRP/ERP	-do
Module 4 : Contract Enforcement								
4 (a,b,c)	Post contract monitoring	Variations in time and scope Termination – Determination of contracts	Lecture Gp. Exer. Case study	OHP/PPT FC	Handouts Checklist	2.30 hrs	ERP	-do
Module 5 : Dispute resolution								
5 (a,b,c,d)	Mechanisms for Resolution of disputes in government contracts	Provisions for dispute resolution in government contracts Alternative dispute resolution – Arbitration The Arbitration & Conciliation Act, 1996 Reasons for reference to arbitration	Lecture Disc. Exer. – Case study	OHP/PPT FC	Handouts Checklist	2.45 hrs	ERP	-do
Module 6 : Current developments in contracting methodologies								
6 (a, b)	Current models in contracting	Public Private Partnerships - DBFO, BOO, BOLT, BOOT - International Contracting practices - World Bank Aided Contracts	Lecture Disc	OHP/PPT FC	Handouts	1.30 hrs	ERP	- do
6 (c)	Public Private Partnerships	Analysis of Provisions in contracts	Case study - Disc	OHP/PPT FC	Handouts	45 mts	ERP	-do
Module 7: Reform initiatives & public official responsibility in contracting								
7 (a)	Reforms in contracting	E procurement initiatives	Demo. Disc.	PPP	Handouts	1.30 hrs	ERP	-do
7 (b, c ,d)	Public Official responsibility	Transparency & Accountability mechanisms	Group Disc. Pres.	OHP/PPP	Handouts	1.15 hrs	ERP	-do

PRE COURSE PREPARATION

1. Firm up the dates of the programme
2. Identify participants based on analysis of training needs
3. Issue call letters inviting participation and/or nominations

4. Accept nominations and issue confirmations
5. Identify resource persons and interact with them
6. Finalise the course schedule and attendant formalities
7. Ensure facilities / arrangements for conduct of programme -

Infrastructure:

- 1 Classroom
- 2 Discussion rooms
- Access to computers and library

Material:

- Class room equipped with computer and audio visual equipment (OHP/LCD/microphones, Public address system/Flip chart board /participant name boards
- Discussion rooms
- Stationery - Flip chart paper/white board marker/OHP & marker pens/OHP sheets/Floppy diskettes/White sheets/Stapler/Stapler pins/Sketch pens etc.
- Trainee kits with course material, Pad, Pen
- Participants' accommodation, if required
- Transport arrangements

Manpower:

- Course coordinator/Training Assistant/Attender, if required
- Guest Faculty / Resource Persons

CONTRACTING IN GOVERNMENT

Course Guide and Schedule
(for use while calling for nominations)

Introduction

The mechanism of contracting, whether for development of infrastructure or for providing services of allied or ancillary nature, has today become an accepted norm in any government machinery. Contracting, in the traditional sense, refers to the privatization of services, the responsibility of which eventually remains with the Government and for which the Government provides finances to cover costs. Conventionally, the term contracting in government context is largely associated with the execution of public construction and repair works as well as to the procurement of material, equipment and machinery required by various government departments. Over a period of time, however, with growing government commitment the world over to improve the quality of public services, and given the scarcity of public funds for capital investments coupled with high operating costs, radical though highly imaginative Public Private Partnership contracts are now being attempted in Governments.

Contracting in Government at large has therefore moved, from its nascent forms to public-private partnerships covering core areas of capital projects and procurements to social programs, manpower and technology related services. The complexities involved in the effective discharge of the related functions are compounded by the responsibilities associated, and implications in terms of time, resources and manpower on account of ineffective contracting.

Aim

This training course on contracting has been designed for functionaries in different levels in government who discharge various responsibilities related to contracting. The course content is drawn from the rules, regulations and procedures obtaining in government presently. It will define and clarify concepts and procedures related to the process of contracting and improve the participants knowledge and skills in discharging related responsibilities.

Objectives

In keeping with the above aims, the objective of this course is to enable participants to

- Describe the relevant laws and principles governing contracting in government
- Describe tendering procedures, rules and nature of contracts in government
- Develop tender notices / Invitation for bids, tender schedules, comparative statements / Evaluation reports for bids
- Draft contract documents such as Purchase orders, Agreements
- Conclude technically sound contracts in a manner free from procedural and legal lacunae
- Handle post contract developments such as variations in contract value, quantity and scope, supplementary agreements, termination and determination of contracts, levy of penalties for delay or non-adherence to contract conditions
- Develop check lists for monitoring contract related processes
- Respond to on current models of contracting and their applicability
- Describe the dispute resolution methodologies in government contracts
- Identify reform enabling mechanisms at their work place

Designed for

The course has been developed as a composite one for Group A, B and C levels of officials in government. While hitherto, contracting functions were discharged primarily by engineers responsible for execution of works contracts and by officials handling purchases in government in consultation with their associate finance department in some cases, such a distinction is no more relevant. The increasing stress on citizen centered government and growth in technology, coupled with efforts by all governments to right size, has given rise to public private collaborations in large facets of functioning as well outsourcing of requirements of varied nature. Contracting has thus become a function inevitable to almost all departments. The course keeps such developments in view and in addition recognizes that participants are likely to be heterogeneous.

Course Design and Duration

The course has been designed as a four day program with approximately twenty hours of input. The design provides for equal number of sessions of instructional and practical nature and reinforces the learning through exercises and case study discussion methodologies. The programme will commence at 10 hrs on the first day and conclude at 17.30 hours on the last day. The normal working hours in the forenoon will be from 10 hrs to 13.15 hours and 14.00 hours to 17.30 hours in the afternoons.

Day wise indicative schedule of contents is given overleaf.

DAYWISE SCHEDULE

DAY	FORENOON SESSION	AFTERNOON SESSION
Day 1	Registration Program Overview Introduction to Contracts in Government – Nature and Type of contracts Contracts & Tenders	Contracting process – Principles Preparation of Tender Schedule - Invitation & Opening of tenders
Day 2	Evaluation of bids	Award of Contract Transparency & Accountability - Public official responsibility in contracts
Day 3	Enforcement of Contracts Post Contract implementation	Dispute resolution - Role of Arbitration in Government Contracts
Day 4	Current developments in contracting in government – their relevance & applicability - International contracting practices	Reforms in contracting - Systemic improvements in contracting Validation & Valediction

SESSION GUIDE

SESSION BRIEF

First day / Second day / Third day / Fourth day

Session 1: Introduction

1. Activity/Topic : Registration, Introductions, Participants Expectations from programme, Course Overview
2. Duration of the session : 1hr. (10.00 am - 11.00am)
3. Facilitator : Course Director
4. Objective :
 - To introduce course, Course Director and training center officials and facilities, Complete the registration formalities
 - To facilitate introduction and expectations of participants
 - To explain the design, purpose and content of the programme
 - To explain the session evaluation forms, how and when it is to be filled in.
5. Methodology : Instruction and Interaction
6. Handout material : Identity Cards, Registration Forms, Course Kits, Evaluation Forms
7. Support facilities required : Flip charts, Marker Pens

Session 2: How much do you know?

1. Activity/Topic : Obtaining inputs through questionnaire - How much do you know?
CD's feedback on participant expectations
2. Duration of the session : 15 minutes (11.15 am - 11.30 am)
3. Facilitator : Course Director
4. Objective :
 - To obtain from the participants inputs on their knowledge and skill levels with reference to the programme context
 - To explain how the programme schedule and content will be adapted to the specific needs of the participant group
5. Methodology : Before commencing the session , be sure that participant has introduced himself / herself. Explain the reasons for the questionnaire. Obtain feedback on formats or through a short interaction
6. Handout material : Questionnaire – “How much do you know?”
7. Support facilities required : Flip charts, Marker Pens

Learning Unit 1 – Session 3:

Topic	:	Contracting in Government – Principles of Government Contracts & Constitutional Provisions
Duration of the session	:	45 mts (11.30 am – 12.15 pm)
Facilitator	:	Course Director / IRP
4. Learning Objective	:	<ul style="list-style-type: none">- To describe the principles of contracting and essential characteristics of any contract- To define the constitutional and legal provisions & responsibilities of officials in contracting- To describe the relevant provisions of the Indian Contract Act, 1872 & other related laws
5. Methodology	:	Lecture / Discussion
6. Reading material	:	<ol style="list-style-type: none">1. Contracting in Government – An Overview2. The Indian Contract Act, 1872 – Bare Act
7. Recommended Reading	:	Indian Contract Act, 1872 Sale of Goods Act
8. Handouts	:	--
9. Support facilities required:	:	OHP/LCD, OHP Transparencies, White Board, Marker Pens.

SESSION GUIDE

45 mts. (11.30-12.15) This is the introductory session to 'Contracting in Government'. It is necessary to build the linkages even at this stage to the coverage in the future sessions to enable participants to have a holistic view of contracting. Though the target level of participants at the three levels, A, B and C are expected to have fairly adequate knowledge of the process of contracting, a discussion on the basic characteristics of any contract and the distinct features of government contracts should be dwelt upon, stressing on the legal provisions, responsibilities of government functionaries, as well as the issues of delegation, transparency and accountability of government functionaries.

This session is vital to the entire programme. Specific important provisions and clauses of the Indian Contract Act should be taken up for detailed discussion.

Learning Unit 2 – Session 4:

1. Topic : Nature and methods of tendering
2. Duration of the session : 1 hr (12.15 pm – 1.15- pm)
3. Facilitator : Course Director / IRP
4. Learning Objective :
 - List the main procedural and legal concerns of government in contracting
 - Detail the methods of contracting
 - Identify the different nature of contracts
5. Methodology : Lecture / Discussion followed by Quiz
6. Reading material :
 1. Nature of contracts in government
 2. Types of tenders in government
7. Recommended Reading : State PWD manual / Finance code (where relevant)
8. Handouts : - Quiz
9. Support facilities required : OHP/LCD, OHP Transparencies, White Board, Marker Pens.

SESSION GUIDE

12.15 – 1.15 pm Introduce the tendering process as a method of contracting in government. It is necessary to provide a clear linkage between contracting and tendering, the latter as a mechanism for the former, in government. The session then deals with the general principles governing tendering. It proceeds to discuss the various types of tenders that are acceptable in government, the implications, assumptions and strengths of each.. The instructor should have a good knowledge of the different tendering options open in government, along with the relative strengths, limitations and requirements of each, in order to co-ordinate this session effectively

It may be worthwhile highlighting the basic characteristics that distinguish a government contract vis-à-vis commercial contracts, and the types of tenders by writing the key phrases/words on the flip chart or chalk board, like

OPEN TENDER

LIMITED TENDER

SINGLE TENDER (or) TENDER BY NOMINATION

QUOTATIONS

LOCAL PURCHASE

1pm – 1.15 pm: An individual quiz exercise shall follow with the participants being given 10 mts to fill in the quiz forms and answers being read out / discussed

Learning Unit 3 - Session 5:

1. Topic : The tendering process – Principles
-Invitation of tenders – Tender
schedule preparation
2. Duration of the session : 45 mts (2 pm to 2.45 pm) - Lecture
45 mts (2.45 pm – 3.30 pm) -
Exercise
3. Facilitators : IRP
4. Learning Objectives : To draft tender schedule relevant
to the need
5. Methodology : Lecture followed by individual
exercise
6. Handouts : Any tender schedule relevant to the
participants profile may be taken
up for discussion or
Case let Exercise 1
7. Background Reading : Tender Process - Preparation of
Tender Schedule – Tender
Opening
8. Recommended reading : The Relevant rules and provisions
on tendering as contained in the
State Financial codes and manuals
/ rules of the engineering
departments.
9. Support facilities required : OHP / LCD Projector, OHP
Transparency sheets, OHP pen &
White board Marker Pen

SESSION GUIDE

2 – 2.45 pm(45 mts)

Record key words in front of the group as each is discussed.

You may wish to highlight how the lack of clarity in the tender schedule documents, and the absence of some mandatory clauses can have implications, both financial and legal, which are detrimental to the proper implementation of the contracting process.

This will be relevant in the exercise session which follows.

2.45 -3.30 (45 mts)

A sample tender schedule may be taken for analysis to explain the rationale for incorporation of specific clauses and formats.

Learning Unit 3 - Session 6 :

1. Topic : Tender Notice – Tender opening
2. Duration of the session : 1.15 hrs (03.45 pm to 05.00 pm)
3. Facilitator : IRP/ERP
- Learning Objective :
 - To formulate & issue tender notice / tender enquiry / Invitation for bids document
 - To describe the procedure of tender opening
 - To list out the duties of tender opening officials
4. Methodology exercise : Lecture followed by individual exercise
5. Reading material : Tender Process - Preparation of Tender Schedule – Tender Opening
6. Handouts : 1,2 Exercises on Tender Notice Checklist on Tender Opening procedure
7. Recommended reading : The Relevant rules and provisions on tendering as contained in the State Financial codes and manuals / rules of the engineering departments.
8. Support facilities required : LCD/OHP, Transparencies, Marker pens

Session Guide

3.45-4.15 pm

Present the participants with a brief of the pre-tender processes i.e., preparation of tender notice, the development of tender schedules and tender opening. The need for tendering in the most open manner, through issue of a tender notice and the requisites of any tender notice must be discussed.

The precautions during tender opening and the *raison d'être* for the insistence on these procedures should be abundantly clarified. The main points may be summarized before closing the session.

You may like to record key words on the chalk board, or prepare cards on them, e.g.,

DESCRIPTION OF WORK, EARNEST MONEY, DATE OF OPENING OF TENDER

4.15 pm –5 pm

The participants shall be asked to draft a Tender Notice based on the exercise given to them. This is an individual exercise at the end of which a discussion on the exercises given shall be facilitated, reiterating the implications of non-inclusion of specific clauses in the Tender Notice. Summarise the session by reiterating the basic requirement of adhering to stipulated procedures. Conduct a quiz or a question and answer session to help recapitulate the topic.

Participants may be requested to fill up the evaluation forms for the sessions of the first day.

SESSION BRIEF

First day / **Second day** / Third day / Fourth day

Learning Unit 3 - Session 1:

1. Topic : Evaluation of Bids – Technical & Financial
2. Duration of the session : 1.00 hr(10.30 am to 11.30 am) - Lecture
3. Facilitator : IRP/ERP
4. Methodology : Lecture followed by discussion
5. Learning objective : - To evaluate responses to tender / bids in terms of extant orders and provisions of government
6. Reading material : Evaluation of offers -
7. Background reading : The relevant manuals / working instructions in the matter
8. Support facilities required: OHP/LCD Projector, Flip charts, OHP pen & White board Marker Pen

Session 2:

1. Topic : Evaluation of tenders - Group Case Study Exercise
2. Duration of the session : 1.305 hrs (11.45 am to 01.15 pm)
3. Facilitator : IRP/ERP
4. Learning Objective : To give the members an opportunity to work in small groups, analyse the case study(ies) given and present their conclusions
5. Methodology : Case Study exercise followed by discussion / presentation by participants
6. Handout material : Copies of the Case let developed on this topic – Nos.2,3
7. Support facilities required : OHP/LCD, Flip chart board & charts for each group, Sketch pens, OHP & White board Marker Pens, Transparency sheets, Computer for presentation, Discussion rooms

SESSION GUIDE

11.45 –12.15pm

In this session, the participants are to be grouped into groups of 3 or 4 to discuss, for about 20 minutes, any one or a couple of the case studies developed on ‘Evaluation of Tenders’

Each group has a leader who is assigned the responsibility of leading the discussion, noting all opinions and points of view and summarise the group’s views and conclusions in a plenary discussion / presentation.

12.15 – 12.50 pm

Each group shall be given 5 minutes to its their conclusions. A general discussion should be facilitated at the end of each presentation, led by the Resource Person.

12.50 -1pm

Summarise the experience and ask the participants to evaluate the sessions covered under this learning unit. Collect the evaluation forms.

Learning Unit 3 - Session 3:

Topic	:	Entering into agreement - contract
Duration of the session	:	1.30 hrs (02.00 pm to 02.45 pm – Finalisation of agreementspm – 3.30 pm – Agreement clauses – Delegation of powers)
Facilitator	:	IRP/ERP
Methodology	:	Lecture
Learning Objective	:	<ul style="list-style-type: none">- To understand the importance of a written agreement and to draft contract agreements- To prepare agreements and purchase orders in conclusion of contract- To identify mandatory, standard, optional clauses in contracts of different nature for incorporation in agreements and to learn the implications of their non-incorporation- To interpret the delegation of powers in respect of contractual matters – administrative and financial
Reading Material	:	Agreements
Handouts	:	Caselet ex.4,5
Recommended reading	:	General and Specific Conditions of Contracts for works and purchases, applicable in each state Delegation of powers in respect of works / purchases as applicable to the state
Support facilities required	:	OHP / LCD Projector, Flip charts, Sketch pen, OHP pen & White board Marker Pen

SESSION GUIDE

- 2.00 –2.45 This session should be highly informative and due to the intrinsic nature of the topic covered, is mostly instructional.
- 2.45-3.15 The latter half of the session is devoted to identification of the imperative clauses in any agreement, depending on the nature of agreement entered into. It maybe worthwhile to encourage and allow for some discussion to draw out from the participants their understanding of imperative clauses in a contract document and to report their experiences on the development of agreements, if any.
- 3.30 – 4.15 The analysis of the case lets on award of contract is to be followed by discussion on the various merits / demerits of such decision, led by the Resource Person. The emphasis should be on experience sharing among participants.
The instructor is advised to prepare a detailed list of points that he wishes to cover as the coverage of session is rather vast.

Learning Unit 3.- Session 4:

Topic	:	Transparency & Accountability in contracts
Duration of the session	:	0.30 hrs (04.15 pm - 5.00 pm)
Facilitator	:	Guest Faculty / ERP
Learning Objective	:	- To appreciate the need for transparency and accountability in government contracts. To establish public official responsibility
Methodology	:	Lecture / Discussin
Reading material	:	Transparency and accountability in government contracts - Pages ()
Background reading	:	State Laws on Right to Information
Support facilities required	:	Flip charts, OHP/LCD, Marker Pens, Transparency sheets

SESSION BRIEF

This session is introductory in nature to Learning Unit 7, and should stress on the reform attitudes required in handling contracts. The Resource Person could draw a correlation between the provisions and rules on contracting and the methods of facilitating reform in each.

SESSION BRIEF

First Day / Second Day / **Third Day** / Fourth Day

Learning Unit 4 - Session 1:

1. Topic : Contract Implementation
2. Duration of the session : 1.00 hrs (10.30 am to 11.30 am)
3. Facilitator : Guest Faculty/ERP
4. Learning Objectives : Contract Implementation - To identify post contract developments and deal with them within the ambit of the rules
5. Methodology : Lecture
6. Reading material : Contract Implementation
7. Background reading : The rules and procedures relevant to the state government
8. Support facilities required : OHP / LCD Projector, Transparency
Sheets, White boards, Marker Pen

SESSION GUIDE

A clear appreciation of the factors influencing the successful implementation of a contract is basic to the understanding of Contracting in Government. The instructor should be able to handle this session through examples in order to establish the general principles of contract management. Since participants are drawn from the relevant workplace, it should not be difficult to facilitate a discussion through actual decisions taken by them.

Learning Unit 5 - Session 2:

1. Topic : Group Exercise – Contract Implementation
2. Duration of the session : 1.15 hrs (11.45 am to 01.00 pm)
3. Facilitator : IRP & / or Guest Faculty
4. Learning Objective : To give the participants the opportunity to analyse case studies on Contract Implementation and develop conclusions and suggestions
5. Methodology : Case let analysis and discussion
6. Handout material : Case let Ex.6
7. Support facilities required: Computer, OHP/LCD, White board marker pen, White sheets, Sketch Pens, Floppy diskettes.

Learning Unit 5 - Session 3:

1. Topic : Dispute resolution in government contracts
2. Duration of the session : 1.30 hrs (02.00 pm to 03.30 pm)
3. Facilitator : ERP
4. Learning objective :
 - To examine and appreciate the reasons for dispute in government contracts
 - To understand the dispute resolution mechanisms available, the rules on arbitration and the role and responsibilities of the arbitrator (s)
 - To detail the reasons for increase in arbitration references
5. Methodology : Lecture
6. Reading material : The Indian Arbitration and Reconciliation Act 1996 (Bare Act)
7. Background reading : Dispute Resolution methodologies
8. Support facilities required: OHP/LCD, White board marker pen, White sheets.

SESSION GUIDE

This session covers a topic of common interest in contract management. It is recommended therefore that an expert in the field be requested to facilitate this session and the one that follows. Care may be taken however to brief the guest faculty on the scope and direction of the sessions, so that it does dwell adequately on the legal and procedural aspects in relation to contracts rather than on specific case decisions only.

Learning Unit 5 - Session 4:

1. Topic : Case Study Exercise – Arbitration
2. Duration of the session : 1.15 hrs (03.45 pm to 05.00 pm)
4. Facilitator : IRP and/or Guest Faculty
5. Learning objectives : - To enable the participants to think on the process of contract management objectively, through analysis of case studies on dispute resolution from actual practice
6. Methodology : Case Study - presentation
7. Handout material : Exercises on Arbitration Ex.7,8
8. Support facilities required: Computer, OHP/LCD, White board marker pen, White sheets, Sketch Pens, Floppy diskettes.

SESSION GUIDE

The timing of this session can be adjusted according to the progress of the discussions among the participants. The facilitator should first divide the members into small discussion groups and hand out the cases to be discussed and explain the case study to the individual groups. The participants should read and make a study of these cases. The interpretations on the case should be presented by a nominated representative of each group, and the interpretation thrown open to discussion.

It may be informative if the session coordinator observes and makes notes on the approach of each group and prepares summary comments to facilitate a summarisation of the proceedings.

SESSION BRIEF

First Day / Second Day / Third Day / **Fourth Day**

Learning Unit 6 - Session 1:

1. Topic : Current Models in Contracting
2. Duration of the session : 45 mts (10.30 am to 11.15 am)
3. Facilitator : IRP/ERP
4. Learning objective :
 - Understanding of the current models in contracting on account of the changing government role and responsibilities, alongwith its merits and suitability
5. Methodology : Lecture followed by discussion
6. Support facilities required : OHP / LCD Projector, Transparency Sheets, White boards, Marker Pen

SESSION BRIEF

This session is best handled jointly, through an IRP /ERP who has handled traditional contracts and another ERP who has adequate experience in dealing with the new models of contracting. The experience that the latter brings to be bear on the session is worth documenting also.

Learning Unit 6 - Session 2:

1. Topic : Current Models in Contracting – Contracts for externally aided projects - World Bank contracts
2. Duration of the session : 45 mts (11.30 am to 12.15 pm)
3. Facilitator : ERP
4. Learning objective : - Analyse the provisions of world bank (external aided) contract documents and understand the significance of relevant clauses
5. Methodology : Lecture followed by discussion
6. Background reading material : Contracts supported by external funding; Looking at contracting differently; Procurement of world bank funded works
6. Support facilities required : OHP / LCD Projector, Transparency Sheets, White boards, Marker Pen

SESSION BRIEF

At the state level, the extent of external funding for projects is enormous. It is therefore expected that this session will not deteriorate into a monologue but will be supplemented with actual experiences of the participants in dealing with contracts funded by external agencies.

This session is best handled jointly, through an IRP /ERP who has handled traditional contracts and another ERP who has adequate experience in dealing with the new models of contracting. The experience that the latter brings to be bear on the session is worth documenting also.

Learning Unit 6 - Session 3:

1. Topic : Group Discussion – PPP Model
2. Duration of the session : 45 mts (12.15 pm to 01.00 pm)
3. Facilitator : IRP & Guest Faculty
4. Learning objective : - Identification of the advantages of a PPP contract through discussion of a live contract.
5. Methodology : Discussion on Case study
6. Background reading : Contract for e seva (GOAP)
8. Support facilities required: Computer, OHP/LCD, White boardmarker pen, White sheets, Sketch Pens, Floppy diskettes.

SESSION GUIDE

It is a matter worth consideration that the same faculty which facilitated the earlier session also conducts the proceedings of this session, in order to lend credibility and that experiences in alternative contracting model experimented in the state be taken up for discussion. It is necessary that the participant reaction to the introduction of new models of contracting in the Indian context be elicited and discussed thoroughly. It is

It is also likely that the session will throw up individual experiences in this area which are worth noting for future documentation as case studies.

LEARNING UNIT 7 : session 4

1. Topic : Reforms in contracting - e procurments
2. Duration of the session : 1.30 hrs (02.00 pm to 03.30 pm)
3. Facilitator : ERP
4. Learning objectives : - To understand the different requirements on contracts for externally aided projects
5. Methodology : Demonstration (PPT) / Lecture
7. Support facilities required: LCD, White board marker pen, White sheets

SESSION GUIDE

There is a concerted effort in all states to consider solutions and methodologies that would facilitate transparency, speed and accountability. So to in contracting. E procurement initiatives and efforts to use the technological improvements in communication - internet technology - WWW for contracting have been successfully experieented with in a few states. The effort at Andhra Pradesh has been documented in a powerpoint presentation enclosed. Similar success stories are available the world over and could also be used instead in this session, to demonstrate capability and initiate discussion.

Learning Unit 7 - Session 5:

1. Topic : Systemic improvements at workplace
2. Duration of the session : 1 hr (03.45 pm to 05.00 pm)
3. Facilitator : Course Director & an external moderator.
4. Learning objectives : To consider mechanisms that would facilitate transparency, speed and accountability in contracting
5. Methodology : Introductory talk followed by group discussion – presentation and Brainstorming
6. Handouts : Panel discussion material (Systemic improvements in the work place)
7. Support facilities required: White Board and Marker Pens /PPT

SESSION GUIDE

Topics of interest in the context of contracting in government may be identified and the participants broken into groups to facilitate analysis. Presentation may be made by each group for about 10 minutes each and the analysis thrown open for discussion thereafter. Participants should consider what mechanisms can be introduced in the workplace to ensure transparency and accountability in contracting. It would be appropriate to facilitate this discussion by forming a panel among the participants to chair and lead the session. The inadequacies or constraints in the present system of functioning which mitigate the enforcement of such measures must be analysed, along with what appropriate steps can be taken to overcome this. One among the panel may be called upon to summarise and conclude the session. It may be a point worth considering whether the topics for discussion and the groups can be identified well in advance of this session, perhaps on the second day so that the participants can ponder on their respective topics sufficiently.

The internal evaluation of the sessions of the day may be taken from the participants.

Session 6:

1. Topic : Feedback & Validation
2. Duration of the session : 30 minutes (04.45 pm to 05.15 pm)
3. Facilitator : Programme Director
4. Learning Objective : How the learning will be translated to the workplace
5. Methodology : Open session & Questionnaire
6. Support facilities required: Feedback questionnaire, Learning Logs & Certificate Folder

SESSION GUIDE

This can be developed into the most interesting and important session of the programme. The participants may be asked to fill up 'learning logs' and explain what they have learnt of the programmes, how they propose to translate the learning to the work place effectively. Feedback of each participant may be elicited for effective participant involvement.

TRANSPARENCIES

CONTRACTS – LAWS AND RULES

WHAT IS AN AGREEMENT?

- a) **SECTION 2 (e) OF THE INDIAN CONTRACT ACT, 1872:**
- b) **“ EVERY PROMISE AND EVERY SET OF PROMISES,**
- c) **FORMING THE CONSIDERATION FOR EACH OTHER, IS**
- d) **AN AGREEMENT”**

SECTION 2 (h) OF THE INDIAN CONTRACT ACT, 1872

IN THE EYES OF LAW, AN AGREEMENT, WHICH IS

ENFORCEABLE BY LAW IS CONSIDERED TO BE A CONTRACT

ART. 299 OF THE INDIAN CONSTITUTION

ALL CONTRACTS MADE IN THE EXERCISE OF THE EXECUTIVE POWER OF THE UNION OR THE STATE, SHALL BE EXPRESSED TO BE MADE BY

THE PRESIDENT OR BY THE GOVERNOR OF THE STATE AS THE CASE MAY BE AND ALL SUCH CONTRACTS AND ALL ASSURANCES OF PROPERTY MADE IN THE EXERCISE OF THAT POWER SHALL BE EXECUTED ON BEHALF OF THE PRESIDENT OR THE GOVERNOR BY SUCH PERSONS AND IN SUCH MANNER AS HE MAY DIRECT OR AUTHORISE.

NEITHER THE PRESIDENT NOR THE GOVERNOR SHALL BE PERSONALLY LIABLE IN RESPECT OF ANY CONTRACT OR ASSURANCE FOR THE PURPOSE OF THIS CONSTITUTIONNOR SHALL ANY PERSON MAKING OR EXECUTING ANY SUCH CONTRACT OR ASSURANCE ON BEHALF OF ANY OF THEM BE PERSONALLY LIABLE IN RESPECT THEREOF.

THREE ESSENTIAL CONDITIONS FOR A VALID GOVERNMENT CONTRACT:

- 1. IT MUST BE EXPRESSED TO BE MADE BETWEEN THE PRESIDENT OR BY THE GOVERNOR OF THE STATE, AS THE CASE MAY BE**

**2. IT MUST BE EXECUTED FOR AND ON BEHALF OF THE
PRESIDENT OR THE GOVERNOR AS THE CASE MAY BE**

3.ITS EXECUTION MUST BE BY SUCH PERSON AND IN

**SUCH MANNER AS THE PRESIDENT OR THE GOVERNOR
MAY DIRECT OR AUTHORISE**

- **THE INDIAN CONTRACT ACT,
1872**

**SECTIONS 1-75: GENERAL
PRINCIPLES**

SECTIONS 124-238: SPECIFICS

**S 1-75: PRINCIPLE OF COMMUNICATION
OF ACCEPTANCE**

**S 23-27: VOID CONTRACT
RECIPROCAL PROMISE**

S 74: RATIONAL PENALTY

S 3-18: REVOCATION

S 235: WHO IS AN AGENT

- GENERAL CONDITIONS OF CONTRACT
- SPECIAL CONDITIONS OF CONTRACT
- STANDARD SPECIFICATIONS OF WORK
- WORKING INSTRUCTIONS CONTAINED
IN GOVERNMENT ORDERS

PRELIMINARY SPECIFICATIONS –

THE CORNERSTONE OF THE STATE
PUBLIC WORKS CONTRACTS BUT
LEGALLY INTERPRETED THROUGH
INDIAN CONTRACT ACT

AN INSEPARABLE CONDITION OF
PUBLIC WORKS CONTRACTS & DOES NOT
REFER TO
TECHNICAL CONDITIONS

PS 6, 8, 10, 11, 16, 24, (59), 60, (65) – TO BE TAKEN UP FOR
DISCUSSION

DELEGATION OF POWERS

**PREPARATION OF TENDER DOCUMENTS
&
FINALISATION OF TENDERS FOR WORKS**

COVERAGE:

**PARAMETERS GOVERNING IMPLEMENTATION OF
WORKS/PROJECTS – PROJECT – PROJECT CYCLE**

National / State Investment Plan

**SECTOR INVESTMENT
POLICY STRATEGIES**

Five Year Plan / Annual Plans

**PROJECTS: DISCRETE PACKAGING OF
INVESTMENTS TO ACHIEVE A SPECIFIC
DEVELOPMENT OBJECTS WITHIN A DESIGNATED
PERIOD**

PROJECT CYCLE :

- 1. Identifications**
- 2. Preparation of detailed Project Report**
- 3. Designs and Drawings**
- 4. Clearances and Approvals (as the case may be)**
- 5. Preparation of Estimates obtaining sanctions
(Administrative and Technical)**
- 6. Packaging and Funding**

- 7. Procurement**
- 8. Implementation**
- 9. Evaluation of Project**

IMPORTANT PROVISIONS IN GOVERNMENT CONTRACTS

- **Eligible Class of Registration**
- **Method of Evaluation**
- **Discussion on Assessment of quantum of work on hand**
- **Tender Reforms & their advantages**
- **Contents of Bid documents**
- **Case studies**

PROCUREMENT PROCESS

- 1. Preparation and approval of NIT & Tender**
- 2. Publication of Notice Inviting Tenders.**
- 3. Issue of Tender documents (one day prior to receipt date)**
- 4. Receipt of Tenders.**
- 5. Opening of Tenders.**
 - a) Technical bids.**
 - b) Financial bids.**
- 6. Evaluation and submission of tenders to CE**

- 7. Scrutiny and submission of tenders to COT**
- 8. Scrutiny of Tenders and preparation of Agenda Notes.**
- 9. Finalisation of Tenders by the Commissionerate of Tenders.**
- 10. Communication of Minutes and Proceedings.**

DELEGATION OF POWERS

**FINANCIAL LIMITS FOR
PUBLICATION OF TENDER NOTICE
POWERS TO CALL FOR TENDERS (ACCORD
TECHNICAL SANCTION)
APPROVE SALE OF TENDER DOCUMENTS
WITNESS TENDER OPENING
ACCEPT TENDERS**

APPROVED LIST OF CONTRACTORS – CLASSIFICATION

FILING OF TENDERS

TECHNIAL BID IN COVER : A

PRICE BID IN COVER : B

COVERS A & B IN COVER : C

TECHNICAL BID :

- 1. REGISTRATION PROCEEDINGS**
- 2. INCOME TAX CLEARANCE CERTIFICATE**
- 3. SALES TAX CLEARANCE CERTIFICATE**
- 4. DD / BG TOWARDS EMD**
- 5. SOLVENCY CERTIFICATE**
- 6. VALUE OF WORKS EXECUTED YEAR WISE
(5 YEARS)**
- 7. VALUE OF SIMILAR WORKS COMPLETED**
- 8. QUANTITIES EXECUTED**
- 9. WORKS ON HAND / TENDERED**
- 10. EQUIPMENT AVAILABLE**
- 11. TECHNICAL PERSONNEL AVAILABLE**

PRICE BID :

**PERMISSABLE PERCENTAGE EXCESS / LESS OVER
ESTIMATE**

VALUE PUT TO TENDER

ASSESSMENT OF BID CAPACITY

**ELABORATION OF EXTANT GOVERNMENT ORDERS
ON TENDERS, CONTRACTS**

CONTRACT ENFORCEMENT

EXTENSION OF CONTRACT

- CLAUSE 60: TIME IS THE ESSENCE OF CONTRACT
- WHAT IS REASONABLE PERIOD FOR COMPLETION OF WORK
- SAFEGUARDS AGAINST DELAY

FORFEITURE OF EMD / SD
WITHHOLDING OF DUES
EXECUTION OF BALANCE WORK AT
CONTRACTOR'S RISK AND COST

- **PREREQUISITES** - RELEVANT
CLAUSE IN STANDARD
SPECIFICATIONS
- **ADMINISTRATION:**
- REASONABLE TIME FOR COMPLETION
- HAND OVER POSSESSION OF SITE
- 2 MONTHS
- WORKING INSTRUCTIONS
- READY DRAWINGS / DESIGNS

e. CONTRACTOR:

- LIQUIDITY
- MANPOWER
- MACHINERY

EXTENSION OF TIME

1. SECTION 15 of INDIAN CONTRACT ACT – WHAT IS COERCION
2. FORCE MAJEURE - CL. 61 OF PS

WHO IS COMPETENT TO GRANT
EXTENSION

CAN EXTENSION OF TIME BE GIVEN
GIVEN SUO-MOTO BY ADMINISTRATION?

IMPLICATION OF TIME EXTENSION ON PVC

TOWARDS BETTER CONTRACTING

CONCERNS:

- **TRANSPARENCY**
- **ACCOUNTABILITY**
- **SPEED – AVOID / REDUCE DELAY – TIMELY COMPLETION**
- **SIMPLIFICATION OF PROCEDURES**
- **RATONALISATION OF RULES**
- **BETTER VALUE FOR MONEY**
- **BETTER QUALITY OF OUTPUT**

TENDER REFORMS – PRE REQUISITES

- **SOUND PROCESS**
- **APPROPRIATE SKILLS**

TRANSPARENT PROCESS

- **CLEAR DOCUMENTATION**
- **CONFIDENTIALITY**
- **EQUAL ACCESS TO INFORMATION**
- **MAXIMISING FAIR COMPETITION**

**FOCUS ON OUTCOMES AND OUTPUTS
RATHER THAN PROCESS
COMPLAINT MECHANISM**

DEBRIEFING

ACCOUNTABILITY ARRANGEMENTS

- **DEVELOPING GOVERNMENT SERVICE CHARTERS**
- **FOR STANDARDS OF PERFORMANCE**
- **FOR SERVICE LEVELS**

DISPUTE RESOLUTION

- **PROVISIONS IN GOVERNMENT CONTRACTS FOR DISPUTE RESOLUTION**
- **GOVERNMENT AS A PARTY TO THE CONTRACT**
- **ROLE OF ARBITRATION**
- **THE ARBITRATION ACT, 1940**
- **THE ARBITRATION AND CONCILIATION ACT, 1996**
- **RESPONSIBILITIES OF ARBITRATOR(S)**
- **NEED FOR CHANGED PERSPECTIVES**

ARBITRATION CLAUSE: PS 73
(PROVISION FOR REFERENCE TO
ARBITRATION)

REFERENCE TO ARBITRATION

WHEN

WHO IS THE APPROVING AUTHORITY

WHAT IS ARBITRABLE?

-INTERPRETATION OF CONTRACT

-MATTERS ARISING OUT OF THE CONTRACT

-NOT ARBITRABLE:

EXCEPTED MATTERS UNDER GCC –
PS 20, 22, 27(c), 29, 36, 37, 40

-TIME FRAME FOR ARBITRATION

-PROCEDURE FOR ARBITRATION

-POWERS TO ARBITRATE

-POWERS TO ACCEPT AWARDS

-WHY ARBITRATION
EFFICIENT
ECONOMICAL
EXPEDITIOUS
IMPARTIAL TECHNICAL
AUTHORITY

-DISADVANTAGES

MATTER OF LAW
IMPULSE OF SYMPATHY
CONNIVANCE

-TIME FRAME FOR COMPLETION OF ARBITRATION

REASONS FOR INCREASE IN REFERENCES TO ARBITRATION

1. IMPROPER & INADEQUATE ESTIMATION - VARIATIONS IN THE COURSE OF EXECUTION ON ACCOUNT OF INCREASE IN QUANTITIES & ADDITIONAL ITEMS
2. CHANGE IN DESIGN (ESPECIALLY FOUNDATION) DUE TO INADEQUATE INVESTIGATION/ SOIL EXPLORATION
3. FAULTY & AMBIGUOUS PROVISIONS IN TENDER DOCUMENT & CONTRACTUAL CONDITIONS

4. DELAYS IN HANDING OVER OF SITE –
LAND ACQUISITION DELAYS – INTER-
DEPARTMENTAL DELAYS

5. INADEQUATE PROGRESS AND
STOPPAGE OF WORK BY THE
CONTRACTOR ON ACCOUNT OF
DELAY IN APPROVAL OF FINAL
PLANS / DESIGNS / DRAWINGS

6. IMPROPER CONTRACT MANAGEMENT -
DELAYS IN ACCORD OF APPROVALS TO
VARIATIONS AND REVISION OF RATES
- LACK OF IMMEDIATE RESPONSE TO
THE CONTRACTOR DURING CONTRACT
EXECUTION

7. INADEQUATE BUDGET PROVISION –
DELAYS IN PAYMENT TO
CONTRACTOR THUS AFFECTING HIS
LIQUIDITY

8. UNDUE DELAY IN SETTLEMENT OF
FINAL BILLS

9. INSUFFICIENT ALLIED RECORDS, WHICH
RENDERS THE CASE DIFFICULT TO DEFEND
DURING ARBITRATION - LABOUR EMPLOYED
ON SITE; UP-TO-DATE & PROPERLY
MAINTAINED MBS

PROCUREMENT PROCEDURES

- Procurement functions
 - One of the basic function in all Deptt.
 - Large sums are spent on procurement.
- Procurement of Goods and Services
- Public money for procurement
- Accountability to public

Objectives

- Justified Procurement
- Equal opportunity to similarly placed
- Procedure based on objective criteria
- Transparency in process
- Procedure in conformity with the law of the land

Right Product at Right Price

- Public Perception –
- Lack of equal opportunity
- Vague Procedures
- Lack of clear quality parameters
- Mid way changes in procedures
- Lack of transparency
- Procurement – Corruption link

Steps for Procurement

- Requirement for goods and services
- Justification of need
- Quantification of need
- Define quality parameter in measurable units
- Preparation of tender document
- Pre – Proposal meeting with vendors
- Publication of tender
- Pre bid meeting with vendors
- Receipt of bids
- Opening of bids
- Comparative statement
- Decision process
- Issue of purchase order / contract
- Delivery of goods and services
- Quality control
- Payment procedures

Procurement Methods – IT and Procurement :

- EProcurement:
 - Wider publicity for OCB – through internet
 - Can cut down time required for evaluation
 - Can bring transparency in process
 - Easy supplier database management
 - MIS reports for internal reviews

- Open Competitive Bidding (OCB, NCB, ICB)
 - Large procurements
 - Take longer period to complete process

- Limited Tender System
 - Medium scale procurement
 - Invitation to pre qualified bidders only
 - Procurement process time is reduced considerably

- Rate Contract
 - Low cost high volume items
 - Items where Price remains by and large static

- Repeat orders based on LT prices
 - Low volume items

- Tender document – Heart and Soul of Procurement Process
- Preparation – should get very high attention
- Clear scope of work
- Measurable Pre-qualification criterion
- Technical specs in general format
- Well documented procedure for –
 - Receipt of bids
 - Opening of bids
 - Technical and financial Evaluation

- Predefined procedure for change management
- Well defined measurable quality parameters
 - Time schedule for supply and quality test
 - Well defined penalty clause for delay and poor quality
- Well defined payment schedules
 - Payment as per schedule or
 - Compensation for delay
 - Least possible documentation for payment
- Statement of Corrupt Practices

Model Contract Form

- Name and Addresses of both parties
- Definitions
- Product Specification and Description
- Product Quality parameters
- Product Quantity
- Contract Value
- Change Order Management
- Packing, Transportation and Insurance
- Delivery Schedule
- Quality Inspection Procedures and Schedule
- Payment Schedule
- Documentation for payments
- Securities
- Conditions and warranties
- Force majeure

- Procedure for resolution of disputes
- Conditions for terminations
- Liquidated damages and penalties
- Applicable law
- Taxes and duties

Important Laws Governing Procurement

- Indian Contract Act 1872
- Sales of Goods Act 1930
- Indian Arbitration and Reconciliation Act, 1996

(GROUP DISCUSSION EXERCISE)

**CONSTRAINTS AND ENABLING
MECHANISMS TOWARDS BETTER
CONTRACTING -
PUBLIC OFFICIAL RESPONSIBILITY**

1. CONTRACT POLICY

2. TO OBTAIN BEST VALUE FOR MONEY

3. TRANSPARENCY ISSUES

CONTRACT POLICY

- 1. IS IT ADVISABLE TO HAVE ONLY ONE GOVERNMENT BODY WITH OVERALL RESPONSIBILITY TO MAKE POLICY IN MATTERS OF PROCUREMENT AND CONTRACTS, DEVELOP STANDARDIZED DOCUMENTATION AND DISSEMINATE REGULATIONS AND GUIDANCE ON BEST AND ACCEPTED PRACTICE ACROSS THE STATE. OR IS IT PREFERABLE THAT EACH DEPARTMENT DEALS INDEPENDENTLY WITH REFERENCE TO ITS INDIVIDUAL NEEDS. IF THE LATTER IS PREFERABLE, IS THERE LIKELY TO BE A LACK OF STANDARDIZATION AND OVERALL VIEW OF HOW THE SYSTEM OPERATES.**
- 2. HOW CAN REQUIREMENTS BE MADE MORE COMPREHENSIVE AND DEFINITIVE? SHOULD SPECIFICATIONS CONCENTRATE ON MEASURABLE OUTPUT RATHER THAN ON THE CONTRACTOR'S INPUTS?**
- 3. IT IS NECESSARY TO MEASURE A CONTRACTOR'S PERFORMANCE IN TERMS OF HIS OUTPUT AND THE EVENTUAL OUTCOME OF THE CONTRACT, RATHER THAN IN TERMS OF INPUT. HOW CAN THIS BE DONE?**

TO OBTAIN BEST VALUE FOR MONEY

- 1. IS THERE NOT A REAL NEED FOR BETTER RESPECT TO THE CONCEPT OF LEGITIMATE PROFIT IN GOVERNMENT DEALINGS RATHER THAN GOING BY THE LOWEST COST.**
- 2. SHOULD THE LOWEST ACCEPTABLE BID BE THE CRITERIA FOR AWARD THE LIFE TIME COST OF WORK – IE., THE COST OF OWNERSHIP OF GOODS THROUGHOUT THEIR ANTICIPATED LIFE.**
- 3. WHAT ARE THE IMPLICATIONS OF NOT ENSURING RISK ASSESSMENT AND MANAGEMENT OR SHARING RISK APPROPRIATELY. DO YOU AGREE THAT GOVERNMENT IS CURRENTLY ASSUMING A DISPROPORTIONATE AMOUNT OF RISK AND ITS ASSOCIATED COSTS. SHOULD BIDDERS BE REQUIRED TO INCLUDE RISK MANAGEMENT PLANS AS PART OF THEIR TENDER DOCUMENTS.**

TRANSPARENCY ISSUES

- 1. HOW CAN MORE TRANSPARENCY IN THE TENDER EVALUATION PROCESS BE BROUGHT ABOUT?**
- 2. IS THE MERE EXPRESSION OF THE BASIS OF EVALUATION IN THE TENDER DOCUMENTS SUFFICIENT?**
- 3. WILL THE PUBLISHING OF A STATEMENT ON PUBLIC CONTRACTING POLICY HELP IN TRANSPARENCY?**
- 4. IS THERE A GRIEVANCE REDRESSAL PROCEDURE FOR TENDERERS IN PLACE? IS DEBRIEFING FOR THE UNSUCCESSFUL TENDERERS ON REQUEST NECESSARY TO PREVENT CRITICISM OF UNFAIR PRACTICE AND LACK OF OPENNESS.**
- 5. WHAT ARE THE IMPLICATIONS OF 'RIGHT TO INFORMATION' IN THE MATTER OF CONTRACTING.**
- 6. WILL AN INTEGRITY PACT WORK?**

**EXERCISES
AND
CASELETS**

Exercise 1

TENDER NOTICE

**Given below is a tender notice that appeared in the newspapers.
Read the tender notice and list out all the lacunae that you find**

Government of/
Government of Urban Services For The
Poor

.....MUNICIPALITY

Tender Notice No: 8/ / /02-03

Dated:20.10.2002

The Municipal Commissioner, Municipality, invites sealed tenders from interested bidders for “Providing Street lighting in the unserved areas in (a).....x..... andy..... Poor Settlement and (b)a.....,.....b.....,.....c..... Colonies andp..... Poor Settlement.”

Estimated Contract value of work is (a) Rs.5.55 lakhs (b) Rs.4.85 lakhs

Last Date for receipt of tenders including EMD is before 3.00 PM on (a) 15.11.2002 (b) 15.11.2002.

Documents can be purchased from the Municipal Commissioner, Municipality Ph. No....., Fax No..... by remitting a D.D. or Municipal Challan for Rs.2,200/- before 5.00 PM on (a) 12.11.2002 (b) 12.11.2002. Other details regarding eligibility etc., are in the tender documents.

sd/-

(Municipal Commissioner,)

Exercise 2

TENDER NOTICE

Given below is a tender notice that appeared in the newspapers. Read the tender notice and list out any lacunae that you find. You are required to explain what lacuna is found if any, and redraft the tender notice.

HYDERABAD NATIONAL GAMES ORGANISING
COMMITTEE (HNGOC) 32nd NATIONAL GAMES
SECRETARIAT, LAL BAHADUR STADIUM, BASHEER
BAGH, HYDERABAD

TEL :

FAX :

EXPRESSION OF INTEREST (EOI) FOR SUPPLY ITEMS

Government of Andhra Pradesh (GOAP) proposes to conduct 32nd National Games at Hyderabad from 13th December 2002 to 22nd December, 2002. Hyderabad National Games Organizing Committee (HNGOC) an Apex body was constituted by GOAP for conducting National Games 2002. The eligible parties meeting the following criteria are invited to submit Expression of Interest (EOI) containing the following information for evaluation, to supply the following items on rental basis for a period of 20 days commencing from 4th December 2002 to 23rd December 2002 for the event. The selected parties shall be

responsible for mobilization and de-mobilisation, fixation and maintenance of the following items. The short-listed parties are expected to demonstrate samples of the following items for the inspection based upon the standard specifications as mentioned in a document, which can be obtained from the office of the undersigned.

Cots – for players & officials (7500), Mattresses (7500), Pillows (7500), Pillow Covers (15000), Bed Sheets (15000), Soft Woolen Blankets (500 – Reserve), Buckets (3400), Dust Bins (1600), Mugs (3400), Glasses – Plastic (5000), Plastic Bottles (4000), Durries (1200), Steel folding Tables (500) – Fiber Chairs (2000) – Fans with regulators (3400). The quantities mentioned here are tentative; they may vary at the time of award of the Contract by 10%.

1. The selected parties shall be responsible for supplying, commissioning within time and maintain and to take back the supplied items after the event/period is over.
2. The parties shall have adequate capability to mobilize the required quantity as specified above either all the above items or some of the above items. Preference will be given to parties mobilizing majority of the above items.
3. Participation in such capacity in any prior State/National/International games or sports events is preferred.
4. In support the parties applying shall submit documentary evidence to demonstrate their capability through supply of maximum quantity of all or any of the items mentioned above for any State/National/International events in India in the last 5 years.
5. HNGOC reserves the right to select either one or more parties for award of the contract.
6. The parties are required to submit along with Expression of Interest (EOI) their past experience,

credentials, understandings of the requirement, timeframe required for supply of all or any of the items mentioned above, existing available quantity, lead time required for supply of all or any of the items mentioned above.

Interested parties may submit EOIs on or before 24/10/2002 before 5.00 p.m. along with Demand Draft for Rs... (Non-refundable) favouring Secretary General, Hyderabad National Games Organizing Committee (HNGOC) payable at Hyderabad. Only the parties qualified after scrutiny of EOIs shall be informed and issued Tender Documents for submission of Technical and Financial Proposals.

HNGOC reserves the right to accept or reject the EOIs of any of the parties during the selection process without assigning any reason whatsoever.

Sd/- Secretary General
Hyderabad National Games Organising Committee (HNGOC)

TENDER SCHEDULE PREPARATION

Given below is a summary of an audit reference on a civil work published in a state Audit Report of the AG. You are required to study the same and consider the questions raised below.

The Chief Engineer (CE), Roads and Buildings (R&B), technically approved an estimate for construction of a high level bridge across a river for Rs.2.67 crores. The estimate included, interalia, the following items at the rates indicated against each for 'Earth work in excavation

1. Without bailing out water cu m	Rs.265.60/10
2. With bailing out water cu m	Rs.1065/10
3. Providing black top open grade premix carpet sq. m.	Rs.603.60/10

However, in the bid documents prepared by the Superintending Engineer (SE), the units of work for these three items were indicated as 'cu m' and 'sq m' instead of 10 cu m and 10 sq m, despite the fact that as per the relevant Standard Specifications also, the units were to be 10 cu m and 10 sq m. No reasons for this change were on record. The CE did not correct this too, while issuing the bid notice.

In response to the bid notice, the lowest tenderer, with an overall premium of 5%, quoted the rates of Rs.260, Rs.1060,

and Rs.575 for these items against the units of cu m, cu m and sq m respectively as depicted in the bid documents. This worked out to an abnormally high premium of 853 to 895 % for these items, while for all the remaining items he had quoted at a discount ranging from 0.11 % to 7.06 %. The rates quoted by three other bidders for these items ranged between Rs.33 - Rs.40 per cu m, Rs. 80 - Rs.139 per cu m and Rs.61 - Rs.80 per sq m respectively, comparing reasonably with the estimated rates.

Though it was evident that the lowest bidder had quoted for 10 cu m and 10 sq m (rather than 1 cu m and 1 sq m), in conformity with the estimate which was open to him for scrutiny and the Standard Specifications, the CE evaluated and accepted the bid considering the rates as applicable to the units of 1 cu m and 1 sq m.

The Audit have held that the action of the SE in changing the units of the works without reasonable cause and failure of the CE even initially at the bid document stage to correct this change and later at the bid approval stage to evaluate the tendered rates correctly resulted in incorrect bid evaluation involving additional and undue financial outgo of Rs.20.89 lakhs to the contractor. In reply to the Audit, the Government has held that the World Bank, which had funded the project, had cleared the draft bid document and the bid evaluation awarding the contract to the lowest evaluated bidder and that the World Bank procedures allow only for clarifications to be sought from the bidders and not negotiations with them.

Do you find this reply of the Government tenable? Who would you hold responsible, if not tenable and why? Explain your stand with reference to delegation of duties and responsibilities obtaining in your department. What would be the further suggested course of action by you for execution of the work?

PROCUREMENT TENDER EVALUATION

XYZ Department of the Government of invited tenders from eligible bidders for supply, installation and commissioning of PCs and Network components like routers and modems. The bid documents indicated that the bidder shall also quote unit price for the items indicated in Schedule - II for Rate contract valid for 6 months. Selected Bidder will also supply required computer stationery.

A. Events and Dates:

Tender call date open from 25/06/2001 to 02/07/2001-
11 am

Pre bid conference on 07/07/2001- 11.30am

Last date and time for bid submission 22/07/2001 -
03.00am

Date and time of bid opening 29/07/2001 - 03.00
am

Note:

On request of few bidders, the last date of submission of bid was extended to 20/08/2001, 3 PM. Accordingly date of bid opening was changed to 22/08/2001, 3.00 PM

B. EMD: 2% of bid value for Schedule -I

C. Requirements:

Schedule -I

1. PCs 100Nos.
2. Routers 100 Nos.
3. Modems 100 Nos. Of 64/128 Kbps

Schedule -II

1. A4 size paper (1000 sheets)
2. Printer Cartridges for A Brand Printer
3. Printer Cartridges for B Brand Printer

D. Bidders Eligibility Criteria:

1. The bidder should be a company registered in India under Companies Act, 1956 for at least 2 years prior to submission of proposal.
2. The bidder must have at least 2 years prior experience in the defined scope of work.
3. The bidder must have handled at least three such projects.
4. The bidder should be of sound financial standing.
5. The turn over of the company should be more than Rs.50 Lakhs in last two years.
6. The company should have ISO Certification

Bidders who are eligible as per eligibility criteria mentioned above must submit their bid before the due date and time.

E. Technical Specs:

1. PCs - Pentium IV, 2.4 GHZ, 128 MB RAM with Colour Monitor
2. Router - To meet the user requirements.
3. Modems- 64/128 Kbps as per local need

F. Up time - For all hardware - 99.99%

G. Liquidated damages -

If bidder fails to achieve the required up time, the penalty will be levied as per SLA which will be signed between Dept and selected bidder.

Form For Commercial bid - Schedule - I

Item	Unit Cost	Total Cost	AMC %
PCs			
Routers			
Modem - 64 Kbps			
Modem - 128 Kbps			
Total			

Form For Commercial bid - Schedule - II Rate Contract

Item	Cost per unit
A4 Size Paper(1000 sheets)	
Cartridge A	
Cartridge B	

Note : Department will buy the consumable as per need.

Proposal of Bidder 'X'

1. Bidder did not submit ISO certificate along with the bid. But after few days of opening of bid he submitted ISO certificate, which he received after bid opening date but certificate is dated prior to bid submission date.

2. Bidder submitted EMD of Rs.3.80 Lakhs

3. ISO certificate is for software development. Bidder also undertakes software development in addition to supply of IT hardware and consumable.

4. Bidder is completing 2 years as Registered Company well within revised date of submission but not on the original date of bid submission.

5. Bidder indicated turn over of Rs.150 Lakhs. Out of that Rs.125 Lakhs pertains to Software development. Bidder indicated that he has sound financial standing.

6. Bidder has given the list of three projects

7. Bidder has experience of 2 years as on Bid opening date but not as on bid submission date.

Comparison of Financial Bids: Schedule - I : Rs. In Lakhs

Item	Bidder X	Bidder Y	Bidder Z
PC with 14” monitor	38	37	
PC with 15” monitor	39		41
Router	150	160	145
Modems 64 Kbps Per Unit	0.3	0.4	0.2
Modem 128 Kbps Per Unit	0.6	0.5	0.7
Total		197.9	186.9

Bidder X indicated AMC as 8%, Y as 6% and Z as 7% across all items.

Comparison of Financial Bids: Schedule - II : Value in Rs.

Item	Bidder X	Bidder Y	Bidder Z
A4 Siz Paper(1000 sheets)	235	229	215
Cartridges A	2,500	2,600	2,650
Cartridges B	4,500	4,200	4,150
Total	7,235	7,029	7,015

Issues:

1. Whether EMD submitted is sufficient.
2. Is it mere a coincidence that one of the bidder became eligible due to extension of date for bid submission.
3. Is the bidder qualified on account of 2 years experience.
4. Is the bidder qualified on account of sound financial standing

5. Should we take total turn over of company for qualification or the turn over relevant to the scope of work.
6. Is the ISO certificate valid for the scope of work defined in the tender. What is the validity of certificate as same was submitted after bid opening.
7. How to handle different option given by bidders for colour monitors.
8. Should we give weightage for AMC in financial evaluation?
9. For modems, unit price is given as total number was not indicated. How to add value in financial bid comparison statement?
10. Rate contract. Who is L-1.
11. SLA terms and conditions were not given in tender document for levying penalty. Later dept proposed a penalty of 2% for every 1% reduction in up time. But successful bidder did not agree for that and proposed 0.5%. How to resolve the issue?

Case let Exercise 3

TENDER EVALUATION

The Chief Engineer (CE) of a major irrigation project technically sanctioned a work of “Rehabilitation and modernization of distributary system from D5 to D29” for Rs.22.50 crore in October 1997. Bids were invited by the concerned Superintending Engineer (SE) in the same month.

While evaluating the lowest bid, the SE noticed arithmetical errors in the calculations of two individual items in the Bill of Quantities (BOQ), due to which the total of the BOQ worked out to Rs.26.26 crore, as against Rs.25.16 crore, the gross bid specified by the bidder. The SE adopted the gross bid price to be as Rs.26.26 crore, which still being the lowest was recommended by him to CE. The bid was finally accepted (in March 1998) by the Commissionerate of Tenders (COT) and the work was accordingly awarded (in May 1998).

The bid documents provided for correction of two specific types of arithmetical errors in the BOQ, but there was no provision for correction of gross bid price. Therefore, the audit, in the course of check held that the SE was required to adhere to the specified bid price of Rs.25.16 crore and if necessary, allow the contractor to rectify the errors in the BOQ items. The irregular and unilateral modification of the bid by the SE to Rs.26.26 crore, conferred an undue benefit on the bidder for his own errors. Thus, action of the SE in incorrectly evaluating the bid at a higher amount to the advantage of the bidder and the detriment of Government, and the approval of this action by the CE and COT led to an unwarranted extra benefit of Rs.1.10 crore at the award stage.

Critically study the case based on the above facts and details
your stand in the matter.

Case let
Exercise 4

TENDER EVALUATION AND AWARD OF CONTRACT

The Chief Engineer (CE) of a Hazard Mitigation and Emergency Cyclone Recovery Project, invited in November 1998, bids for the World Bank – aided work of “Improvements to road from Km 38/0 to km 69/0”, estimated to cost Rs.9.50 crores. The qualification criteria specified in the notice inviting bids stipulated that the bidder should have

- (i) Satisfactorily completed at least one similar work valuing not less than Rs.4.75 crores and
- (ii) Executed bituminous works of at least 24,500 cum in any one-year.

While evaluating the bid of the lowest contractor ‘P’ for a value of Rs.9.45 crores, the CE took into account 50% of the value of a similar work executed by the bidder in a joint venture with another bidder ‘S’, as fulfilling the criterion of Rs. 4.75 crores. The total quantity of bituminous works to meet the requirement at (ii) above was over a period of two years as against the stipulated period of a single year. Based on the above considerations, however, CE considered ‘P’ as satisfying the qualification criteria. He however sought in January 1999 the clearance of the World Bank to invite the bids afresh in view of an allegation appearing in the press about formation of a cartel by those bidding for the work.

The World Bank noted in February 1999, the lack of any evidence of ‘P’ having executed 50 per cent of the work in the joint venture and execution of the minimum stipulated quantity of bituminous works in one year. Instead of supplying the requisite evidence to the World Bank, the CE re-evaluated the bids and recommended, in February 1999, the second lowest bid

of 'S' for Rs.10.14 crores. For this purpose, he took into account the work executed in the joint venture, again by S and P together, for meeting the criteria of the total value of work and the quantum of the bituminous components of the work. The World Bank accepted the recommendation and the work was awarded to 'S' in February 1999.

Instructions

Please examine the following critique of the Audit on the above decision and offer your interpretation on the evaluation and award of contract:

“In effect, the second lowest bid of 'S' was no better than the lowest bid of P. In both cases, total value of work executed was based on the joint ventures between 'P' and 'S' and disability if any, with regard to this criterion should have been equally applicable to both the bidders. Therefore, there was no valid reason for the CE to re-evaluate and recommend a higher bid, which had the same limitation as that of the lowest bidder. The unwarranted re-evaluation thus resulted in an avoidable extra commitment of Rs.69.76 lakh at the award stage.”

Case let exercise 5

TENDER EVALUATION AND AWARD OF CONTRACT

Government decided to take up

- A prestigious state work to be completed in just three months.
- Accorded approval for Rs.200 lakhs.
- Accorded Revised Administrative Approval for Rs.250 lakhs.
- Technical sanction was accorded for Rs.260 lakhs.
- Request For Proposal was invited from 6 (SIX) short listed firms.
- Response received from : 4 Nos.
- Tender Committee approved : L – 1
- Lowest quoted amount : Rs.280 lakhs i.e. less than 10% excess.
- Subsequently after completion of work, it was detected that the Percentage excess is about 27 instead of 9.9%.

REASON :

Technical sanction :	Rs.260 lakhs
ECV :	Rs.220 lakhs
Thus excess :	27%

Your comments.

CONTRACT MONITORING

In a contract for a major work at a considerable discount percentage on the face value of work, extension of time for the contract, was sanctioned by the competent authority suo-moto. The contractor protested against this action on the ground that the department was trying to derive advantage by continuing the contract. The contractor also held that unless he applied for extension, it cannot be granted. The Executive Engineer however contended that suo-moto extension could be granted under his discretionary powers as per the General Conditions of Contract.

Instruction:

Do you agree with the interpretation? Justify your stand in the matter with reference to the extant rules obtaining in your department.

ARBITRATION

In a work relating to the execution of a “flat slab roof construction” the rates accepted in a contract were such that the rate for cement concrete was considerably lesser than the sanctioned estimate rates while the rate for fabrication and placement of steel was higher than the estimate rate. The Executive Engineer got the slab redesigned and in the process the quantities for the concrete section increased vis-à-vis the agreement provision while the quantity of steel reduced.

Do you expect any litigation from the contractor on this account. Why? If so, how do you propose to tackle the situation?

- (i) as in-charge of the work
- (ii) as an arbitrator

ARBITRATION

A contract for “Formation of a major road with earthen embankment along the periphery of a huge reservoir” was entered into. As the work required top class quality of execution, the tender conditions stipulated the use of Vibratory Rollers. As such rollers were available with the department and also as the department wanted to be sure of the consolidation, it was stipulated in the contract documents that vibratory rollers required would be given by the department at nominal hire charges, which were incorporated in the agreement. The contractor quoted a competitive rate for the earthen embankment work including rolling keeping in view the hire charges indicated.

During the actual execution of work, the department failed to supply the rollers as indicated in the tender documents. When the contractor protested and demanded revision in the rate to compensate for the failure, since the rollers were now required to be hired from the market, the department retaliated by taking a stand that under relevant clauses of the Preliminary Specifications governing the contract and the special conditions governing the contract, no compensation is payable. The contractor threatened stoppage of the work till the dispute was settled to his satisfaction under arbitration.

How would you solve this impasse?

VALIDATION

(NAME OF THE ATI)

SESSION WISE EVALUATION

COURSE TITLE : **PILOT RUN OF TRAINING**
PROGRAMME ON **“CONTRACTING”**

TOPIC :

DATE: _____ **(FN)**

FACULTY NAME:

GRADATION

1.

Exce- llent	Very good	Good	Satis- factory	Poor
5	4	3	2	1

GOVERNMENT OF

(Name of ATI)

Course Evaluation Report to be filled by individual participant
Course Evaluation Questionnaire

(Note: Please fill in the items in the questionnaire. Your objectivity will help us to improve the module for the future courses)

1. Name of the Institution :

2 (i) Title of the course & dates : Training Programme on **“Contracting”**
(..... to)

2 (ii) Name of the Course Director:

3. Course Objectives :

- Describe the relevant laws and principles governing contracting in government
- Describe tendering procedures and rules in government
- List the nature of government contracts
- Develop tender notices / Invitation for bids, tender schedules, comparative statements / Evaluation reports for bids
- Prepare contract documents such as Purchase orders, Agreements
- Conclude technically sound contracts in a manner free from procedural and legal lacunae
- Handle post contract developments
- Develop check lists for monitoring contract related processes
- Respond to on current models of contracting and their applicability
- Describe the dispute resolution methodologies in government contracts

- Identify reform enabling mechanisms at their work place

4. Did you receive advance intimation from the Institution about the programme? If so, did you respond to the Institution ?

Yes

No

5. What do you think about the structure and organisation of the course to meet the objectives set.

Very well structured

Well structured

Some what structured

Unstructured

6. How useful will the inputs given be to you, in handling your job / responsibilities?

Very useful

quite useful

of limited use

Not at all useful

7. How useful will the training be for future jobs / responsibilities that you may handle?

Very useful

quite useful

of limited use

Not at all useful

8. Practical orientation of the course

Highly practical oriented

Practically oriented to a great extent

Practically oriented to a limited extent

Not at all practically oriented

9. How far have you been benefited from interaction with fellow participants of the course.

Substantially	Considerably	Fairly	Not at all
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

10. How far was the reading material supplied relevant and related to the course content?

Extremely Relevant	Considerably relevant	Fairly relevant	Not at all relevant
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

11. To what extent you are satisfied with the following:

	Satisfied fully Not at all satisfied (1)	Satisfied to a Large extent (2)	Satisfied to a limited extent (3)	
(4)				
(a) Reception & Transport	(1)	(2)	(3)	(4)
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) Food quality & Service	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) Class room facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) Library facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(e) Interaction with faculty	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

12. Assessment of training faculty
(Session wise evaluation of the faculty has already been taken)

13. What inputs of the course did you find most useful?

14. What inputs of the course did you find least helpful?

15. Your overall impression of the course:

Excellent

Very good

Good

Fair

16. Did the course give you any specific ideas / areas in which improvements in your work situation can be made?

Yes

No

17. If yes, can you identify them and briefly spell out your proposed course of action, with timeframes, if any envisaged, to translate the learning to the workplace?

18. Any other comments/observations that you wish to make about the course in order to improve its relevance and effectiveness

Place:
Date :

NAME:
(optional)

GOVERNMENT OF

(Name of ATI)

Course Evaluation Report

1. Name of the Institution :
2. Title of the course & dates : Training Programme on “.....”
from to
3. Course Objectives :

(Indicate No. of appropriate responses received for each in the blocks below)

4. Did you receive advance intimation from the Institution about the programme? If so did you respond to the Institution ?

Yes -	No. ---
-------	---------

5. What do you think about the structure and organisation of the course to meet the objectives.

	Very well structured	Well structured	Some what structured	Unstructured	
Weighted average	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

6. How useful is this input giving to be to you immediately in your job?

Very useful	quite useful	of limited use	Not at all useful
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

7. How useful this training likely to be for the future jobs you may handle?

Very useful	quite useful	of limited	Not at all
Weighted		use	useful
average			
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

8. Practical orientation of the course

Highly practical oriented	Practically oriented to a great extent	Practically oriented to a limited extent	Not at all practically oriented
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

9. How far have been benefited from interaction with the fellow participants in the course.

Substantially	Considerably	Fairly	Not at all
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

10. How far was the course material supplied relevant and related to the course content?

Extremely Relevant	Considerably relevant	Fairly relevant	Not at all relevant
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

11. To what extent you are satisfied with the following:

Satisfied fully	Satisfied to a Large extent	Satisfied to a limited extent	Not at all satisfied
(1)	(2)	3)	(4)
		(1) (2)	(3) (4)
		<input type="checkbox"/>	<input type="checkbox"/>

- (a) Reception & Transport
- (b) Food quality & Service
- (c) Classroom facilities
- (d) Library facilities
- (e) Interaction with faculty
12. Assessment of training faculty
- (Session wise evaluation of the faculty has already been taken)

13. Which parts of the course did you find most useful?

14. Which parts of the course did you find least helpful?

1.

15. Your overall impression of the course:

Excellent average	Very good	Good	Fair	Weighted
<input type="checkbox"/>				

16. Did the course give you any specific ideas about improvements in your working situation when you get back?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>

17. If yes, can you spell them out briefly?

1.

18. Any other comments/observations you wish to make about the course?

1.

Place
Dated:

NAME:

COURSE DIRECTOR'S REPORT

Institute's Ref. No.

Date:

1. Name of the Institution :
2. Title of the course :
3. Duration of the course : Date/Week(s)
From (date)
To (date)
4. Name of the Course Director :
5. No. of participants :
(Please enclose a copy of the final list of participants duly classified)
6. Number of those who submitted feedback proforma :
 - a) Whether the institution got in touch in advance with the participants of the course :
 - b) If so, when, and :
 - c) How many participants responded :
7. Whether the course expectations of the participants from the course were ascertained by the Institution if so, how and when ? :

8. General observations of the Course Director :
on how the course was organized

- (1) Total number of working days
in the course:
- (2) Number of working hours per day
- (3) Total number of sessions planned
in the course :
- (4) Number of sessions which could
not be conducted as planned :

(Please enclose a copy each of ---)

- the final course time-table
- the list of faculty (both in-house and guest faculty)
- the complete background material supplied to the participants

- a) What changes, on the basis of the feedback received in
the
Earlier course, were effected in the current course in
terms of :

- 1) Course objectives :
- 2) Course contents structure and distribution of
Sessions among various topics :
- 3) Reading material :
- 4) Faculty :
- 5) Training methodology :
- 6) Greater practical orientation :
- 7) Physical facilities :

10. General remarks of the course director on the nature and extent
of participant's involvement in the course, including attendance,
punctuality and interest evinced.

11. Comments of the feedback received from participants. (This
will consists of

- a) a consolidated abstract and summary, in the format of the individual feedback proforma, and
- b) a statement, in the format, containing the Course Director's comments on the participants views about the strengths and weaknesses as well as other aspects pertaining to the course)

12. Comments of the Institution on how the feedback is proposed to be recycled into future programmes in terms of course content, methodology, etc.

13. Any other comments which the Course Director and / or the institution may wish to make in respect of this course :

Place :

Date :

BACKGROUND READING MATERIAL

CONTRACTS - AN OVERVIEW

WHAT IS A CONTRACT?

In simple terms a 'Contract' is a promise that the law will enforce. The law provides remedies if a promise is breached and recognizes the performance of a promise as a duty. Contracts arise when a duty does, or may come into existence, because of a promise made. To be legally binding as a contract, a promise must be exchanged for adequate consideration. Adequate consideration refers to the benefit that a party receives, which induces them to enter into a contract.

Contracts are mainly governed by statutory law, which may require contracts to be put in writing and executed with particular formalities. The Indian Contract Act of 1872 contains the law relating to contracts. Although based on British Common Law on Contracts, the Indian Law is more comprehensive and differs on matters of detail and principles. It has, as is evident, been enacted keeping in view the Indian context and circumstances. The Act deals with the general and limiting principles applicable to all contracts such as the formation, validity, performance or breach and the remedies for the breach of contract.

The Indian Contract Act is not a complete code on contract. Statutes dealing with special types of contracts like the Negotiable Instruments Act 1881, The Indian Arbitration and Conciliation Act 1996, The Sale of Goods Act 1930 etc do not form part of the main Contract Act.

“Every promise and every set of promises, forming the consideration for each other, is an agreement” (Section 2 (e) of the Indian Contract Act, 1872). In the eyes of the law, an agreement which is enforceable by law is considered to be a contract. (Section 2 (h) of the Indian Contract Act, 1872).

The conditions required to be met for any agreement to qualify as a contract are laid down in Section 10 of the Indian Contract Act, 1872. As per this clause, all agreements, if made by the free consent of the parties who are competent to contract and for a lawful consideration and with a lawful object, are deemed to be contracts.

CONTRACTING IN GOVERNMENT

Government is, by far, the largest contractor in any country. So too in India. It contracts variously at the central and state levels for supply of products (purchases) and services (Contractor services, consultancy services, labour etc.)

Three characteristics set government spending apart from private spending:

First, government contracts are heavily regulated to curb misappropriation of funds and ensure uniform policies and practices across agencies.

Second, the contract terms are the product of careful drafting by a team of experts in government and have often received distinct meaning through past contract adjudications.

And third, because of the government's special status, disputes under government contracts follow a very different procedural path than those arising under private contracts.

WHAT IS THE SIGNIFICANCE OF GOVERNMENT CONTRACTS?

There is an essential difference between a contract entered into between private persons and that entered into with Government as one party.

In so far as a contract between two private parties is concerned, a contract will be absolutely binding and valid if the conditions referred to in Section 10 of the Indian Contract Act, 1872 are satisfied. In the case of government contracts, however, the mere provisions of the Contract Act, 1872 are not sufficient while for a valid contract to be formed between the Government and a private party, the stipulations of Art. 299 of the Constitution of India have to be met fully.

CONSTITUTIONAL PROVISIONS

Under Article 299 of the Constitution of India, *all contracts made in the exercise of the executive power of the Union or the State shall be expressed to be made by the President or by the Governor of the State as the case may be and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such person and in such manner as he may direct or authorize.*

Neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purpose of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.

JUDICIAL PRONOUNCEMENTS

The Supreme Court has held that the provisions of Article 299 of the Constitution of India were not inserted for the sake of form but to safeguard the interest of the Government against unauthorized contracts. If in fact a contract is unauthorized or is in excess of authority, it is right that the Government should be safeguarded. On the other hand, an officer entering into a contract on behalf of the Government can always safeguard himself by having recourse to a proper form.

Three essential conditions for a valid contract between the Government and a private party as recognized by the Supreme Court are as follows:

- It must be expressed to be made by the President or by the Governor of the State as the case may be.
- It must be executed for and on behalf of the President or the Governor as the case may be.
- Its execution must be by such person and in such manner as the President or the Governor may direct or authorize.

If the above conditions are not satisfied, the contract is void and there is no question of estoppel or ratification. Generally in all

branches of government, specific posts are identified and assigned the role and responsibility of contracting and only such posts have the power to bind the government.

The provisions of Art 299 of the Constitution of India are mandatory. As such, a contract, which does not comply with the formalities prescribed there in, is unenforceable in the eyes of law.

COMPETENCY TO ENTER INTO GOVERNMENT CONTRACTS

The authorities legally empowered to enter into contracts and to whom the powers have been delegated under Art. 299(i) of the Constitution of India to execute contracts at the State level are required to be listed out clearly in the Departmental orders/ Manuals of each State Government. No authority lower in rank than the officer identified in the said rules is competent to exercise these delegated powers. These delegated powers can, however, be further delegated to officials at various levels in the official hierarchy so that the execution of contracts of differing values can be taken up at the appropriate levels.

GENERAL CONDITIONS OF CONTRACT

The General Conditions of Contract are terms that have been formulated in advance for an indefinite number of contracts of a certain nature, and which have not been individually negotiated between the parties. A large number of contracts, especially relating to buildings and engineering works as well as purchase of goods are carried out in Government through contracting out. Any amount of ambiguity in the interpretation of the clauses and terms of the contract is likely to lead to litigation, loss of resultant goodwill and waste of time.

The legal and contractual obligations of government contracts are generally required to be enshrined in Government Orders which would be in the form of working instructions to the Government official, in respect of the rules for contracting, their powers and the procedures to be followed. These orders are of course subject to periodic review and revision either on account of lacunae that become evident in its enforcement or on account of reform initiatives envisaged by the respective governments towards refinement and transparency in procedure or towards enforcing better accountability in the functioning of the Government.

The General Conditions of Contract are supplemented by the Special Conditions of Contract applicable for specific nature of contracts. It is to be noted that in case of any conflict between the General and Special Conditions of Contract, the latter conditions shall prevail.

REFERENCE TO ADJUDICATION

Any dispute or difference of any kind that arises between the department and the contractor in connection with or arising out of the execution of a contract or work, either during the progress of work or after its completion or before or after its termination or abandonment or breach shall first be referred for settlement to the executive in charge of the work (the tender accepting authority). In the event of such difference not being settled to the mutual satisfaction of the two parties, the agreements provide for a reference to arbitration.

All matters of dispute related to the implementation of the contract are referred to arbitration including such issues pertaining to non-payment for work executed. However, all contracts of government contain clauses referred to as 'excepted matters' which are clearly not arbitrable and on which the decision of the Engineer is final. Such clauses related to matters on the quality of work, measurements, mixing of material, rejection of defective work, scaffolding instructions and construction of temporary structures. This chapter is covered in greater detail later. Suffice that a large number of contracts in government are referred to arbitration, the reasons for which are not far to seek.

While contracts are no doubt the responsibility of the engineer or the executive in charge of its execution, the implementation of the contract conditions in government is largely constrained by its organizational structure, the delegation of powers and dependent on the judicious exercise of these powers. Litigation in government arises on account of delay or indecision, inadequate pre-contract preparation, modifications in the scope of the contract during the execution of the work on account of inadequate and bad planning or design and delay in payments for work actually executed. To a great extent, it would not be wrong to say that contracts in government are largely one-sided i.e., advantageous to the one party to the contract, namely the government.

ESSENTIAL CHARACTERISTICS OF A CONTRACT

1. The terms of the contract must be clear and precise. There should be no room for ambiguity or misinterpretation.
2. Time is the essence of contracts
3. No contract involving an uncertain or indefinite liability or any condition of an unusual character should be entered into.

4. The terms of the contract should be enforced strictly. This responsibility rests with both parties to the agreement even in the case of government contracts.
5. Revision of rates in accepted agreements during the currency of such agreements is prohibited.

NATURE OF CONTRACTS IN GOVERNMENT

While by and large, when one speaks of contracts in government, it is with reference to the execution of civil works such as construction of buildings, roads, emergency works relating to restoration of breaches and dams. Alternatively, contracts entered into for purchase of goods by issue of a purchase order and such comes to mind. It is also a fact, however, that the scope of the term contract has, over a period of time become enlarged to cover other services.

The activities in Government today have become numerous and wide ranging. Hence, barring what is considered its core activity or business, in many governments, there is a concerted move towards outsourcing of its non-core activities and contracts are being concluded for rendering services, such as

- Annual Maintenance Contracts for equipment and machinery
- Service contracts for upkeep of sanitation in office premises, catering services, maintenance of gardens, security services, maintenance of computer networks
- Contracts for the sale of goods such as vehicle, used machinery and equipment and paper
- Contracts for intellectual collaboration and know-how in new areas of functioning such as development of software, business process re-engineering and collaboration with industry in research and technology issues etc.
- Outsourcing of responsibilities that were hitherto the solely that of the Government such as the construction of over bridges and highways as well as the maintenance and upkeep of these structures over a period of time. In such novel experiments, which are fast becoming the order and trend of working in government the world over, financial arrangements are also being reviewed and reworked.

Such development has been the direct result of several factors:

- The acknowledgement that the role of government should be changed from that of a regulator to that of a facilitator in a social welfare state
- The acknowledgement of the vast pool of intellectual knowledge and know-how in specialized and specific areas of working which need not be duplicated by creation of huge governmental machinery
- The increasing scarcity of financial resources to carry out its vastly increasing responsibilities
- Growing consumer and citizen awareness of their rights
- The larger world market of resources – whether of man power, technology or resources that are now available to governments the world over, on account of the breaking down of national and geographic boundaries and the communication revolution
- The unleashing of the power of the media. This has in effect thrown open to the world the knowledge of best practices and success stories for emulation across the world.

The direct result of such influences on the working of the government has been the development of different collaborative models of working with knowledge centers the world over. Thus, contracting in government today is no longer a straight-laced agreement governed strictly by the General Conditions of Contract or restricted to specific areas of working such as construction activity or procurement of goods. We have in government today varying models of interaction with the private sector, such as

The PPP model – The Public Private Partner ship model
 The BOO model – The Build, Own and Operate model
 The BOLT model – The Build, Own, Lease and Transfer model
 The DBFO model – The Design, Build, Finance and Operate model

We shall look into the working of these models in detail in the future sessions. Suffice that the developments in contracting procedures have influenced and are influenced to a very great extent by the ever changing world perspectives of the respective rights and responsibilities of citizens and government.

TENDER SYSTEM IN GOVERNMENT

It is the primary duty of the executive (read government) to get the best value for money spent. The tender system, in one form or the other, should be given very careful and serious consideration as being one of the best and most effective methods of achieving this objective. Under extant government rules therefore, all contracts, whether for purchase of stores whether from firms or suppliers, or for purchase of services such as maintenance of equipment or machines, or for contracting out services such as catering services or upkeep of sanitation and security on government office premises or for sale of government owned moveable goods, equipment or machinery or for execution of works through contractors, are as a matter of rule, let out on the basis of tenders. The sole aim of so doing is to secure the benefit of the most competitive rate.

TYPES OF TENDERS

The following are the types of tenders:

OPEN TENDERS

Tender documents are normally sold to anyone buying it. The most open and public manner of invitation of tenders by public advertisement should be used as a general rule unless it is specifically decided that limited tender or single tender (by nomination) shall be called for or i.e., tenders shall be dispensed with altogether. Thus, as a matter of rule, sealed tenders should invariably be invited in the most open and public manner possible. The notice inviting tenders should be put up on the notice board of the concerned department, circulated for notification in its subordinate and main officers and invariably published in prominent news papers

(local and national) both in English and vernacular. The financial limits beyond that which open tenders have to be invariably called, is dependent on the nature of tender, varies from state to state and between the departments in a state also. Generally, when open tenders are called, the sales of tender forms are not restricted to only the list of approved contractors.

It is also essential to ensure wide publicity and that open tender notices are issued in newspapers at least 15 to 30 or even up to 45 days before the scheduled date of opening of tenders.

LIMITED TENDERS

The procedure of calling for tenders up to specific values from the approved list of contractors only as in the case of civil engineering tenders, thus limiting the scope of response, refers to Limited Tenders. This practice also presumes that wide publicity is not necessary for the work and hence draws the attention of only the contractors approved for specific nature of work and monetary values to respond to the call of tenders.

SPECIAL LIMITED TENDERS

In major departments, specifically of the Central Government, where the nature of works required to be executed is at times considered very specialized, a shortlist of 10 firms of equal capability is drawn from the approved list of contractors for the said nature of work, to whom notices of tender are sent along with the tender schedule for immediate response. Such a practice is also followed on grounds of urgency, as in the case of restoration of road or track as a result of floods etc. Instances of Special limited tenders are generally few and far between and have to be justified for its usage and approved by the competent tender accepting authority within whose powers its acceptance lies. Under this method, the notice inviting tenders may also be sent to selected contractors/firms/suppliers.

SINGLE TENDER (NOMINATION)

The issue of single tender is done in cases of a small work or purchase or where the article to be procured is proprietary in nature or where competition is not considered necessary. Contrarily, in departments where

tendering system is widely prevalent, such single tenders (also referred to as tender by 'nomination') are invited for even higher monetary values if the situation warrants its call on grounds of urgency or specialization of work. Circumstances such as restoration of track on account of accidents or floods in railway contracts justify such call, which is to be done only with clearly recorded reasons concurred in advance of finalization of tender by the associate finance and approved by the competent tender accepting authority with reference to its estimated value.

PROPRIETARY ARTICLES - PROCUREMENT ON SINGLE OFFER OR NOMINATION:

A proprietary article certificate is required to be furnished by the indenting department in case the procurement of stores is to be done on PAC, clearly certifying that the item required is manufactured by any other firm, nor is a similar item manufactured by any other.

QUOTATIONS

For small value works or purchases, a minimum of 3 quotations is obtained locally either through local enquiry by sending enquiry letters. The lowest quotation is then accepted. A minimum response time for offers to be received, of at least 7 days is desirable. Telephone enquiries should not, in the normal course, be encouraged. In such cases, no EMD is collected, and the practice is restricted to petty values.

While processing quotations, care may be taken to ensure that the requirement is not split into several indents in order to bring the purchase within the powers of local purchase through quotations.

ZONAL CONTRACTS

This practice is found to be working successfully in the Railways. For minor maintenance works to be executed over a specified period of time within a specific geographical zone, contracts are awarded from out of the list of approved contractors for each zone (area) who have been found capable of handling such nature of works and are placed on the list of zonal contractors. Each work order on the zonal contract, which is also finalized through open tenders from among the list, at par SSR rates or at percentages above SSR, is not of high value. Works awarded relate to repairs and maintenance of buildings, conveyance of material, supply of material for a definite period of time over a specific area etc. Inclusion of

contractors in the list of zonal contractors has thus to be done with great care.

RATE CONTRACT

As the term implies, rate contracts identify the rate and terms of supply of items for which the order is placed, which would be effective and cannot be varied over the specified time frame of the contract. Rate contracts are commonly prevalent in case of purchases of items for which specifications are standardized and the rate is also fixed over a period of supply, generally one year or above. The rate contract indicates the periodicity and schedule of periodic supply at a uniform rate.

APPROVED LIST OF CONTRACTORS

An approved list of contractors for various nature of work such as construction of bridges, earth work, construction of roads, construction of quarters is generally maintained by every department which undertakes works through call of tenders on a large scale. This approved list is prepared based on the capability of the contractor, his previous performance and values of work executed, manpower and machinery he possesses, financial capacity etc. The list is required to be reviewed and revised or updated annually based on confidential reports or performance of contractor. This would involve upgrading/downgrading/ adding and deleting from the list and is performance based. The inclusion in the approved list of a particular category / value qualifies the contractors to quote for specific nature and financial limits of works.

PRE QUALIFICATION OF TENDERS

Also called the two-packet system, this is necessary to verify the credentials of contractors thoroughly as independent contractors, including their physical, financial and technical capacity, vouchsafed with credentials of work done. The two-packet system is generally followed for major works and works of specialized nature or of large magnitude.

In this procedure, 2 sealed covers 'A' and 'B' are submitted; each of the covers shall be superscripted clearly as the Technical Bid and the Financial or Price Bid. Both the covers are submitted in another sealed

cover 'C' supplied by the department at the time of sale of tender schedule, on which is superscripted the name of the work / tender.

The authority (authorities) delegated with the power to invite the tenders will open and evaluate the tenders as per the qualification criteria. While opening the tenders, care should be taken to first open Cover C in the presence of the tenders or their authorized representative on the specified date and time and also to verify whether the Cover A and Cover B are properly sealed. In case the Covers A & B or any one of them is found/unsealed, such tenders will not be opened and summarily rejected. Minutes shall be recorded to this effect then and there only.

First Cover (cover – A) with superscription “TECHNICAL BID” which shall contain the qualification data and the details of the contractors technical capabilities is opened first and the shortlist of qualified tenderers is drawn. This cover shall also contain certifications from the concerned engineer’s on the quantum of existing commitments in respect of on going works and scheduled completion dates. While evaluating capability, the sub contractors / GPA holder’s experience is not taken into account in determining the bidders compliance with the qualifying criteria.

SECOND COVER (Cover – B) with the superscription “PRICE BID” shall contain the financial bid. Price bid of those tenderers who are determined as qualified as per eligibility criteria will be opened on the date specified in the tender notice and the Cover – B of un-qualified tenderers will not be opened but kept in the safe custody and there after shall be returned to them along with E.M.D. The Schedule – A of price bid shall contain the working items indicated as Part I and LS provisions as Part – II. The premium or discount quoted by the Contractor shall be applicable only for Part – I. However, the provisions contained in the Part – II will be operable basing on the conditions provided in the tender Schedules. The tenderers will have to state clearly their willingness to execute the work at the percentage excess or less or at par over the ECV indicated at Part – I at the space provided therein on finalisation of tenders. Tenders whose seals are found tampered with, shall be summarily rejected

**TENDER NOTICE – PREPARATION OF TENDER SCHEDULE – TENDER
OPENING**

PRE TENDER REQUISITES

In respect of execution of works, it is imperative that tenders are invited only when the site of work is free of all encumbrances and can be handed over to the contractor

- when the plans/ designs / drawings/ and allied estimates with schedule of quantities are approved by the competent authority and ready for execution
- when the full scope and character of work is decided upon
- when soil exploration studies are carried out in respect of works involving foundations and structures
- when estimates for the works in question are prepared realistically and duly sanctioned by the competent authority
- when land acquisition proceedings have been completed and the land taken over by the Government

TENDER NOTICE

Due notice and wide publicity of all tenders of considerable value shall be invariably given in leading newspapers, including the vernacular. The time frame for publishing the tender is generally 30-45 days before the scheduled date of opening of tender. The following details shall invariably be included in the tender notice inviting sealed tenders. In addition, if required instructions for issue of the bidders is also included

- The name of project
- Name and description of work with approximate cost
- Nature of contract
- Approximate value of work
- That sealed tenders should be submitted

- Last Date/time/place of purchase of tender forms / closing of tender box ie., Last date submission of filled in tender forms and opening of tender box
- Cost of blank tender forms by direct purchase and dispatch by post.. Sales tax if any leviable
- Method of remitting the cost of tender documents (Bank draft, M.O., Postal Order, Cash)
- Officer in charge of sale of tender documents
- Place and time for scrutiny of contract documents and plans by the prospective tenderers
- Description of work with its location
- EMD required to be submitted
- Officer in whose favor Bank Draft for cost of tender form / EMD is to be obtained
- Period of completion of work
- Prescribed period of validity of tender documents
- Competent tender accepting authority
- Reservation of right to either accept any offer or reject all offers without assigning reasons

Tender notices should be precise and brief and devoid of ambiguity. It is not necessary to detail elaborately the eligibility criteria of tenderers in the Tender Notice. The widest publicity to tender shall imply that it is necessary that the Tender Notice is prominently displayed in the concerned and connected offices of the tender issuing and inviting authorities. In addition, advertisement in leading national international newspapers and in vernacular/local papers is essential. This mode of tendering would elicit the best competitive bid in a confidential manner, unless a ring is suspected (Cartel)

TENDER SCHEDULE

APPROVAL TO TENDER SCHEDULES

Tender Schedules are required to be approved by the competent authority based on the cost of work for which tender is being invited. In some state governments, the Commissioner of Tenders is the designated competent authority to approve tender schedules of very high value.

CONTENTS OF TENDER SCHEDULES

Tender schedules shall contain the quantities to be executed strictly as per the sanctioned estimates, for each item of work. It is necessary that a proper assessment of quantities is made to avoid variations after execution of agreement. (+/- 25% on the quantity/value of each item and on the total value of the contract permitted in some departments). Splitting up of similar works to bring it within the competence of a particular level of acceptance should be discouraged.

While in the case of works, the schedule would cover items included in the SSR and items that are non-standard, in the case of procurements, the schedule shall include the nature of item to be supplied with detailed specifications or drawings if any available. Installation if necessary is to be covered as a separate item of the schedule.

Tender documents shall contain, in addition to the schedule of items, quantities and rates, the following:

- Special conditions of contract
- Full Description, drawings and updated specifications
- Updated and Standard GCC
- Updated and Basic Schedule of Rates - The Basic Schedule of Rates / Master Schedule prepared for items of work that have been standardized through evaluation of the cost by rate analysis of the various constituents such as the cost of material involved, cost of labour and other incidentals.

Needed for evaluation of the face value of work/item of work realistically, based on regional disparities.

The last 3 are printed and priced documents, which are required to be purchased by the tenderers separately and are not sold with every tender. Tender forms shall be signed at least on the cover page by a nominated gazetted officer.

It is desirable to insist that all responses to tenders are received only on the Standard Tender Form.

METHOD OF QUOTING OF RATES

The contractor is required to quote individual rates for each item of the schedule at the unit of measurement indicated for each, alongwith the value of each item. It is also the practice in many Central Government Departments to call for one uniform percentage above or below the face value of the scheduled rates. Such a practice is very rational as vitiation of tenders on account variation in quantities is avoided.

EARNEST MONEY DEPOSIT

Earnest Money Deposit should be levied at a fixed basis and is not varied from tender to tender. EMD is a non refundable deposit @ 1 % of the assessed value of contract, taken along with the tender submitted and is a security / guarantee against loss in the event of the contractor failing to undertake a contract for which he has quoted, i.e., resiling or with drawing his offer before the agreement is finalized. EMD is refunded in the case of unsuccessful tenderers after the finalization of tenders within a reasonably time, which is generally within the validity of offers as stipulated in the tender documents. Failure to submit EMD along with the tender shall render the tender invalid invariably therefore. EMD is payable either in cash (the cash receipt being enclosed in original along with the tender) or DD or Pay orders. Guarantee bonds for EMD is not to be encouraged as verification from the concerned banks is entailed. EMD of the successful tenderer is in most departments of the central government retained as the first charge towards the Security Deposit for the due and faithful fulfillment of the Contract.

In some departments, EMD is fixed at 2 ½ %, payable alongwith the tender failing which tender will be rejected. In some states, EMD is also

recoverable at 1% alongwith purchase of tender documents and balance 1 ½% on submission of tender documents.

STANDING EARNEST MONEY DEPOSIT

The practice in some departments is to accept a Standing EMD of given value from approved list of contractors for each category of work, which would entitle him to quote for any number of works n the said category, provided that the SEMD shall not be set off against SD for any contract.

SECURITY DEPOSIT

Security Deposit is generally equivalent to 10% of the value of work awarded and executed which shall be notified and collected for the due fulfillment of the contract before the agreement is entered into. SD can in the case of approved contractors be recovered at the rate of 10% of the value of each bill. SD is generally retained even after the final bill is payed and settled, towards security for maintenance of buildings. SD shall be in the form of either cash, DD, Pay order, Government Bonds etc or even in the form of Bank Guarantees provided the same are veified and found to be genuine. For contracts of higher value, the SD is recovered at a sliding scale and provides for a cap.

The value of EMD and SD can however be revised in each case for clearly argued reasons.

SAMPLES

Submission of samples for materials/granite/ballast – such samples shall be tested and the test results available to the tender committee or the competent authority / authorities for incorporation in the tender committee proceedings. Number of such samples shall have to be 3 – for custody with the divisional office, at the site and tender accepting authority.

VALIDITY

Open tenders are required to be kept valid for consideration for a period of 3 months, during which time the tender should be finalised. extension

of validity may be sought if necessary. Limited tenders are called for with lesser validity of offers, for 45 days, while quotations on local purchase may indicate 7 days validity.

PRICE VARIATION CLAUSE

PVC is required to be provided for contracts beyond a certain value say Rs. 25 lakhs. The price variation clause along with weightages for different cost elements should be clearly indicated in the Special Conditions of contract, so that the tenderers are fully aware of the implication of the variation clause.

MOBILISATION ADVANCE

This is an interest bearing advance agreed to at the request of the tenderer for works or orders of very high value, and is generally restricted to a portion of the cost of equipment or machinery required to be procured by him for the execution of the work or 10% of the contract value (5% for labour mobilization and 5% for machinery and equipment, payable in two instalments. The mobilization advance is recoverable against on account bills and is secured through bank guarantees

OPENING OF TENDERS

SALE OF TENDER DOCUMENTS

- The time for cessation of sale of tender documents shall be clearly indicated and is generally 24 hours before the closure of tender box.
- The Tender Box shall be closed generally half an hour before the opening of the tender box.
- Actual sale of tender papers shall be recorded in a register.
- Tenders shall be invariably dropped into the sealed tender box identified for the purpose.
- The tender box shall be opened at the prescribed / specified date, time and place, by the nominated official(s) in the presence of the tenderers who choose to be present either in person or through their nominated representative.
- The nominated official to witness the tender opening shall normally be more than one. The same procedure is to be followed in respect of quotations.
- The names of the tenderers or their representatives who are present shall be recorded in the register along with their signature, in proof that the tender box was sealed and that all the tenders were received in proper sealed condition
- The tender schedules shall be issued up to one day prior to the last day of submission of Tenders.
- The tenders shall be received at the place and time as specified in the Tender Notice.
- The tenderer shall be allowed to submit the tender either personally or through his agent or by post. In case of submission of tender by post the risk and responsibility for either loss or delays in transit of the same is to be borne by the contractor.
- The tender opening authority will not consider any tender received by him after the expiry of date and time fixed for receipt of tenders.

TENDER REGISTER

Particulars of tenders received should be invariably noted in the register including the names of the tenderers or their representatives who are present shall be recorded in the register along with their signature, in proof that the tender box was sealed and that all the tenders were received in proper sealed condition.

This register should record details of

- Date of tender opening and time
- Nature of tender
- Name of work and tender number
- Names and rates quoted by each tenderer for each item of the schedule as tabulation.
- Where the rates are differing the rates in words shall be taken as the criterion.
- Whether ITCC submitted
- Whether EMD submitted or SEMD holder
- Whether samples submitted if required and number of sample submitted

The tender register shall be signed by the tender opening authorities and the representatives of the tenderers immediately in token of correctness.

The tender opening register is a confidential document and shall be preserved for audit verification.

RESPONSIBILITIES OF THE TENDER OPENING OFFICIALS

- To initial each page of the tender which contains financial implications, on the cover with date.
- Circle the column of rate, taxes, Statutory levies, discount etc., ie all clauses that have a financial implication.
- Ensure that the offers are submitted in original only.
- Date and initial all corrections and overwriting in respect of the schedule and specifications, preferably in red ink.

- In case of variation in the rates between figures and words, the number of corrections in each page shall be noted and clear cross reference made in the tabulation statement in the tender opening register. In case of variation between the rates in figures and words, the rates as in words shall prevail.
- The tenders shall be serially numbered and the rates shall be read out to the tenderers or their representatives who may be present at the time of opening, including the special conditions if any.
- No opportunity shall be given to any tenderer to modify or alter any clause of the tender or repudiate the offer already submitted.
- Delayed tenders, ie tenders received after the closure of the tender box but before tender opening and late tenders ie tenders received after the opening of tender box shall be opened and marked as such prominently in red ink on the cover and the first page with due entry in the tender register.
- In some state governments, the procedure of tender opening provides for preparation of a statement of the attested and unattested corrections in any tender by the tender opening officials at the time of tender opening and obtaining the signature of the tenderer's representative, if any are present. It is also a good practice as in some central government departments to nominate two tender opening officials, one each from the executing department and the other an accounts representative.

EVALUATION OF TENDERS – BRIEFING NOTE – TENDER FINALISATION

A comparative statement of the offers received shall be made by the department indicating the rates quoted for each item, the total value of each offer at the rates quoted vis a vis the tender schedule value. The tabulation statement is also required to indicate the lowest rate accepted for similar item of work in the same vicinity or contiguous area.

The briefing note shall give full particulars of the tender, its response, number of valid offers with reference to the EMD and samples, the result of test of samples. Along with the tender shall also indicate the details of works on hand with the tenderers and implications of the special conditions if any quoted by the tenderers. The briefing note, duly prepared and signed by a departmental official one level below that of the tender committee shall forward the same to the accounts for verification of correctness, duly signing each page of the briefing note. This is also termed as the Evaluation Report in the State Government procedures.

The Evaluation Report is a standardized document to be filled in by nominated officials giving full particulars of the

- Scope of the work and estimated cost
- Stage of land acquisition
- Reference to the approval to the tender documents
- Salient points of the tender such as the stipulated period of completion and price escalation, if any.
- Tender invitation process
- Response to the sale of tenders
- The technical bid opening and evaluation of the technical bid
- Reference to any representations/petitions received
- Price bid opening reference and details
- Reference to the lowest qualified tenderer and his rates
- Reference to the trend of tenders for similar works in the vicinity
- Recommendations of the tender forwarding authority.

The Executive Engineer/Superintending Engineer/Chief Engineer who are delegated with powers to invite tenders, undertake, in some state governments, the evaluation of the tenders as per the qualification

criteria. Beyond certain financial limits, tenders are referred to the Commissioner of Tenders along with the technical id evaluation for consideration. The latter shall scrutinize the tenders in accordance with the stipulated conditions and take a decision on the tenders. Officials empowered to consider and evaluate the tenders particularly careful in the matter of application of rules and regulations pertaining to tenders. The onus of examining of valid tenders rests purely on the nominated officials.

Tenders should be considered without any delay after opening of tender documents. Finalization of tenders must be ensured within the period of validity of offers. While opening the tenders under two packet systems due care must be taken to ensure that covers (a) and (b) are received in fully sealed condition. If either of them are found unsealed such tenders shall not be open and shall be summarily rejected. No clarifications shall be sought which have a financial implications. Information if necessary, which do not have a financial bearing, may be called for after thorough scrutiny of all tenders.

QUALIFICATION CRITERIA

Various states have different yardsticks for assessing the capability of the tenderers. In AP, to qualify for award of the Contract, each bidder in its name should have, during the last five years (specified financial years i.e., they should be immediately preceding the financial year in which tenders are invited).

- a) Satisfactorily completed (non less than 90 per cent of Contract value) as a prime contractor, similar works of value not less than 50% of Estimated value of contract in any one year.
- b) Executed in any one year, specified minimum quantities of works under the following specifications :
 - Cement concrete including RCC and PSC
 - Earth work in both excavation and Embankment

EACH BIDDER SHOULD FURTHER DEMONSTRATE

- a) Availability (either owned or leased or to be procured against mobilization advances) of the key and critical equipment for the work.
- b) Availability of the Key personnel with adequate experience as required based on the requirement for the work to be executed.
- c) Liquid assets/credit facilities /solvency certificate from Banks equivalent of the estimated cash flow for three months in peak construction period).
- c) Experience relating to the work executed in State/Central Government departments or State/Central Government undertakings which alone shall be considered.
- d) It must be clearly noted however that the above criteria are not fixed and vary between states and between nature of work to be executed. Some state government rules clearly stipulate that tenders received in excess of 15% of the estimated contract value shall be summarily rejected. Contrarily, offers received at more than 15% below the estimated value shall be supported by a bank guarantee or a demand draft for the difference in value, at the time of conclusion of agreement.

PROCEDURE IN THE CENTRAL GOVERNMENT DEPARTMENTS

It is necessary that the nominated tender committee considers and recommends the most suitable offer for reasons to be clearly argued and recorded in writing, for consideration and acceptance by the competent authority. The tender committee nomination may vary with the nature of tender and value of tender and may involve a member of the concerned department, an associated finance member and a third member who shall also be technically competent to consider the offers. In specific circumstances, a fourth member may be co-opted. The standing tender committee nominations are related to the functional responsibilities and jurisdiction of officials and are expressed in terms of their financial powers. The tender committee nomination is closely related to the Delegation of financial powers in the department. Inevitably however, the

associate finance member is a standing committee member, included to safeguard the financial interest of the government. For purposes of objectivity the tender committee composition is made up of three members.

The tender committee shall be responsible for making a critical evaluation of all the offers received and shall look into the reasonableness of rate, the availability of budget, estimate sanction details, adequacy of the procedures followed, financial capability of the contractor, his previous track record and the works on hand. The Tender committee recommendations shall be finalized inevitably before the validity of offers expire as the acceptance letter /agreement shall have to be executed before its expiry.

In case of supplies, if a higher offer with an earlier delivery is accepted in preference to a lower offer with protracted delivery, the purchase is required to be recommended on time preference terms.

TIME LIMIT FOR FINALISATION OF TENDERS

The Tender committee recommendations shall be finalized inevitably before the validity of offers expires as the acceptance letter /agreement shall have to be executed before its expiry. Generally the period of finalisation of tenders shall be within 3 months after the date of tender opening.. If due to any administrative reasons, the tender cannot be settled before this period, the tenderers should be addressed to extend the period of validity of tender. If extension of validity is not given by any tenderer, his EMD has to be rightly refunded. Finalisation of the other offers, in case the offer that was not extended is the lowest, is a serious matter as the rates are bound to be higher. Full EMD is to be forfeited if an offer is withdrawn before the validity period expires, ie., if a tenderer resiles his offer.

POWERS OF ACCEPTANCE OF TENDERS

It is the responsibility of the tender committee to verify the genuineness and correctness of all certificates in respect of eligibility, experience and details of previous similar works executed. Under no circumstances shall tenders be scrutinized and finalized by officials beyond their powers of

technical sanctions. In adherence of discrepancy to stipulated conditions shall be carefully scrutinized for rejections.

The tender committee is responsible for

- (a) Careful scrutiny of all rates for major items of work covered this scope of contract.
- (b) Ensuring that no vitiation of tender would occur.
- (c) That no unintended benefit accrues to contractors on account of implementation of specific clauses.
- (d) That the financial capacity and capability of the tenderers including their technical competence is fully validated.
- (e) That clear reasoning is given where offers are overlooked
- (f) That unsolicited offers are not considered without recording valid reasons in writing
- (g) That rings formation does not occur.
- (h) That samples are submitted wherever due and that offers without samples are summarily rejected.
- (i) That Reserve Price is ensured for each lot in case of auctions

All the members shall sign proceedings of the tender committee of every page. The recommendations of the tender committee are cover all aspects including the financial and technical capability and consideration of rates reasonableness of major items of work in order to enable the approving authority to take decision. In case of any dissent from any member of the tender committee, reasons for dissent shall be clearly recorded within the body of the tender committee recommendations.

In case of open tenders where only one tender is received the reasonableness of rate must be clearly examined before considering acceptance. Procedures vary in different states, in some of which a cap of 15% over the estimated value is permissible and any excess beyond that warrants discharge and recall of tenders. On no account shall late and delayed tenders be accepted.

The decision of the tender accepting authority is independent of that of the tender committee. The tender accepting authority shall invariably be one level above for all the tender committee. The tender accepting authority shall record clear reasons for acceptance.

In various ministries of the Central government, there is a gradation in the authority to accept tenders based on levels/jurisdiction while in many state governments the powers are centralized with one authority. In some state governments, as in AP, tenders of high value are referred to the Commissioner of Tenders for finalisation.

The tender accepting authority is required to verify the correctness of certificates submitted by the tenderer, comparing with authenticated agreements of previous works.

NEGOTIATIONS

Under extant rules, no negotiations are to be held at any level generally.

EVALUATION OF TENDERS – TENDER FINALISATION

Evaluation Report - standardized document

Who is competent to prepare **Evaluation Report** – Contents - Role of Commissionerate of Tenders

CONTENTS

- Name of the work and estimated cost
- Stage of land acquisition

- Reference to the approval to the tender documents
- Salient points of the tender such as the stipulated period of completion and price escalation, if any.
- Tender invitation process
- Response to the sale of tenders
- The technical bid opening and evaluation of the technical bid
 - Qualification criteria
 - Verification of the genuineness and correctness of all certificates in respect of eligibility, experience and details of previous similar works executed.
- Reference to any representations/petitions received
- Price bid opening reference and details
- Reference to the lowest qualified tenderer and his rates
- Reference to the trend of tenders for similar works in the vicinity
- Recommendations of the tender forwarding authority.

QUALIFICATION CRITERIA

Yardstick for assessing the capability of the tenderers –

Each bidder in its name should have, during the last five years (specified financial years i.e., they should immediately precede the financial year in which tenders are invited).

a) Satisfactorily completed (non less than 90 per cent of Contract value) as a prime contractor, similar works of value not less than 50% of Estimated value of contract in any one year.

b) Executed in any one year, specified minimum quantities of works under the following specifications :

- Cement concrete including RCC and PSC
- Earth work in both excavation and Embankment

Each bidder should further demonstrate:

c) Availability (either owned or leased or to be procured against mobilization advances) of the key and critical equipment for the work.

d) Availability of the Key personnel with adequate experience as required based on the requirement for the work to be executed.

e) Liquid assets/credit facilities /solvency certificate from Banks equivalent of the estimated cash flow for three months in peak construction period).

f) Experience relating to the work executed in State/Central Government departments or State/Central Government undertakings which alone shall be considered.

g)Tenders received in excess of 10% of the estimated contract value shall be summarily rejected.

h)Offers received at more than 15% below the estimated value shall be supported by a bank guarantee or a demand draft, for the difference in value, at the time of conclusion of contract.

Responsibilities:

- a. Careful scrutiny of bid
- b. That no unintended benefit accrues to contractors on account of implementation of specific clauses.
- c. That the financial capacity and capability of the tenderers including their technical competence is fully validated
- d. Unsolicited offers
- e. That ring formation does not occur.
- f. That samples are submitted wherever due and that offers without samples are summarily rejected.
- g. What is Adequate Response
- h. That Reserve Price is ensured for each lot in case of auctions

AGREEMENTS

In government, contracts are concluded through a written agreement. The agreement is the full and final proof of a contract having been entered

into and forms the only basis and authority for the contractor to execute the work and for the department to make payment. The terms and other conditions of an agreement are equally binding on both parties to the agreement. It is also a practice (in some ministries of the Central Government, for example) however, to issue an Acceptance Letter which would enable the contractor to commence the work pending completion of formalities relating to the signing of the agreement. The Acceptance Letter shall however, even in such cases, detail the main clauses and terms of the contract as well as the item wise rates accepted for execution. No payment can however be made on the basis of an Acceptance Letter. At times, an advise of the award of the contract is issued, calling on the successful bidder / tenderer to submit the required performance securities and sign the agreement within a stipulated date.

It is desirable that the Contract Form is standardized and approved by the legal and finance department, at least to the extent of standard clauses required to be incorporated therein. This precludes the possibility of incorporation of irrelevant material, contradictions and ambiguities which may lead to delays, disputes and litigation later.

CHECKLIST

ENTERING INTO CONTRACT - AGREEMENT OR PURCHASE ORDER

- A written agreement containing relevant financial clauses such as rate/price etc., is a pre-requisite
- The terms of contract must be precise and definite, with no ambiguity or room for misinterpretation.
- It is advisable to enter into contracts after obtaining necessary legal and financial clearances of the competent authorities to the draft contract.
- To the extent possible, standard terms / forms of contract should be adopted after sufficient prior scrutiny.
- Sufficient safeguards to government property and interests must be inbuilt into the terms of agreement
- The terms of contract once entered into cannot be materially varied unless with the mutual acceptance of the two parties of the contract and in the case of government as one party, preferably with competent scrutiny and clearance of the financial implications.
- Contracts shall not contain conditions relating to uncertain and unconditional / indefinite liability to either party
- Negotiations, under the rules, can be held with the lowest tenderer. In case post tender negotiations have been held, it is necessary that the negotiations are supported by specific written confirmatory response from the tenderer whose offer has been accepted, as authority for entering into the agreement.
- Generally the clauses in the Agreement are derived from the tender schedule conditions only.

- The Agreement shall invariably detail
 - The name and scope of work in full detail
 - The authority in whose name / for whom the work is being executed
 - Detailed item wise schedule of accepted rates written in words and figures with item wise quantities for execution as per the approved tender schedule / Bid documents
 - Accepted total value / price of contract in figures and in words. In case of works contracts, the percentage(s) accepted over the estimated value of work is also indicated separately for SSR and NS items.
 - Accepted period and date of completion of work
 - The specifications and / or standards / technical drawings / provision in manuals that are required to be adhered to by the supplier / contractor / service provider
 - Performance Security / Security Deposit payable and mode of payment / recovery of SD
 - Scheduled progress of completion of work in terms of units and / or percentage of progress
 - Provision and procedure relating to the execution of permissible variations in quantities and / or percentages to be executed at the contracted rates.
 - Provision and procedure relating to the execution of variations for execution of additional work under the scope of the same contract.
 - Agreed upon milestones (Schedules, Timeframes and Deliverables) towards execution of contract. Terms of payment and the schedule and basis of payment in detail

- Mode of payment for work executed
- Price variation clause if applicable to the contract. The nature and quantum of price variation – whether on specific components used, material, fuel, labour should be clearly indicated
- Statutory levies (ST, ITCC, Works Contract Tax, Service Tax) recoverable.
- Excise duty payment documents if any, required to be produced for admitting bills
- Mobilization advance if any required to be given to the contractor / supplier and details of guarantees required in support thereof
- Clauses relating to permissible uptime / down time in case of service contracts
- Liquidated damages / penalties leviable on account of non compliance with accepted terms of progress of work or accepted uptime
- Safeguards for government property entrusted to a contractor.
- Documentation if any required to be produced (quarrying rights, Excise Duty or Income Tax recovery waiver)
- Maintenance period if any, and guarantees therefore
- General Conditions and Special Conditions that govern the contract.
- Criteria for recovery of charges due on account of supply of electricity, water, seignorage charges.
- ITCC required to be submitted
- Force majeure conditions of contract

- Dispute resolution provisions - Arbitration Clause
- Provisions relating to the mode of determination of contracts in case of default – alternate modes of execution of the balance work – risk and cost provisions – liability of the contractor in such cases
- Responsibilities of both parties of the contract
- IPR /User licenses / Patent rights if any devolving out of the contract
- Inspection and acceptance tests covered under the contract
- Sub contracting provisions if any under the contract

CONTRACT MANAGEMENT

The management of a contract to ensure due enforcement and fulfillment of contract conditions is, in many respects, akin to the efforts required in managing a project. In government, the responsibility of managing a contract that has been entered into, invariably devolves to the middle level of management. In contracts for execution of works or for purchases or even for rendering specific technology related services, this responsibility is discharged by one official or a group of officials in the hierarchy directly in charge of the said nature of contract. In respect of outsourcing contracts entered into, such as annual maintenance contracts, contracts for security and housekeeping services, catering contracts, contracts for hire of vehicles etc., such a responsibility is handled by the administrative machinery in the department.

Irrespective of the nature of contract, however, such management implies regular monitoring of progress and adherence to contract terms. During the pendency of contracts, thus, certain fundamental principles to be followed include

- Ensuring good workmanship by proper supervision
- Keeping proper account of material used, whether issued by the administration or used by the contractor
- Ensuring scheduled inspections
- Keeping proper record of released material and issues to contractors
- Recording measurements clearly in prescribed documents and obtain the signature of the contractor especially where risk and cost tenders are proposed
- Carrying out prescribed test checks as stipulated
- Ensuring adherence to specifications and drawings

There are likely to be reasons which necessitate revisiting of the contract on account of

1. *Extension of the completion period* of delivery for supply contracts or completion period for works contracts :

The request for extension of delivery date /completion period of contract is required to be made by the contractor. No extension of the contract

period is granted as a matter of routine unless specifically sought for by the other party to the contract, since an extension is technically a modification of the original contract terms. Even in instances where extension is suo moto proposed by the administration, its acceptance has to be obtained in writing from the contractor.

Granting of extension is however a matter of discretion. While so doing, care needs to be taken to ensure that the contract was not placed on time preference terms at a higher rate (Price preference). Extension can be granted with or without financial implications – the former, if administrative interests on account of non supply or non completion of contract, is not affected or in case extension is to be considered on force majeure conditions, and the latter when the delay is likely to affect administrative interests.

The powers to grant extension in either case or to waive penalties on account of delay in accepted time schedules is vested with the tender accepting authority generally or with any other authority to whom this power is delegated.

2. *Enforcement of denial clauses:*

Denial clauses are those that are enforceable for breach of contract, such as the levy of *liquidated damages* for non adherence to terms of supply or completion in contracts. Levy of liquidated damages is a standard condition of contract, enforceable generally on account of delayed supplies. Extensions of contract with liquidated damages have to be advised on writing. The quantum of Liquidated damages leviable depends on whether the delay in supply has caused a loss and / or inconvenience only to the government as a party and in both entire and severable contracts.

In the case of purchase orders placed on price preference terms, the enforcement of penalty for delay in supply is at higher rates.

Liquidated damages are levied on the unfinished portion of the contract, excluding statutory levies only. It is also the practice to levy *general damages* instead of liquidated damages if only inconvenience is caused on account of delay in adherence to time frames. LD is not leviable on Rate Contracts or Educational Orders.

3. Determination of contracts: - Risk and cost:

Repurchase or execution of work on risk and cost terms is, as a rule, on identical terms of the original contract. This provides the right of the purchaser to recover losses on account of higher rates being accepted on the subsequent contracts, and the supplier to mitigate his losses. Thus the mode of tender, specifications, conditions of liquidated damages, arbitrations, terms of payment, inspection authority etc., should not be modified, i.e., the intention is that the terms of the new contract should not be more onerous or more liberal than the original contract. The defaulter, in any case, shall not be debarred from tendering. On the contrary, it is imperative that the defaulter's attention is specifically called to the risk and cost tender in order to give him another opportunity to minimise his losses.

Specific time frames for entering into risk and cost contracts exists, non adherence to which may render the risk and cost action non tenable.

Contracts can be terminated on account of non fulfillment on risk and cost terms. In such case, the decision to terminate on risk and cost is to be advise through issue of notices (7 days and 48 hour notices) to the contractor before termination, in order to give him adequate chance to either improve performance or respond to the notice. Under the general conditions of contract, however, the executive in charge of the work / contract retains the discretion to decide the manner of execution of the balance work.

Where a work is completed satisfactorily, however, the post contract management requirements are restricted to finalizing due payments after taking necessary measurement, ensure required inspection etc. Security Deposit if required to be retained during the maintenance period for some works shall be withheld.

Care must be taken to ensure that the final bill of the contractor is accepted by him and signed in token of such acceptance without any qualifications. Such qualifications, whether in the matter of enforcement of contract, measurements, additional quantities or items that have been executed beyond permissible variations give scope for arbitration on the contract later.

4. ***Variation*** in scope of contract or in the value of the contract on account of additional items or variation in the quantities of existing items: The rules on permitting variations on account of the above vary among governments, and are also dependent on the nature of the contract. Technically however, variations in scope of contract vitiate the entire process of tendering is looked upon speciously. The permissible variations in quantities and the nature of items in which contractual quantities may be varied differ greatly.

5. ***Book Examination Clause*** is enforceable for contracts of high value and enables the government to call for and verify the books of the contractors to ascertain the actual cost of execution of contract. This is an obligation without prejudice to the obligation of the contractor under the rules and shall be binding on the contractor

**STREAMLINING OF CONTRACTING MECHANISMS – REFORM
INITIATIVES -TRANSPARENCY AND ACCOUNTABILITY
IN CONTRACTS**

Governments have, from time to time, initiated several reforms in the matter of tendering for public works in order to simplify the procedures, ensure greater transparency and accountability at various levels of functioning while simultaneously obtain better value for money in terms of better quality of execution of works. The introduction of comprehensive tender reforms to streamline and standardize the process and procedure for call of tenders and award of contracts has been a matter of prime importance with almost all governments, therefore.

We shall now attempt to identify the key principles, the adherence to which would enable transparency and accountability in the contracting process

The world over, there is an *increased insistence to move towards competitive bidding and contracting processes* in the matter of selecting the most preferred provider of goods and services from the range of bidders, by seeking offers and evaluating these against pre-determined selection criteria. Competitive tendering and contracting, it is opined, helps achieve better value for money, improve accountability and transparency in the delivery of public / government activity.

KEY PRINCIPLES OF CTC

To obtain the best value for money:

This requires a balance of risks, quality and benefits and an assessment of the most effective way to deliver products or services. Based on such assessment, the best value for money bid may not always be the lowest bid. It would be necessary to evaluate ‘the whole of life costs’ to get the best outcome. This can be best done by ensuring that bids are comparable, that they reflect all costs fully and that they clearly articulate service standards and other dimensions of performance. CTC should be integral to the planning process and reflect the strategic goals as a measure of performance improvement. Hence it is necessary to have clear specifications of the desired outcomes before tendering.

To facilitate transparency and accountability:

1. The availability of a sound process in place, which includes carefully prepared plans and appropriate staff skills to ensure implementation. It is worth noting that the quality of the bids is often improved when tender documents contain

- Clear specifications, focused on the desired outputs and outcomes rather than process (ie., the standards of service expected with responsibility should be clear) and
- Details for the evaluation criteria and methodology.

Thus the Statement of Requirement should include a clear definition of the activity and its objectives, specification of required outcomes and a determination of expected performance levels. These details should be included in the Requirement Statement which should form part of the tender documents. In addition, the RFP (Request for proposal), EOI (Expression of interest, and RFT (Request for tender) must be drafted unambiguously. The baseline cost estimates for the activity, usually based on the current costs or re-engineered current costs must be drawn up. The tender documents must clearly specify the activities in terms of outputs or outcomes rather than processes or inputs. This enables the tenderers to develop innovative approaches to deliver outcome. Requirements should incorporate performance targets as well as any assumptions or constraints.

- The tender evaluation and selection criteria should be closely linked to the Requirement Statement. Key assumptions, risk and quality issues, accountability requirement, intellectual property requirements, special client needs, legal and administrative constraints, performance criteria and measures, IPR and relevant government policies should be spelt out.
- Performance criteria to monitor the contract must be established with measure and indicators that are not very many, but representative.

2. Transparent process – The process must be carefully documented and meet audit requirements thus ensuring accountability for the decisions. The need for documentation, which should demonstrate that the process was conducted with probity, and that it ensured open competition, fair dealing, commercial confidentiality and a clear audit trail cannot be over emphasized.

- Equal access to information – One strategy is a single point of contact
- The right of access to any document should be transparent and enforceable. .

3. A complaint mechanism needs to be in place. Unsuccessful tenderers also have a right to be given feedback (debriefing) on why their bids were successful. Unsuccessful bidders should be notified as soon as possible and offered a debriefing having due regard for any commercial in confidence issues.

4. Maximizing fair competition. Encouraging the number of potential service providers to bid for government business encourages competition. This means that the need for fair and ethical dealings with industry so as not to limit the number of potential bidders is essential if credibility is to be maintained and trust developed. The lack of open and transparent competition can lead to undesirable consequences such as higher costs to government.

- This would imply that equal confidentiality is maintained of all material, in
- the conduct of the tender process and that each tender is given fair and equal consideration.

5. Accountability arrangements must be in place in keeping with which contract management activity must be discharged clearly rather than as a line management of a process. This means that monitoring and reporting mechanisms of performance of both parties are auditable.

- Development of Government Service Charters to set standards of performance and service levels. Charters are a strong performance measurement, evaluation and accountability tool.

6. Simplification of procurement procedures: Transparency in process of procurement-Reduction in delays

(The Government of AP had, with the aim of simplifying the contract process, constituted a State Cabinet Sub-Committee to examine all procedures relating to sanction of estimates for the award of contracts, in 1998. In pursuance thereof, and with a view to ensure transparency and equal opportunity, tender reforms that were recommended were adopted in the same year. The views of all relevant parties, namely the Builders Association, Contractors and Government Officials were elicited on the further reforms required to be introduced in Andhra Pradesh simultaneously.)

- Government contracts have a major impact on development of markets and hence the structure of the tenders and contracts must be such that the long term impact on the market is kept in mind.
- It is necessary to build risk management strategies into the process. As a general rule, risk responsibility should be allocated to the party best able to manage it. Risk can be minimized by a rigorous process of selection – check record of past performance, quality assurance procedures and capacity. The tender evaluation committee should have a mix of skills and have access to legal and financial expertise. Strategies should be evolved, especially in service providing areas to work on critical areas with the provider in partnership or on temporary exchange, through holding regular meetings and reports on critical issues; through purchasing expertise through the use of consultants especially where there are large shifts in technology.
- Transfer of significant intellectual property owned by government may be involved as in contracts for software or data management systems or products. The value of that property for both the government and contractor must be carefully evaluated and reflected in the tender documentation and bid prices from contenders.

ADVANTAGES OF A COMPETITIVE TENDER AND CONTRACTING PROCESS

The CTC process can improve efficiency, improve access to project management and technical skills, enable access to innovative

approaches to service delivery, create and foster a competitive market and increase the choice of service deliverers for government but it is imperative that the government has a clear idea of what they wish to achieve using CTC. As part of the Performance Improvement Cycle, issues of effectiveness and efficiency in any particular activity should be identified including what the government expects from the activity, the current level of performance and costs and expected levels.

SETTLEMENT OF DISPUTES - PROVISIONS IN GOVERNMENT CONTRACTS

Any dispute or difference of any kind that arises between the department and the contractor in connection with or arising out of the execution of a contract or work, either during the progress of work or after its completion or before or after its termination or abandonment or breach shall first be referred by the contractor in writing to the Executive Engineer (read - tender accepting authority) for settlement. The latter shall, within a period of 30 days thereafter convey his decision to the contractor for compliance of the decision.

If the Executive Engineer fails to convey his decision in writing within this period, or if his decision is not acceptable to the contractor, an appeal shall be made by the latter within 30 days thereafter for consideration and personal hearing if necessary along with evidence in support of the same. The decision of the Executive Engineer shall be conveyed within 30 days of receipt of the same. In the event of the Engineer's failure to respond or if the decision conveyed is unacceptable to the contractor, the latter may request for a reference to arbitration of the matters in dispute within 30 days thereafter. The reasonable period of reference to adjudication is generally taken as within 6 months from the date of preparation of final bill / counter signature of the contractor or acceptance of final payment, provided his intention to refer the matter is clearly qualified and recorded in the final bill. In many central government departments, the time limit for seeking arbitration is governed by the Law of Limitation.

REFERENCE TO ARBITRATION - GOVERNMENT AS A PARTY TO THE CONTRACT

Arbitration proceedings in contracts in which Government is a party shall be governed by the provisions of 'The Arbitration and Conciliation Act,

1996', as amended from time to time. The Arbitrator / Joint Arbitrators are required to give a reasoned award in support of their decision.

Though in general, the authority competent to refer claims to arbitration is generally the tender accepting authority. The powers to refer the request of the contractor to arbitration vary from state to state and between the state and central governments. In Andhra Pradesh, the Superintending Engineer has been vested with powers to refer contractor's claims of up to Rs.10000 in value to arbitration, beyond which, up to Rs.50000, the matter is referred to the Chief Engineer. In the Central government however, the authority competent to refer claims to arbitration is generally the tender accepting authority to which the powers of finalisation of contracts are first delegated.

While all disputes irrespective of value are resolved only through arbitration in the Central government, the (some) State Governments seek to refer claims above Rs.50000 in value to the civil court with competent jurisdiction by way of a civil suit and not by arbitration. In the case of the central government, a civil suit is filed for recovery and damages of the Government.

SETTING OFF DUES TO CONTRACTOR

While the Administration retains the powers to withhold amounts due on one contract to the contractor towards dues from the contractor on another contract on account of failure to complete the work or liquidated damages or allied penalties, no amounts due on one contract of a contractor can be set off against the dues of another on account of either risk and cost or liquidated damages, without the approval of the civil court. This clearly shows that Government recoveries can be enforced only through a civil suit, and that the practice of reference to arbitration is not enforced in such cases.

Hence, while both parties to the contract may refer claims to adjudication under the rules of contract in some State Governments, in practice only the contractor refers claims to adjudication in the departments of the Central Government.

The Arbitration Act 1940 was superseded by 'The Arbitration and Conciliation Ordinance 1996'. This marks the beginning of an important chapter in the history of legal reform in India. While arbitration has been

long accepted as a form of dispute resolution, several factors have contributed to its redefined importance as an alternative to litigation especially in government, namely

- Mounting arrears in court cases
- The process of economic liberation since 1991

THE NEW LAW – REFORMS INITIATED AND FACILITATED

It provides a clear framework for both international commercial arbitration and domestic arbitration. Foremost among the changed perspectives that have come into play has been the growing recognition of the role of Alternative Dispute Resolution (ADR) systems in the country. This practice has been accepted and is found to be fairly successful in matters of dispute resolution in domestic and international contracts in other parts of the world like the US, UK, Canada and Australia.

Secondly, the Act has eliminated such provisions, which earlier enabled court intervention in almost every stage of arbitration under the earlier act. The present law is modeled on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration. It provides for the court intervention only in the pre-arbitration and award stages.

WHAT IS ARBITRABLE

The new law provides for recourse to arbitration for resolution of disputes, which are arbitrable between parties in any matter. This clearly implies that disputes of certain kinds, as qualified under any law or agreement which are deemed not arbitrable, cannot be referred to arbitration under the new law (for instance, 'excepted matters' relating to measurements under General Conditions of Contract of the Indian Railways and similar such provisions in the State Government rules of contract and Specifications – In AP for instance, clauses relating to the quality of materials, measurement and mixing, rejection of defective work, scaffolding instructions, temporary structures etc., are not arbitrable and the settlement of these matters is the sole discretion of the Engineer).

The scope of arbitration in Government Contracts is restricted to

- Interpretation of the contract
- Matters arising out of the contract except 'excepted matters' the sole discretion in the decision of which rests with one party to the agreement, namely the Government, represented by the tender accepting authority.
- Due to the contractor on account of non-payment for work executed.
- In AP, Preliminary Specification 73 details the items, which are arbitrable. It also details the excepted items, which cannot be referred to arbitration under the terms of the agreement with the Government.

APPOINTMENT OF ARBITRATORS

However, the new law is very expansive in the matter of composition of the arbitration tribunal and appointment of the arbitrator(s). The number of arbitrators and the procedure of appointment of arbitrators is decided by mutual consent between the two parties to the contract or under the explicit provisions of the agreement. In general practice, each party to the contract appoints one arbitrator from the panel of arbitrators presented to it with the proviso that only independent persons not connected with any party shall be appointed as Arbitrators.

APPOINTMENT OF ARBITRATOR BY COURT

A noteworthy feature is the provision regarding the appointment of arbitrators by the Chief Justice or his designate when the two parties do not agree on a procedure for appointment of arbitrators. Though Section 8 of the Arbitration Act 1940 provided for appointment of an arbitrator or an umpire on the directions of the court on account of the failure of the administration to do so in a timely manner, the present provisions enables the Chief Justice to designate a person either by name or designation or nominate an Institution specializing in arbitration, thus giving recognition to the role of arbitration institutions.

The new law also gives the arbitral tribunal the powers to decide on its own jurisdiction and on the procedure to be followed in the conduct of its proceedings as agreed to mutually by the two parties. The Tribunal is not constrained by the provisions of the Code of Civil Procedure 1998 or the Indian Evidence Act 1872.

CONDUCT OF ARBITRATION PROCEEDINGS

The procedure for conduct of arbitration proceedings is detailed in Chapter V Sections 18 to 26 of the Arbitration and Reconciliation Act, 1996 and relates to the date of commencement of proceedings, procedure for recording statement of claims, the defense statement and hearing, appointment of counsels and experts, the making of an award and termination of proceedings.

REASONED AWARD

The new law prescribes that the arbitration award shall spell out a reasoned decision, i.e., give a speaking award, unless the parties have agreed that no reasons are to be given. This is a significant improvement and departure from the provisions of the earlier act. While the inclusion of this condition has no doubt given rise to questions on the vulnerability of the award and in turn its finality, under Sections 5 and 34 of the Ordinance, the scope of judicial scrutiny of the award has been restricted. Thus it has been accepted as a principle that no court shall sit in appeal over an award given by an arbitrator.

SETTING ASIDE OF THE AWARD

An award under The Arbitration and Conciliation Act, 1996 shall be final and binding on the parties and cannot be set aside by a court unless on grounds of invalidity of the arbitration agreement under law, violation of the principles of natural justice, conflict with public policy and the arbitrator exceeding his terms of reference. This clearly shows that the scope of judicial scrutiny though the award is a speaking award is limited. Under Section 36 of the Ordinance, an arbitration award is conferred the status of a decree. The provisions of 1940 Act for filing the original award in the court and for applying to make it a decree by the court have

been dropped. The award shall be deemed as a decree of the court, if not challenged by any party or if the challenge fails.

The Arbitrator(s) are not bound by the Code of Civil Procedure 1908, and may conduct their proceedings as per agreement of parties and if agreement is silent, in the manner it considers appropriate. The Tribunal is also authorized to terminate the proceedings if the claimant fails to file the statement of facts and claims and to continue proceedings if respondent fails to file his counter statement of facts and clear in the fixed time.

The Arbitrator's award shall state the reasons upon which award issued. However where parties have agreed that no reasons are required or the award is a compromise award and is not required to give reasons. The award can include interest from the date on which the cause of action arose till the date of award.

The Arbitrator's may ask or call for advance deposit from the parties and fix the fees and expenses of arbitrators, witnesses, legal fees etc. The Arbitral Tribunal shall have lien on the arbitral award for meeting the costs of arbitration.

CONCILIATION

One of the most pioneering inclusions is the provision in Chapter VI Section 30(1), which empowers the tribunal to encourage settlement of a dispute through mediation, conciliation or any other procedure mutually acceptable to the two parties at any time during the arbitral proceedings. This provides for an informal settlement, which will be recorded by the tribunal in the form of an arbitral award on agreed terms. Such a settlement will have the same status and effect as any other arbitral award.

Part III of the Ordinance provides for the conduct of independent conciliation proceedings outside the Court, as a statutory framework. This is in the lines of the UNCTRAL Conciliation Rules in the matter of international commercial relations. This is an independent conciliation procedure arising out of a legal relationship, entered into mutually by both parties. This is a significant clause for the promotion of Alternate Dispute Resolution Systems in India.

While no doubt arbitration is considered to be less formal, less time consuming and certainly more efficacious a system of dispute resolution

that litigation, on account of the fact that conciliation methods in the presence of a mediator/arbitrator is less adversarial in nature and promotes greater goodwill, the latter is increasingly gaining in usage.

ARBITRATOR AS FACILITATOR

Under such situations, Part III envisages that any one party inviting the other party in writing to conciliation can initiate conciliation proceedings. The number and names of conciliators are mutually decided – either for a single conciliator or three, one nominated by each party and the third as a presiding conciliator. *It is however to be noted that this provision for conciliation is not yet included in government contracts.* The conciliator is basically a facilitator and not a judge and the acceptability of such conditions in government contracts is doubtful. Further the success of the conciliation method envisaged in Section III hinges on the availability of trained impartial conciliators with necessary educational qualifications and professional experience as well as credibility for acceptance. One facilitating feature is the acceptance of institutional arrangements for facilitating conciliation. The principle of settlement reached by the parties and signed by them through conciliation having the same status and effect as an arbitration award is another noteworthy feature.

Both the arbitration award and a settlement agreement reached after the conclusion of a conciliation proceeding are enforceable as a decree under Section 36 of the Ordinance. Such conciliation proceedings presuppose that there shall be total confidentiality on the part of all participants in the process as well as that arbitration proceedings do not progress simultaneously. Any one party can also terminate the conciliation proceedings in writing during the process.

The Alternate Dispute Resolution process assumes that there are other form other than the court or arbitration available for settlement of disputes and is a bold initiative in the Indian context.

CODE OF ETHICS FOR ARBITRATORS

With the increasing recourse to arbitration practice the world over, more persons are being called upon to perform this onerous job. Arbitration is a quasi-judicial process and it is therefore essential that an arbitrator performs his duties and functions impartially, with honesty and utmost care, keeping the tenets of natural justice in mind all the time. One of the primary grounds on which an arbitration award can be challenged and set

aside is that of mis-conduct on part of the arbitrator. Further, since the provisions of the Civil Procedure Code or the Evidence Act are not binding on the Arbitrator, he is free to form his own procedure within the ambit of the arbitration law and the agreement under which arbitration is enforced. In the absence of any clear-cut legal guidelines, the role of the arbitrator, his conduct and procedures enforced in the conduct of the proceedings is therefore very difficult. Over a period of time therefore International legal institutions have evolved a code of ethics for the arbitrators.

The American Arbitration Association and the American Bar Association have evolved a code of conduct for the guidance of the prospective arbitrators and the users of arbitration in commercial disputes:

- An arbitrator shall uphold the integrity and fairness of the arbitration process.
- Expression of willingness to serve as an arbitrator does not violate the principle of integrity.
- The Arbitrator must be fully available at all times for facilitating the arbitration process.
- The arbitrator shall not indulge in any activity after his appointment whereby he enters into a relationship, or develops an interest, either official or personal which is likely to affect his impartial status as an arbitrator.
- The Arbitrator shall be bound by the procedure and rules laid down in the agreement in matters of arbitration.
- He shall not be responsible for any delay or disruption in the arbitration process.
- His ethical obligations for the conduct of the arbitration are assumed
- He shall maintain full confidentiality of the arbitration process.

PRE ARBITRATION COMMITTEE

The General Conditions of Contract of many Government Departments provide for the constitution of a Pre Arbitration Committee which will examine the claims of the contractor to arbitration and arrive at a decision through a process of negotiation and conciliation, in case the claims of the contractor are found to be genuine. In actual practise, however, pre arbitration committees are found to be rarely successful since the element of personal responsibility is associated to the recommendations of the nominated committee, which would consist of a representative of the concerned engineering department and an associate finance member.

REASONS FOR INCREASE IN REFERENCE TO ARBITRATION IN GOVERNMENT CONTRACTS

1. Improper estimation – wrong data used for want of adequate and detailed estimation of quantities (especially in earthwork)

2. Faulty and ambiguous provisions in the tender documents and contractual conditions
3. Delays in handing over of the site – land acquisition delays – before tender is finalized. (In Andhra Pradesh, the contract conditions have been modified to put the onus of land acquisition on the contractor – is this modification welcome or workable. Implications on the cost of the work to be examined)
4. Indifferent contract management.
5. Bad estimation - Variations in the course of execution on account of additional quantities, additional items etc.
6. Inadequate progress and stoppage of work by the contractor on account of lack of approval to final plans or designs or drawings. In contracts where the responsibility of supply of material rests on the Government (this practice is being increasingly discontinued in the free economy) delays are bound to happen
7. Change in design especially foundations due to inadequate investigation and soil exploration before calling for tenders and estimation of quantities.
8. Delays in acquisition of forest land on account of inter departmental delays
9. Award of contracts at unworkable rates merely on the grounds of it being the lowest.
10. Inadequate budget provisions and delays in payment of on account dues to the contractor thus affecting his liquidity.
11. Delays on account of approvals to variations and revision of rates
12. Undue delay in settlement of final bills
13. Lack of immediate response to the contractor during contract execution.
14. Allied records, which renders the case difficult to defend during arbitration. This should include details of the number of labour

employed on site, up to date and properly maintained measurement books etc.

PROCUREMENT PROCEDURES

- Procurement functions –
 - One of the basic function in all Deptt.
 - Large sums are spent on procurement.
- Procurement of Goods and Services
- Public money for procurement
- Accountability to public

Objectives

- Justified Procurement
- Equal opportunity to similarly placed
- Procedure based on objective criteria
- Transparency in process
- Procedure in conformity with the law of the land

Right Product at Right Price

- Public Perception –
- Lack of equal opportunity
- Vague Procedures
- Lack of clear quality parameters
- Mid way changes in procedures
- Lack of transparency
- Procurement – Corruption link

Steps for Procurement

- Requirement for goods and services
- Justification of need
- Quantification of need
- Define quality parameter in measurable units
- Preparation of tender document

- Pre – Proposal meeting with vendors
- Publication of tender
- Pre bid meeting with vendors
- Receipt of bids
- Opening of bids
- Comparative statement
- Decision process
- Issue of purchase order / contract
- Delivery of goods and services
- Quality control
- Payment procedures

Procurement Methods –
IT and Procurement :

- EProcurement:
 - Wider publicity for OCB – through internet
 - Can cut down time required for evaluation
 - Can bring transparency in process
 - Easy supplier database management
 - MIS reports for internal reviews
- Open Competitive Bidding (OCB, NCB, ICB)
 - Large procurements
 - Take longer period to complete process
- Limited Tender System
 - Medium scale procurement
 - Invitation to pre qualified bidders only
 - Procurement process time is reduced considerably
- Rate Contract
 - Low cost high volume items
 - Items where Price remains by and large static
- Repeat orders based on LT prices

- Low volume items
 - Tender document – Heart and Soul of Procurement Process
 - Preparation – should get very high attention
 - Clear scope of work
 - Measurable Pre-qualification criterion
 - Technical specs in general format
 - Well documented procedure for –

- Receipt of bids
- Opening of bids
- Technical and financial Evaluation
 - Predefined procedure for change management
 - Well defined measurable quality parameters
 - Time schedule for supply and quality test
 - Well defined penalty clause for delay and poor quality

- Well defined payment schedules
 - Payment as per schedule or
 - Compensation for delay
 - Least possible documentation for payment

- Statement of Corrupt Practices

Model Contract Form

- Name and Addresses of both parties
- Definitions
- Product Specification and Description
- Product Quality parameters
- Product Quantity
- Contract Value
- Change Order Management
- Packing, Transportation and Insurance
- Delivery Schedule
- Quality Inspection Procedures and Schedule
- Payment Schedule
- Documentation for payments

- Securities
- Conditions and warranties
- Force majeure
- Procedure for resolution of disputes
- Conditions for terminations
- Liquidated damages and penalties
- Applicable law
- Taxes and duties

Important Laws Governing Procurement

- Indian Contract Act 1872
- Sales of Goods Act 1930
- Indian Arbitration and Reconciliation Act, 1996

CONTRACTS SUPPORTED BY EXTERNAL FUNDING **-INTERNATIONAL COMPETITIVE BIDDING**

Contract concluded for projects supported by external funding agencies often have to adhere to the stipulations and policies of the respective agencies in the matter of tendering. Clear guidelines are drawn up by the external funding agencies, such as the World Bank, on the procedures that are acceptable.

While not presuming to be exhaustive, this brief gives the broad guidelines that distinguish such contracts:

The primary four concerns in such external aided projects are that *the funds are used for the purpose for which the grant / loan was granted, with due attention to economy and efficiency*. A uniform primary concern is that all qualified bidders (from the Bank's member countries, in the case of the World Bank, for example) are given an *equal opportunity* to compete for the bank financed contracts. While so doing, *development of local contractors / suppliers* of the borrowing country is encouraged, while preserving the *transparency of the process* of tendering / contracting.

Major contracts are required to be reviewed and agreed to by the Bank before they are awarded - i.e., *prior review of contracts* is mandatory for major contracts financed under investment lending. Such a review covers the Borrower's procurement procedures, documents, bid evaluations, award recommendations and contracts to ensure that the contracts are concluded according to the agreed procedures. The threshold for prior review varies and depends on the nature of monetary support and is specified in the procurement schedule of the agreement with the World Bank.

Where ICB (International Competitive Bidding) is not found to be the most economic and efficient method of contracting, contracts are finalized on various other criteria such as:

- Selection based on Consultants' qualifications / Procurement agents
- Selection under a fixed budget
- Least cost selection
- Quality based selection
- Quality and cost based selection
- Service delivery contracts
- Single source selection (Direct contracting)
- Force Account
- Limited competitive bidding
- National competitive bidding
- International and National Shopping

The particular method(s) to be followed is specified in the loan agreement for each project.

In ICB, the most common types of contract provide for payments on the basis of a lump sum, unit prices or reimbursable cost plus fees, the last only if the costs cannot be determined with sufficient accuracy, with *incentives to limit costs*. In addition, simultaneous bids for individual contracts or package contracts can be called, or for turnkey contracts or single responsibility contracts. This includes designing, building, supply and installation of all goods and works required, and at times management contracting also, where appropriate. **BOO / BOT / BOOT** or similar type of contracts involving private sector arrangements as well as **Community Participation** in procurement where considered feasible and advantageous from the point of project sustainability are also encouraged.

NOTICE TO TENDER

A General Procurement Notice is published, updated annually, followed by a Specific Procurement Notice. The related pre qualification or bidding documents are released eight weeks after the publication of the SPN .

PREQUALIFICATION

For large contracts, a *two stage bidding procedure* may be used. The main distinction in this is that an *un-priced technical proposal* on the basis of a conceptual design or performance specification is first invited

and is subject to technical and commercial clarification and adjustment. This is followed by the submission of the ***amended and final technical proposal and priced bids in the second stage***. The two packet system followed generally is not accepted by the bank. ***All applicants are to be informed of the results of pre qualification.***

BID DOCUMENTS

While the details required to be incorporated in the bid documents are similar to those used generally in our government contracts, it is also necessary as per the World Bank stipulations to outline the basis of bid evaluation and selection of the lowest evaluated bid in the instructions. Only Standard Bidding Documents can be used

PRE BID CONFERENCE

This shall be arranged for complex contracts, to enable clarifications being given. The minutes of the conference shall be provided to all the prospective bidders with a copy to the Bank.

Contract provisions relating to price adjustment (price variation), Statutory levies, payment terms, mobilization advance, Bid security (EMD), Performance security (SD), Defect Liability security, LD, Force Majeure conditions and dispute resolution through arbitration are by and large similar to indigenous contracting stipulations and clauses.

Of particular interest, is the availability of a provision of a ***Bonus Clause*** for earlier deliveries or earlier completion of work. The time for submission of bids extends from six to even twelve weeks. Bid evaluation is undertaken to determine the ***lowest evaluated bid*** and not necessarily the lowest submitted price. Thus in the process of evaluation, in addition to the normal criteria, the operating costs, efficiency and compatibility of the equipment, availability of service and spare parts, related training, safety and environmental benefits ie. factors other than the price are used to determine the ***Life time cost*** of the offer. ***Price preference terms*** guaranteeing earlier completion are encouraged. To summarise therefore, a responsive bid to the bidding documents is encouraged.

In cases where the *lowest responsive bid* is substantially higher than the pre bid cost estimates, new bids may be considered, or alternatively, negotiations with the lowest evaluated bidder may be undertaken to obtain a satisfactory contract through a reduction in the scope or reallocation of risk and responsibility which can be reflected in a reduction in the contract price. These exercises require the World Bank's prior concurrence.

DEBRIEFING

If, after notification of the award, a bidder wishes to ascertain the grounds on which its bid was not selected, its request is to be acceded to by the Borrower, and if such clarification is not found satisfactory, by the Bank. In this discussion, only the bidder's bid can be discussed and not the bid of the other competitors.

LOOKING AT CONTRACTING DIFFERENTLY

With growing government commitment to improve public services, the possibilities offered by the hitherto uncharted territory of PPP (Public Private Partnership) and PFI (Public Finance Initiative) are, though radical, perhaps the only decisive solution to provide high quality services by drawing on the best of both public and private sectors. The basis of any Government's exercises to PPPs as a way of improving public services is its underlying assessment that public services have been historically under funded and at times, poorly managed. The scarcity of public funds for investment in capital, investments being made without a clear commitment to adequate future spending on maintenance, heavy replacement costs, coupled with poor service performance and high operating costs have led governments the world over to look to PPP as a better solution.

The responsibility for delivery of public service is split in a way to harness the capabilities of private firms so that the public sector can focus on those activities fundamental to the role of Government, such as

- *Defining the level of services*
- *Setting, monitoring and enforcing safety, quality and performance standards*
- *Ensuring that wider public interests are safeguarded*

The private sector brings a range of disciplines, incentives, skills and expertise driven by

- *Commercial incentives*
- *A focus on customer requirements*
- *Innovation*
- *Management expertise*

The starting point of the whole process is a recognition of the contributions that both sides bring to the partnership. Contracts under PPP framework provide thus a basis for a working relationship between the public and private partners and lays down strict requirements for delivering better service. Improved performance is rewarded while failure to perform attracts stringent penalties. These clauses underline an essential element of the 'value for money' test: ensuring that the bidders will be capable of delivering their contractual obligations.

The PFI (*Public Finance Initiative*) is but a variation to the PPP. The PPP contractual framework providing for incentives in the performance specifications implies a *long term partnership* supported by a comprehensive risk analysis covering operational and contractual risks. A fundamental principle of PPP is the *transfer of risks to the private sector*. While the outputs are specified by the public sector, the responsibility for many risks associated with delivering those outputs is transferred to the private sector partner.

It is at times opined that PPPs are by definition costlier than the public sector alternative since the rate of return on private finance is higher than on public borrowing. While the gap between the cost of private sector capital and public sector borrowing has been narrowing, the competencies in the private sector in innovation, greater efficiencies, investment in quality and responding effectively to commercial disciplines largely accounts for the narrowing gap. Further, risk management is not considered in the public sector's cost of finance. Performance levels are never certain. Contrarily, the *best value for money* is achieved through a combination of contractual structure with incentives for good performance management and a financial structure which addresses risk management issues effectively. This is what PPPs set out to achieve.

The Commission of Public Private Partnership of the Government of UK, which conducted an independent evaluation, has concluded that the following advantages could certainly be derived from PPP/PFI initiatives:

- Diversity and contestability in capital projects.
- Focus on outcomes expected by service users rather than on inputs.
- Space for new ideas for the role of Government.
- Scope for innovation and flexibility in the management and delivery of services.
- Assessment of potential service providers on their ability to achieve results.

Better monitoring of efficiency levels through benchmarking and incentives.

**PROCUREMENT OF
WORLD BANK FUNDED WORKS**

THROUGH 'NCB' DOCUMENT

PROVISIONS IN THE INVITATION FOR BIDS (IFB)

- Bidders from India should however be registered with the Government of AP or other State Governments, Government of India, or State / Central Government undertakings.
- Bidding documents (three sets) may be purchased for a non-refundable fee as indicated below.
 - Cash or
 - DD on any Scheduled Bank payable at in favour of
.....
- Bids must be accompanied by security of the amount specified for the work, payable at drawn in favour of Bid security will have to be in any one of forms specified in the bidding document and shall have to be valid for 45 days beyond the validity of the bid.
- Bidders are advised to note the Minimum qualification criteria specified in Clause 4 of ITB to qualify for award of the Contract.
- Pre-bid meeting will be held on at Hrs., at the office of To clarify the issues and to answer questions on any matter that may be raised at that stages as stated in Clause 9.2 of ITB.

PROVISIONS IN

INSTRUCTIONS TO THE BIDDER : (ITB)

- 1. SCOPE**
- 2. SOURCE OF FUNDS**

3. ELIGIBLE BIDDERS

- All bidders from eligible countries.
- All bidders shall provide in Section-2, Forms of Bid and Qualification information, statement that bidder is not associated with the consultant.
- Government owned enterprises in the employer's country, if they are legally and financially autonomous, operate under Commercial Law and not a dependent agency on Government.
- Not under declaration of ineligibility for corrupt and fraudulent practices by the BANK.

4. QUALIFICATION OF THE BIDDER

4.1. All bidders shall provide in Section – 2.

- Forms of Bid
- Qualification information
- A preliminary description of the proposed work method and schedule including drawings and charts

4.2 In the event of pre-qualification, only bids from pre-qualified bidders will be considered – update their original qualification.

4.3 If pre-qualification is not undertaken, all bidders shall include the following information and documents with their bids in Section – 2.

- a) Copies of original documents defining legal status, place of Registration, principal place of business, written power of attorney of the Signatory
- b) total monetary value of construction work for each of the last five years.
- c) experience in execution of similar nature of works and size for each of the last five years **and**

details of works under way or contractually committed; and clients who may be contracted for further information on those contracts.

- d) major items of construction equipment proposed to carry out the work / Contract.
- e) qualifications and experience of Key site management and technical personnel proposed for the work / contract.
- f) reports on the financial standing such as profit and loss statements and auditor's reports for the past five years.
- g) evidence of adequacy of working capital for this contract (access to line of credit and availability of other financial resources).
- h) authority to seek references from bankers.
- i) Information regarding any litigation, current or during the last five years, in which the bidders is involved, the parties concerned and disputed amount.
- j) proposals for sub-contracting components of the works amounting to more than % of the Contract price and
- k) the proposed methodology and programme of construction, backed with equipment planning and deployment duly supported with broad calculations and quality control procedures proposed to be adopted justifying their capability of execution and completion of the work as per technical specifications within the stipulated period of completion as per mile stores. (for all contracts over Rs.10 Millions).

4.4 Bids for Joint Ventures are not acceptable

4.5 A. TO QUALIFY FOR AWARD OF THE CONTRACT EACH BIDDER IN ITS NAME SHOULD HAVE IN THE LAST FIVE YEARS i.e * specify the financial year they should be those immediately preceding the financial year in which the bids are received).

- a) achieved a minimum financial turnover (in all classes of Civil Engineering Construction works only) of Rs. @ in any two financial years usually not less than two and half times the estimated annual payments under the Contract)
- b) satisfactorily completed (non less than 90% of contract value) as a prime contract, atleast one similar work of value not less than Rs. @ (usually not less than 50% of estimate contract value).
- c) executed in any one year, the following minimum quantities of work.
- Cement Concrete (including RCC and PSC)
Cu M
 - Earthwork in both excavation and embankment
(combined quantities) Cu M
 -
 -
- (Usually 80% of the expected peak rate of construction).
- d) The Contractor or his identified Sub-Contractor should possess required valid electrical license for executing the building electrification works and should have executed similar works totaling Rs. @ in any one year (atleast 50% of the estimated value electrical work.).
- e) Same as above for sanitary or water supply works.
- @ updated at the price level of the financial year in which bids are received by giving a weightage of 10% per year.

4.5 B. Each Bidder should further demonstrate

- a) availability (either owned or leased or by procurement against mobilization advance) of the following key and critical equipment for this work.

-

NOTE : to be included for bid valued over Rs.10 M only. Based on the studies carried out by the Engineer the minimum equipment be suggested for completion of work in specified period.

The Bidder should however, undertake its own studies and furnish with the bid a detailed construction planning and methodology as stated in Clauses 4.3 (k).

- b) availability, for this work, of a Project Manager with no less than five years experience in construction of similar Civil Engineering works and other key personnel with adequate experience.
- c) Liquid assets and / or Credit facilities no less than Rs..... Millions.

(Credit lines / letter of Credit / Solvency Certificate) - usually equivalent of the estimated cash flow for 3 months in peak construction period.

4.5 C. To qualify for a package of Contracts made up of this and other contracts for which bids are invited in IFB, the bidder must demonstrate having experience and resources sufficient to meet the aggregate of the qualifying criteria for the individual contracts.

4.6 Sub-contractors' experience and resources shall not be taken into account in determining the bidder's compliance with the qualifying criteria.

➤ (except to the extent stated in 4.5 (A)).

4.7 Bidder who meets the minimum qualification criteria will be qualified only if the available bid capacity is more than the total bid value.

Bid capacity is calculated as under.

$$\text{Assessed Bid capacity} = (\text{AN} \times 1.5 - \text{B})$$

Where

A = Maximum value of Civil Engineering works in any one year during the last five years (to be updated) taking into account completed as well as works in progress.

N = No. of years prescribed for completion of the work (s).

B = Value (updated) of existing commitments and on-going works to be completed during the period of completion of the work(s).

4.8 Even though the bidders meet the above qualifying criteria, they are subject to be dis-qualified if they have

- Made misleading or false representation in the forms, statements, attachments etc.
- Record of poor performance such as abandoning the works, not properly completing the contract, inordinate delays in completion, litigation history or financial failures etc., and or
- Participated in the previous bidding for the same work and had quoted unreasonably high bid price and could not furnish rational justification to the employer.

5.0 One Bid per Bidder

6.0 Cost of Bidding

7.0 Site visit.

The Bid submitted by the bidder shall comprise the following

- a) The bid (in the format indicated in Section – 2)
- b) Bid security.
- c) Priced B.O.Q.
- d) Qualification info. Forms and Documents.

Bid Prices.

The bidder shall fill in rates and prices for all items in BOQ. (items for which no rate or price is entered will not be paid for and shall be deemed covered by other rates and prices).

All duties, taxes and other levies payable by the Contractor shall be included in the rates, prices and total Bid Price.

The Rates and prices quoted are subject to adjustment during the performance of the Contract in accordance with Clause 47.

BIDS shall remain VALID for a period not less than ninety days after the deadline date for bid submission. A bid valid for a shorter period shall be rejected as non responsive.

(in exceptional circumstances, prior to expiry of the original time, employer may request the bidders to extend the validity).

BID SECURITY

Bid Security for the amount specified shall be

- A bank guarantee issued by a nationalized / scheduled bank in the form appended to the bid document.
- Certified cheque, Bank Draft or LOC valid for 45 days beyond the validity of the bid.

Bid not accompanied by an acceptable bid security shall be rejected.

Bid Security may be forfeited.

If the bidder withdraws the bid after bid opening during the period of Bid Validity.

If the bidder does not accept the corrections.

In case of successful bidder fails within specified time limit to

sign the agreement

OR

furnish the required performance security.

Bidder shall prepare one ORIGINAL and one COPY of the documents.

SUBMISSION OF BID.

Sealing and marking of Bids

‘Original’ and ‘Copy’ kept in separate envelopes and sealed. These envelopes shall then be put inside another envelope (outer envelope).

If the outer envelope is not sealed, employer will assume no responsibility for the misplacement or premature opening.

Late bids will be returned un-opened to the bidder.

Bidder’s modification or withdrawal notice shall be delivered with the outer and inner envelopes additionally.

Bidder’s may only offer discount to or otherwise modify the prices of their bids.

BID OPENING AND EVALUATION

Bids shall be opened at the appointed time and location.

Envelopes marked ‘WITHDRAWAL’ or ‘MODIFICATION’ shall be opened and read out first.

Bidder’s names, the bid prices, total amount of each Bid, any discounts, bid modifications and withdrawals, the presence or absence of Bid security and such other details considered appropriate will be announced. Any bid price, discount which is not read out and recorded at Bid opening will not be taken in to account in Bid Evaluation.

Minutes of bid opening will be recorded.

Process to be Confidential

Clarification of Bids.

- To assist in examination, clarification can be called for from a bidder
- No bidder shall contact Employer on any matter relating to bids till the contract is awarded.
- Any effort to influence the bid evaluation may result in rejection of the bid.

EXAMINATION OF BIDS AND DETERMINATION OF RESPONSIVENESS.

Whether each bid

- a) meets the eligibility criteria as per Cl. 3.
- b) Has been properly signed.
- c) Is accompanied by the required securities and
- d) Is substantially responsive.

Substantially Responsive bid is one which conforms to all terms and condition without material deviation.

Material deviation is one

- a) Which affects the scope, quality or performance of the work.
- b) Which limits employer's rights or the bidder's obligations.

OR

- c) Whose rectification would affect unfairly the Competitive position of other bidders.
- d) Bid determined as not substantially responsive will be rejected and may not be made responsive by correction or withdrawal of non-confirming deviations.

Correction of Errors :

Bids determined substantially responsive will be checked for any arithmetical errors and they will be corrected.

- a) Where there is a discrepancy between the rates in figures and in words (the rates in words will govern).
- b) Where there is a discrepancy between the unit rate and the line total, the unit rate as quoted will govern.

The Employer will evaluate and compare only the bids determined to be substantially responsive.

AWARD OF CONTRACT

Award Criteria

Employer will award the Contract to the Bidder whose bid is determined to be substantially responsive and who has offered the lowest evaluated Bid Price.

Employer's Right to accept any Bid and to reject any or all Bids.

Employer reserves the right to accept or reject any Bid and to cancel the Bidding process and reject all bids at any time prior to the award of contract.

Notification of Award and Signing of Agreement.

The bidder whose bid has been accepted will be notified of the award by the Employer prior to expiration of the Bid Validity. This letter is called "Letter of Acceptance".

The notification of award will constitute the formation of the Contract, subject to furnishing the performance Security.

- Within 28 days following the notification award the Employer will sign and forward to the bidder. The bidder within 21 days of receipt will sign the agreement and deliver it to the Employer.
- Upon the furnishing of performance security by the successful bidder, the employer will promptly notify the other bidders that their bids have been unsuccessful.

Performance Security :

Within 21 days from receipt of LOA, the successful bidder shall deliver to the Employer Performance Security in the form of BG or DD for an amount equivalent to 5% of the Contract Price plus additional security for unbalanced items. Failure to comply with the condition shall constitute sufficient ground for cancellation of the award and forfeiture of the Bid security.

Advance Payment and Security.

Adjudicator

Corrupt and Fraudulent Practices.

a) Definition :

i) Corrupt : giving + receiving (any thing of value)
practice to influence the procurement process
or contract execution.

ii) Fraudulent : mis-representation of facts to influence
practice process or the execution of a Contract

AND
Collusive practice among bidders.

b) Action :

i) rejection of the bid.

ii) declaring the bidder ineligible, either indefinitely or for a
Stated period of time for award of a work funded by the Bank.

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