

Chapter-6

Invitation of Tenders

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To prevent fraud, waste of public money, corruption or manipulation, the law in most of the countries regulates government procurement closely. In India as well as in the State of Uttar Pradesh there are comprehensive rules and detailed guidelines prescribing norms and procedures for public procurement of goods, works and services. These rules and government instructions require that public contracting should be conducted in a transparent manner to bring competition, fairness and elimination of arbitrariness in the system. The first stage in the process of public procurement after assessment of requirement is to issue tender to obtain bids from all prospective bidders in a fair, open and transparent and competitive manner. Rules require that the tender document should be comprehensive, unambiguous and relevant to the objectives of the purchase. Adequate publicity to notice inviting tender for ensuring maximum possible participation of bidders and sufficient time to be allowed to tenderers to prepare and submit their bids, are the basic and mandatory requirements of a fair and transparent tendering system. Any system not conforming to the above basic principles and rules is prone to fraud, corruption, favoritism, manipulation, waste of public resources, and several other malpractices.

Audit however, observed that in large number of cases, the system of inviting bids for road works in the State did not comply with the above mandatory requirements and, therefore, the tendering system in the State lacked transparency and fairness and was prone to manipulation, favoritism and other malpractices, as discussed below:

6.1 Notices Inviting Tender (NIT) and bid document

In Uttar Pradesh, after issue of administrative and expenditure sanction by the government, and technical sanction by the competent authorities, engineering authorities (EEs, SEs and CEs) have been delegated powers to issue tenders inviting bids for all road works irrespective of the financial value.

Government in 2007 notified Model Bid Documents (MBDs) for issue of tenders by the public works authorities. There are three separate MBDs viz. T1 for works costing up to ₹ 40 lakh, T2 for works costing more than ₹ 40 lakh and T3 for supply of material. The MBDs lay down detail terms and conditions of tender. The PWD while notifying these MBDs in January 2007 directed all CEs/SEs/EEs and other concerned officers to strictly adhere to the MBDs so that developmental activities and construction works in the State are not adversely affected.

Test-check of records in 17 selected districts disclosed many flaws in the tendering process as discussed in subsequent paragraphs:

6.1.1 Change in the conditions of NITs: NIT was approved by the Government in January 2007. It was ordered (November 2010) by E-in-C that conditions of NITs would not be changed in any case under any circumstances. E-in-C further directed that if any officer makes any changes in the clauses of model bid document (MBD), it would be treated as financial misconduct and the officer would be held personally liable for such financial indiscipline. Audit, however, observed that EEs/SEs changed the conditions of NITs/MBDs and violated financial rules giving undue advantage to certain bidders or category of bidders as discussed below:

Restrictive condition imposed: Audit noticed that in 62 NITs a condition was included stating that the bidder should own a Hot Mix Plant (HMP). It was further noticed that five NITs out of the 62 included another condition also that HMP should have been installed within 50 km of the work site. However, it was observed that no such condition was stipulated in the MBD regarding the location of the equipment or that the equipment should only be owned by the bidder. The MBD only prescribed that each bidder must demonstrate availability of the owned/hired or leased key equipment. Thus, the NIT condition of owning a Hot Mix Plant in 62 cases and a further condition of having it installed within 50 km of the district implied that only local or nearby bidders could participate in these tenders. This restricted the scope of the competition and favored local/nearby contractors.

Ineligible contractors allowed to bid: NITs should include the correct category of contractors who were eligible to submit bids according to cost of work. During test-check of records in the selected districts it was noticed that Superintending Engineers allowed ineligible contractors to participate in the NITs for 54 works amounting to ₹ 94.88 crore. For example, in NITs for eight works for which 'A' category contractors were eligible, in five NITs both A and B category contractors were shown eligible and for three works, A, B and C category contractors were shown eligible for bidding. Similar was the case with other works also. Thus, the deficient NITs made lower category contractors eligible for works of higher value. Detail of such cases is given in *Appendix-6.1*.

Bids for road works invited from bridge contractors only: SE, Basti Circle, Basti invited (February 2013) bids through NITs for construction of two approach roads (₹ 2.76 crore) but the NITs included the condition that contractors should be registered for bridge works. Surprisingly, the bids were not invited from road contractors for road works. As a result, these works for construction of roads were awarded to contractors registered for bridge works. This was against the prescribed provisions and deprived contractors registered for road works from bidding for the work.

Sale of bid documents: The government order of January 2007 issued in compliance of Hon'ble High Court order to check/prevent *Mafia* activities in tendering process had directed that sale of bid documents would be done at four places (offices of concerned EEs, SEs, CEs and DMs) in the district. Subsequently, E-in-C, PWD issued instructions in November, 2009 directing that sale of bid documents should also be made from all branches of Punjab

National Bank in the respective districts to enhance transparency and competitiveness and check involvement of anti-social elements in tendering process. In test-check of 331 contract bonds in selected districts, audit noticed that in 65 cases (costing ₹ 1136.69 crore), condition of sale of bid documents through bank branches was not included in NIT. This could have limited the sale/availability of bid documents to the potential bidders and thus could have defeated the objective of issue of instructions by E-in-C.

Pre-bid meeting: In 40 NITs (₹ 621.04 crore), condition relating to holding of pre-bid meeting was not mentioned though, the same was clearly stipulated in paragraph 8 of the standard NIT notified by the government. Audit noticed that no pre-bid meeting with potential bidders was held in these cases. Hence, the process of providing clarifications to all potential bidders in a fair and transparent manner, before submission of bid, as prescribed in MBD was not being followed.

Deficient Tender Documents: Model Bid Document included General conditions of contracts, Special conditions of contracts, Instructions to Bidders (ITB), Bid Form, Specifications, Bill of Quantities etc. The bid issuing authorities were required to indicate the basic information such as specification, Bill of quantities, number of key equipment and technical personnel for road works and field testing laboratory etc. in the bid document before sale to the prospective bidders. During test-check of records in selected districts, audit observed that bid documents were sold to bidders without filling relevant data in appendix to ITB which were very significant for the finalisation of bids by the bidders as detailed below:

- Out of 331 contract bonds test-checked by audit, in 62 contracts costing ₹ 892.01 crore, number of key equipment required for road works was not mentioned in bid document and the relevant column was left blank. This implied that condition of possessing specified number of equipment by the bidder to be qualified to participate in the tender was waived off. This diluted the requirement as prescribed in MBD and could favor ineligible contractors.
- Further, it was noticed that in the bid documents, different divisions showed the requirement of different quantity of machinery for similar types of works as detailed in *Appendix 6.2*. Since the E-in-C has not issued any guideline for assessing the requirement of equipment and indicating in MBD, the divisions are mentioning the requirement in NITs as per their discretion without any justification. It was noticed that MBD of the Bihar Government clearly mentions the minimum number of 15 equipment and also maximum age of these equipment required for contractors.
- Similarly, number of technical personnel, their qualification and experience required for construction works was indicated insufficiently in 16 bid documents (costing ₹ 297.36 crore). Further, number of technical personnel required for field testing laboratory was not indicated by divisions in any of the bid documents during 2011-16.

Thus, bid documents sold to bidders were incomplete and lacked important information which was necessary for proper finalisation of bids and for protecting government interest.

6.1.2 Approval of contract documents: Paragraph 357 of the FHB Vol VI prescribes that if the tender cost is beyond the EE's power of acceptance, prior approval of SE or CE, as the case may be, should be obtained to the contract documents before inviting tenders by divisional officers. During the scrutiny of records in test-checked districts, audit observed that tenders in the financial power of Chief Engineers (more than ₹ one crore) were invited by SEs during 2011-16. As such, SEs were required to take prior approval of CEs on the contract documents before inviting tenders. However, audit noticed that approval of CEs on the contract documents were not taken by SEs for all 170 test-checked works costing ₹ 4,789.06 crore. Thus, NITs for these works were published without approval of CEs.

6.2 Irregular Publication of NITs

Notice Inviting Tenders were published in newspapers and hoisted on departmental websites for wide publicity and getting most competitive bids for execution of work. Audit, however, noticed several irregularities in publication of NITs which are described below:

6.2.1 NITs issued before Administrative/Technical Approval: As per Financial Rules¹, no work should commence before Administrative Approval/Financial Sanction/Technical Sanction has been received from the Competent Authority. E-in-C also instructed (April 2004) that NIT should not be published without finalisation of bill of quantity.

However, it was observed that out of 170 test-checked works costing ₹ 4,789.06 crore, in 96 works (56 *per cent*) costing ₹ 3,071.45 crore, tenders were issued by SEs before administrative approval/financial sanction of works by the Government which ranged up to 565 days prior to the issue of AA/FS. Similarly, EEs also invited bids through publication of NITs in newspapers for 66 works costing ₹ 20.07 crore before (up to 420 days) issue of AA/FS by the government (*Appendix 6.3*).

It was further noticed that out of the 170 works, NITs for 156 works (92 *per cent*) costing ₹ 4,184.74 crore were invited by SEs before technical sanction of detailed estimates which ranged up to 872 days. Similarly, EEs also invited NITs for 103 works costing ₹ 33.86 crore before technical sanction of detailed estimates which ranged up to 520 days (*Appendix 6.4*).

Audit noticed that AA/FS/TS were accorded in all these cases whose tenders were invited in advance. Such system of tendering is flawed as tenders have to be based on detailed estimates prepared on the basis of scope of work approved by the government through administrative approval and cost of the project sanctioned through expenditure sanction. Tendering before issue of

¹ Article 375 (a) of FHB Vol. VI and E-in-C circular dated 27.11.1999.

AA/FS/TS could lead to change in the scope of work after issue of tender as changes suggested in the AA/FS/TS have to be incorporated in bill of quantities subsequently. This violates a fundamental principle of tendering that there should not be any significant change in the scope of work after issue of tender/competitive bidding. Invitation of tenders before approval of estimated costs, specifications and quantities by the Government and preparation of detailed estimates in such a large number of cases raises the question of due diligence in according government approvals by competent authority.

6.2.2 Opening of financial bids before TS: Audit scrutiny revealed that in 105 works costing ₹ 3,333.61 crore, even financial bids were opened before issue of technical sanction as detailed in *Appendix 6.5*.

Thus, financial bids were opened up to 823 days before issue of technical sanction. As bill of quantity was still not approved in these cases, opening of technical and financial bids without technical sanction was questionable.

6.2.3 Contractors deprived from bidding: During scrutiny of records it was noticed that bids for 11 works amounting to ₹ 15.08 crore were invited from contractors of different categories as per NIT cost. Audit observed that cost of works was changed (estimated cost ₹ 17.64 crore) after receipt of bids. As a result, category of eligible contractors also changed. Thus, publication of fresh NITs was required to be published to provide opportunity to all eligible contractors. But, fresh NITs were not published and contract bonds were finalised on the basis of original NITs. This could have resulted in depriving eligible contractors from bidding, thus limiting the scope of competition for works costing ₹ 17.64 crore (*Appendix 6.6*).

6.2.4 Sending of NITs to Director, I&PR: As per orders of the Government (May 1991), all NITs were to be published in newspapers through Director, Information and Public Relations (I&PR) only and payment for the same was also to be made by the Director. Scrutiny of records in test-checked districts, however, revealed that in 81 test-checked cases amounting to ₹ 1,655.36 crore, SEs did not send NITs to Director, I&PR for publication in newspapers. Further, 54 revised NITs amounting to ₹ 521.81 crore were also not sent to Director, I&PR. The executing agencies failed to show any record which could give an assurance that the NITs were widely published in newspapers. Thus, scope of publicity of these works could not be verified.

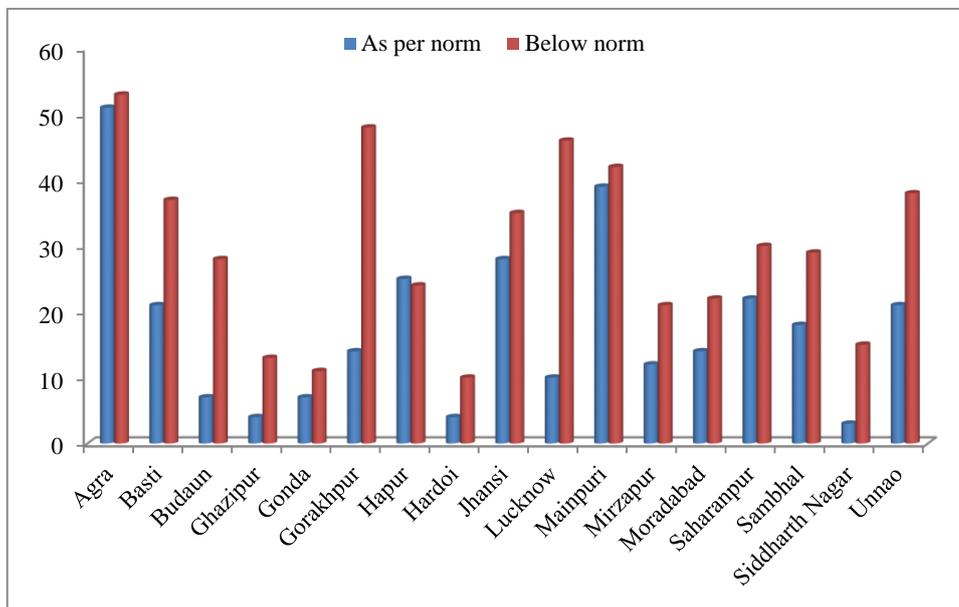
In 32 cases of NIT at EE level, amounting to ₹ 6.87 crore, letters sent to Director, I&PR for publication of NITs were not found in the contract bonds and so it could not be verified that NITs in these cases were sent to Director for publication in newspapers.

Further, during test-check of records in test-checked districts, it was noticed that all NITs were not sent to Director, I&PR for publication by EEs and were being published in local newspapers by directly sending NITs to the editor of local newspapers. Payments were also made by EEs for the same though no funds were received for this purpose. Audit observed in scrutiny of records

that 23 NITs worth ₹ 4.14 crore² were published in local newspapers directly by EEs in eight divisions which was against the orders of the Government (*Appendix 6.7*).

6.2.5 Inadequate time for submission of bids: Paragraph 360 (2) of the FHB Vol VI prescribes that the time for submission of tenders should be at least one month after the date of first advertisement. Government directed (December 2000) that generally bids would be invited giving minimum 30 days' notice and in special circumstances, tenders may be invited after giving minimum 15 days' notice.

Scrutiny of records in test-checked districts revealed that generally bids were invited by EEs/SEs giving short-term notices. Audit noticed that out of 802 test-checked NITs (SE: 331 CBs and EE: 471 CBs) in test-checked districts, bids for 502 NITs (63 per cent) costing ₹ 3,392.37 crore were invited by giving tender notices of short periods ranging between one to 29 days only (*Appendix 6.8*). In only, 300 cases (37 per cent), proper 30 days' notice was given. District-wise position of short-term NITs published in newspapers was as given in Chart below:



Thus, tenders were open for a very limited period. The situation was prevalent in all districts where large numbers of tenders/NITs (49 to 83 per cent), were issued for shorter periods.

This was in violation of tendering norms and financial rules. Giving very short notices for tender implies that bidders were not given adequate time to make their assessments and prepare their technical and financial bids. This limited the competition in the tendering process as all the eligible bidders may not be

² Agra, Budaun, Gorakhpur, Ghazipur, Jhansi, Mirzapur and Mainpuri.

in a position to respond and submit their bids in such a short time. Also, competitive procurements were not viable as only very few bidders participated in the tendering process as discussed in the paragraph 7.1. It could also result in loss to government as there was no proper price discovery in view of limited competition.

6.3 Limited publicity of NITs in newspapers

Due to lack of specific provision about the minimum number of newspapers in which NITs of different value are to be published, while some EEs/SEs of test-checked districts arbitrarily decided the number and names of newspapers for publication of NITs, others left it to Director, Information & Public Relation (I&PR) to decide the same.

Further, during test-check of records, audit observed that divisions made different requests while sending NITs to Director, Information for publication as given below:

- Twelve divisions³ wrote that NITs be published in two to four newspapers and mentioned the name of newspapers also while others did not mention the names of newspapers.
- Some divisions mentioned the name of English national newspapers also where some divisions requested to publish in Urdu newspapers also.
- In one case⁴, EE wrote Director, Information & Public Relation to publish NIT in regional newspapers only though the cost of NIT was ₹ 35 crore.

Thus, due to lack of specific policy for publication of NITs, there was no uniformity in sending of NITs to the Director, Information and their publication in newspapers.

Information furnished by Director, Information revealed that during 2011-16, NITs were also published in 141 newspapers whose circulation was less than 50,000 copies though the department had instructed (May 1999) that NITs would be published in such newspapers whose circulation was of minimum 50,000 copies. It was further observed that NITs were also published in 39 newspapers whose circulation was less than even 10,000 copies.

Thus, due to lack of a well-defined guideline for publication of NITs in PWD, different divisions have been following different procedures. This led to publication of NITs mostly in local newspapers and in many cases, not in the leading newspaper of that district or region thereby limiting the scope of wide publicity of NITs and ultimately in limited receipt of bids as discussed in paragraph 7.1.

³ CD-Budaun, CD-1 & 2 Agra, CD-1 Basti, CD-1 Siddharthnagar, CD-1 Unnao, PD Gonda, PD Gorakhpur, PD Hapur, PD Jhansi, PD Mainpuri & PD Sambhal.

⁴ CD-3, Jhansi for NIT of Airach-Gursarai-Mauranipur road costing ₹ 35 crore.

6.4 Publication of NITs

Director, Information and Public Relations informed audit (August 2016) that NITs were published in 873 newspapers. Audit however observed that in 802 contract bonds examined in audit, news clippings of only five⁵ newspapers were found enclosed with contract bonds constituted by divisions in test-checked districts. In each contract bond there was only one news clipping out of the above five newspapers and in 271 contract bonds (SE: 126 CBs and EE: 145 CBs) no news clipping were found attached.

Thus, it could not be verified in audit if NIT were indeed published in 873 newspapers.

The Government did not furnish reply to any of the points in this Chapter.

⁵ Dainik Jagran, Amar Ujala, Hindustan, Times of India and Hindustan Times.