

# **CHAPTER–IV**

## **Tendering, Award and Execution of Works**



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Number of tenders were invited before technical sanction on detailed estimates *i.e.*, before approval of competent authority on bill of quantities to be executed and even before approval of Government of India and financial sanction by GoUP. Contracts were awarded on single tender basis also. Some instances of improper assessment of technical bids were noticed. Seventy eight *per cent* of test checked works were not completed as per schedule.

#### Introduction

**4.1** 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, transparent and competitive manner. Adequate publicity to Notice Inviting Tenders (NIT) for ensuring maximum participation of bidders and allowing sufficient time to tenderers to prepare and submit their bids are the basic and mandatory requirements of a fair and transparent tendering system.

#### Tendering Process

**4.2** GoUP notified (January 2007) Model Bidding Document (MBD) for issue of tenders by the public works authorities. There are three separate MBD *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 detailed terms and conditions of tender. Further, the State Government decided (January 2016) to adopt Standard Bidding Document (SBD) used by the Ministry of Road Transport and Highways, Government of India (MoRTH) for works of PWD costing above ₹ 100 crore and subsequently (July 2018) for works costing ₹ five crore and above. The Public Works Department of GoUP invites bids for execution of works on e-portal via online system. For evaluation of bids two stage process is adopted by the Department, in the first stage, technical evaluation of every bid is done on e-portal and after verification of uploaded documents, the bid is declared either responsive<sup>1</sup> or non-responsive. In the second stage, financial bids are opened only for the bidders who qualify the technical evaluation and are declared responsive. After evaluation of the financial bids, the substantially responsive lowest bidder is awarded the contract.

Test-check of records of selected works disclosed flaws in the tendering process and technical evaluation of bids by the Department as discussed in subsequent paragraphs.

#### *Tenders invited before Administrative Approval, Financial Sanction and Technical Sanction*

**4.2.1** Administrative approval of all works/projects under Central Road Fund is given by MoRTH, GoI. Thereafter, on these works financial sanction is accorded by the State Government and then technical sanction is given and NIT are issued by the competent authorities of the Department.

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<sup>1</sup> The bid is considered responsive if it fulfills the terms, conditions and specifications of the tender without material deviation or reservation.

As per Financial Rules<sup>2</sup>, Government order<sup>3</sup> and Departmental circular<sup>4</sup>, BoQ of the work is required to be finalised before inviting tenders. BoQ is finalised/ authenticated only after technical sanction of the competent authority is obtained on detailed estimate prepared in accordance with administrative and financial sanction. This implies that the NIT are to be issued only after administrative approval and financial sanction of the work is obtained and technical sanction is accorded on the estimate. The reasonability of the rates quoted by the bidders is also assessed by comparing with the departmental rates approved in the TS.

During audit scrutiny of records of test-checked 109 works, it was observed that:

- Tenders for execution of 18 works costing ₹ 306.24 crore were invited even before administrative approval by GoI ranging from 25 days to 82 days (**Appendix-4.1**).
- Tenders for 61 works costing ₹ 1,636.16 crore were invited before financial sanction of the works by GoUP ranging from 3 days to 124 days as detailed in **Appendix-4.2** and summarised in **Table 4.1** below:

**Table 4.1: Position of NITs invited before FS**

Sl. No.	NITs invited before Financial Sanction (In days)	Number of Works
1	Up to 30	25
2	31 to 60	13
3	61 and above	23
<b>Total</b>		<b>61</b>

It is evident from above table that 36 tenders<sup>5</sup> (32 per cent) were invited more than one month before financial sanction by GoUP. Moreover, in four works costing ₹ 216.08 crore, financial bids were opened even before the financial sanction.

- Tenders for execution of 97 works costing ₹ 2,917.17 crore were invited before technical sanction ranging from 8 days to 172 days as detailed in **Appendix-4.3** and summarised in **Table 4.2** below:

**Table 4.2: Position of NITs invited before technical sanction**

Sl. No.	NITs invited before TS (In days)	Number of NITs
1	Up to 30	23
2	31 to 60	21
3	61 and above	53
<b>Total</b>		<b>97</b>

Above table indicates that 74 tenders<sup>6</sup> (67 per cent) were invited one month or more prior to technical sanction.

It was further observed that out of the above 97 works (**Table 4.2**), in 62 works costing ₹ 2,052.31 crore, financial bids were opened before issue of TS (**Appendix 4.4**).

<sup>2</sup> Paragraphs 356, 375 (a) and 318 of Financial Hand-Book Vol-VI. of GoUP

<sup>3</sup> 989/23-9-99-11 AC 96/ Dated 12.05.1999

<sup>4</sup> 32 Camp E-in-C (P)/ Tendering Process/2004 dated 05.04.2004.

<sup>5</sup> Out of total 111 tenders for execution of 109 test checked works.

<sup>6</sup> Out of 111 tenders for execution of 109 test checked works.

Thus, inviting tenders and opening of bids without administrative approval, financial sanction and technical sanction indicate that prescribed financial rules and tendering norms were not being adhered to by the Department. Inviting of tenders without TS also results in revision of BoQ after opening of tenders as discussed in **Paragraph 4.4.2**.

In reply, the Government stated (October 2023) that tenders were invited before administrative and financial approval of the works under CRF in compliance to GoUP instructions (vide GO dated 9 November 2017). Provision contained in Paragraph 356 of FHB Vol-VI also provides that technical approval is required before the work contract is formed so that the work can be executed as per the prescribed technical standards and drawings. The restriction that specifications which are part of the technical sanction are required to be approved by the competent authority, applies at the stage of contract formation and not to the tender invitation. It was further stated that tenders were invited in anticipation of sanction to avoid delay in inviting tenders for timely completion of works and the Government has not suffered any financial loss in this process.

Reply is not acceptable as Paragraph 356 of FHB Vol-VI clearly stipulates that the contracts document *inter-alia* includes a schedule of the quantities of various description of the work (BoQ). Hence, BoQ of the work is required to be finalised before inviting tender as the bidders quote their rates for tendered BoQ and BoQ is finalised/ authenticated only after TS of the competent authority. Government order and departmental circular also clearly instructed that NIT should be published only after finalising BoQ.

#### **Time period to bidders for submission of bids**

**4.2.2** 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 NIT. Further, GoUP also directed (December 2000) that generally bids would be invited giving minimum 30 days' notice and in special circumstances, short term tenders may be invited after giving a minimum of 15 days' notice.

During scrutiny of records in test-checked divisions, Audit noticed that bids were invited from bidders by giving tender notices of short periods as detailed in **Appendix-4.5** and summarised in **Table 4.3** below:

**Table 4.3: Time period given for submission of bids**

Sl. No.	Bids opened for the period (In days)	Number of bids
1	Up to 14	15
2	15 to 29	56
3	30 and above	40
<b>Total</b>		<b>111</b>

It is evident from above table that prescribed time period of 30 days was not given in 71 cases (64 *per cent*). Further, out of these 71 cases, minimum time period of 15 days prescribed for special circumstances/ urgency was not provided in 15 cases.

In reply, the Government stated (October 2023) that while in most of the cases adequate time was given, in some cases short time was given. It was further stated that Paragraph 437 of the PWD Manual of Orders allows shorter notice period in exceptional circumstances after clearly recording the reasons for

same. Hence, no restriction of days for inviting tender has been prescribed in the Manual. Trend of healthy competition has been seen in most of the cases.

Reply is not acceptable as no reasons were found recorded in the cases where short term tender notices were invited. Further, in 15 cases even the minimum time period of 15 days prescribed for exceptional circumstances was not provided.

**Recommendation 5:**

**Department should avoid the practice of short-term tender notices to improve competitiveness and fairness in the tendering process.**

**Technical Bid Evaluation**

4.3 MBD/SBD provides that financial bids of only those bidders are to be opened who are found qualified in technical bid evaluation. For evaluation of technical bids, financial position of previous three years, works executed during last five years, liability of ongoing/committed civil works, availability of equipment/machinery, technical personnel required for the civil work *etc.* are to be uploaded on the e-portal by the contractor.

During scrutiny of records of test checked works, Audit observed that the process of technical bid evaluation was not properly followed. Irregularities observed in technical bids evaluation are detailed below:

**Improper assessment of technical bids**

4.3.1 Audit observed that bids uploaded on e-tendering portal (*Prahari* portal) had been declared responsive without proper assessment of their technical eligibility. This was shown when some of the bidders, previously declared responsive were later on found non-responsive after enquiries conducted by respective tender committees on complaints of other bidders regarding their technical eligibility, who then, subsequently technically disqualified them as detailed in **Table 4.4** below:

**Table 4.4: Details of bids found non-responsive after re-examination.**

Name of Division	Name of Work	Cost of Bid (₹ in crore)	Bids found responsive on first instance	After re-examination	
				Bids found responsive	Bids found non-responsive
(1)	(2)	(3)	(4)	(5)	(6)
CD-2, Bijnore	NH-734 road to Suawala Surjannagar road	21.97	12	03	09
PD, Jaunpur	Khuthan patti samodhpur Marg	12.84	10	04	06
CD-3, Gorakhpur	Jungle Babban Mohnaag Algatpur Marg	14.93	10	04	06

It indicates that tender committees did not properly evaluate the technical eligibility of the bidders on the basis of documents submitted online under e-tendering system in the Department.

In reply, the Government stated (October 2023) that, as per the rules, it is normal procedure for a contractor's tender to be declared non-responsive after receiving a complaint. This situation arises in some tenders only when information regarding work experience/financial capacity of the contractor, machinery *etc.* is found incorrect. Now, tenders are being invited through the

*Prahari* portal due to which the possibility of occurrence of such incidents has become very less.

Fact remains that despite incorrect information uploaded with the bids on e-tendering portal, bidders were not declared non- responsive.

#### **Award of Contract**

4.4 Deficiencies noticed in the process of award of contract is discussed below:

##### ***Acceptance of single tenders***

4.4.1 As per Central Vigilance Commission (CVC) guidelines, single tenders can be accepted only with detailed justification in support of the acceptance with the approval of the competent authority. Further, GoUP also issued (January 2019) instruction to not accept single bid on first call.

However, during audit, it was observed that out of 111 test checked cases, single tenders were received in 12 cases. In seven out of these 12 cases (**Appendix-4.6**), contact bonds were executed on single tender basis without recording any justification whereas in five cases contract bond were executed after re-tendering.

Thus, the Department executed these seven contract bonds in contravention of CVC guidelines.

During Exit Conference (October 2023) the Department agreed to follow CVC instructions in this regard.

##### ***Revision of BoQ***

4.4.2 No major deviation in the terms and conditions or quantity of items which are part of the tender should normally, be allowed after opening of tenders as it vitiates the tendering process.

Scrutiny of records revealed that for execution of 15 contracts<sup>7</sup> (**Appendix-4.7**), tenders with BoQs amounting to ₹ 305.79 crore were invited before TS and after opening of financial bids (during finalisation of tender), BoQs of these tenders were revised to ₹ 116.54 crore (variation ranging between 50.25 *per cent* to 83.01 *per cent* of original BoQ), thus resulting in downwards revision of ₹ 189.25 crore.

It was further observed that huge variations by withdrawal of basic and essential items such as Granular Sub-base, Wet Mix Macadam, Dense Bituminous Macadam for road works amounting to ₹ 140.90 crore (74 *per cent* of total variation) were allowed. These items were executed later as extra items<sup>8</sup> under the same Contract bond. Though these items of work were already included in the approved estimates, there was no justification recorded by the authorities for exclusion of these essential items from BoQ in contract bond and later on, including and executing them as extra items which also reduced the amount of performance security deposited by the contractors to the extent of ₹ 9.46 crore (at the rate of 5 *per cent* of ₹ 189.25 crore) as the

<sup>7</sup> In contracts where downward variation in BoQ as per tender documents was more than 50 *per cent* in Contract Bond.

<sup>8</sup> Extra items are items which are required to be executed in addition to originally agreed items of work, on account of unavoidable circumstances.

same is to be deposited by the contractors on the value of contract at the time of execution of contract bond.

Thus, despite change in the BoQ, awarding the works without inviting fresh tender was not appropriate as it deprived the other bidders of the opportunity to submit the bids according to the changed BoQ, thereby vitiating the tendering process.

In reply, Government stated (October 2023) that the Department invites percentage-based tenders and not item-wise price based tenders. At the time of finalising the contract, the rates of some items quoted were found higher than the rates of these items in the estimate. Thus, there was no option available other than deleting them in the Government interest which were executed later on as per the scheduled rates/ conditions of the contract. Change in BOQ did not affect the total amount of the tender.

Reply is not acceptable as in these cases the tenders were called before TS *i.e.* before approval of BoQ. Major revision in BoQ after opening of tenders deprived other bidders of opportunity to bid for revised BoQ. Further, contention of the Department that change in BoQ did not affect the total amount of the tender, is also not correct as there were huge differences in BoQ of the tender floated and BoQ of the contract entered upon.

***Recommendation 6:***

***The Department should ensure that significant change should not be made in BoQ after opening of tender.***

***Insurance Cover not provided by the Contractors***

**4.4.3** General Conditions of contract included in MBD/SBD<sup>9</sup> prescribed that the contractor at his cost shall provide insurance cover from the start date to the date of completion of work for loss of or damage to the works, plant and materials, equipment, property and personal injury or death. Insurance cover was also required to be provided from the date of completion to the end of defect liability period for personal injury or death. Insurance policies/certificates were required to be delivered to the Engineer for approval before the start date/ completion<sup>10</sup>. Failure of contractor to provide insurance cover shall be treated as fundamental breach of contract and employer may terminate the contract.

During scrutiny of records in test-checked divisions, audit observed that insurance covers required as per condition of contract were not provided by contractors in any of the test-checked works except for one work in PD, Gautam Buddha Nagar<sup>11</sup>. However, in none of the cases, action against the defaulting contractors was taken by the departmental authorities as per conditions of the contract.

Thus, due to failure of departmental authorities to ensure insurance cover for works, interest of the Government and the workers, both remained at risk during this period. Further, it also led to undue benefit to the contractors as premium amount of the insurance cover was to be borne by the contractors.

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<sup>9</sup> Clause 13 of General Condition of Contract.

<sup>10</sup> From date of start to date of completion of work and from date of completion to end of defect liability period.

<sup>11</sup> Contract Bond No. 100 Dt 08.01.2022 for execution of *Sikandrabad Dankaur Marg*.



In reply, the Government accepted (October 2023) that as per the terms of the contract, insurance of the works should be obtained by the concerned contractor and circular<sup>12</sup> has been issued (January 2018) in this regard. In all the cases mentioned by audit, the works have been completed and the defect liability period has also lapsed and no loss of life or property has been reported under any contract. It was assured that compliance of the tender condition would be ensured in future.

#### **Delay in completion of work**

**4.5** Paragraph 385 of FHB, Vol-VI envisages that all interruptions of large works in progress should be immediately reported to the engineer and causes and probable duration of such interruptions should be duly explained.

Further, as per conditions of contract, if a compensation event<sup>13</sup> or variation by employer would prevent the works being completed before the intended completion date, the intended completion date shall be extended. The Engineer shall decide the extension of completion date within 21 days of the contractor asking for it.

Audit scrutiny of test checked 111 contracts revealed that 87 contracts (78 *per cent*) costing ₹ 2,048.06 crore were completed with a delay ranging between 59 to 1,474 days and seven works valuing ₹ 133.23 crore were in progress as of 30 September 2023 (**Appendix-4.8**). The applications<sup>14</sup> for seeking time extension were undated and their receipts in the divisional office were not recorded in any register/diary. Due to this, it was not ascertainable in Audit whether these applications were submitted timely, and the Engineer had decided the case in a time bound manner or not.

Reasons attributed for the delays were paucity of funds, rainy season, land dispute, shifting of poles, non-clearance from Forest Department, lockdown due to COVID-19, *etc.* However, due to non-documentation of reasons for hindrances in all these cases, audit could not verify the correctness of hindrances claimed by the contractors in their applications except for the period of lockdown due to COVID-19 pandemic.

The Government had not provided any specific reply on delayed completion of works. Regarding time extension, it was stated that in case of contracts in which the contractor was not at fault for the delay, the time extension were approved by the competent authority without imposing any penalty and in other cases, the time extension were approved by the competent authority after imposing penalty on the contractor.

During Exit Conference (October 2023), the Department stated that instructions are being issued to complete the CRF works in a time bound manner and for taking action as per the provisions of contract in case of non-completion of the works in scheduled period.

<sup>12</sup> No. 443/MT/General Category/40MT-45/2017 dated 12.01.2018.

<sup>13</sup> Compensation events are event causing delays of more than 30 days in the work which are not attributable to the contractor.

<sup>14</sup> All 32 applications made available to audit by the divisional officers.

### **Conclusion**

There were significant deficiencies in tendering process of works. Tenders were invited before financial/technical sanction of the works. Bidders were given inadequate time for submission of their bids. After opening of financial bids BoQs were revised by deletion of basic and essential items required for the execution of works which were later executed as extra items. Insurance cover by the contractors required as per conditions of contract, were not ensured. Seventy eight *per cent* of the test checked works were delayed beyond their scheduled date of completion.