

A HAND BOOK
ON
DOs AND DON'Ts FOR BETTER
VIGILANCE COMPLIANCE

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SJVN LIMITED

(A joint venture of Govt. of India & Govt. of Himachal Pradesh)

DOS AND DON'TS FOR BETTER VIGILANCE COMPLIANCE

GENERAL CARDINAL PRINCIPLES:

- Do obey canons of Public Procurement.
- Do obey canons of Financial Propriety.
- Do procure work, material, services of the specified quality within the specified time at the most competitive prices in a fair, just & transparent manner.
- Do remember five watch words of public procurement i.e. **Transparency, Fairness, Value for money, Quality & Time.**
- Do observe extant policy guidelines and procurement manual of the organization / government.
- Do paginate the procurement files and always merge part files with the main file to avoid break in continuity and arbitrariness in decision making.

INITIATING PROPOSAL/ PRE-TENDER STAGE:

Dos

- Do ensure administrative, technical & financial sanction of Competent Authority (CA) for any procurement / works.
- Do prepare preliminary estimates taking into account various factors for particular works, geographical location etc. as laid down.
- Formulate project comprehensively to avoid glaring deviations & delays during execution.
- Do avoid excessive/ in-fructuous purchases resulting in accumulation of unutilized materials for years with hardly any residual life or technology getting obsolete.
- Do appoint consultants in a fair and transparent way.
- Do keep decision-making with the executives; the consultant's role should be only advisory.

- Do Fix upper ceiling limit for fees in the case of consultancy contracts, and fix separate rates for repetitive works.
- Provide safeguards against consultant's failure such as performance guarantee, professional liability, insurance etc.
- Do prepare DPR as per actual site requirements in consultation with the field staff; otherwise it may lead to deviations & delays.
- Prepare Estimates in a realistic and objective manner having conformity/consistency among various schedule of items, drawings, specifications and contract conditions etc. coupled with detailed analysis of rates considering rates prevailing in the area to arrive at realistic cost.
- Do remember to indent only for the standardized products / services as far as possible. The specifications for the final product / services should be as per the products normally available in the market. Even, in the case of products which are not available on the shelf in the market, efforts should be made to specify a standardized product only. In case, items with non - standard specifications are to be procured, reasons for procuring such items be recorded and reasonability of rates must be checked before placing the order.
- Do prefer calling Expression of Interest in the event of technically complex procurement, wherein the Organization may not possess full knowledge of various technical solutions available in the market to meet the desired objectives of the procurement, transparency, ensuring value for money spent, up-gradation of technology & capacity building. Here in cases follow two stage tendering process. In the 1st stage, call for Expression of Interest (EOI) / RFP from the leading experienced and knowledgeable vendors in the field of proposed procurement. The broad objectives / constraints

etc. could be published while calling for EOI. On receipt of EOI, technical discussions / presentations may be held with the short listed vendors, who are prima facie considered technically and financially capable. Based on technical discussions / presentations so held, decide upon one or more than one acceptable technical solutions. And then proceed to lay down detailed technical specifications, quality bench marks, warranty requirements, delivery milestones etc., for each acceptable technical solution, in a manner that is consistent with the objectives of a transparent procurement. Remember here to make the specifications generic in nature, so as to provide equal opportunity to prospective bidders. Maintain proper records of technical discussions / presentations/ process of decision making.

- Thereafter, go for 2nd stage of tendering i.e. calling for techno commercial bids as per the usual tendering system under single bid or two bid system, as per the requirement of each case.
- Do include all commercial clauses including taxes, duties of all types and other statutory charges.

Don'ts

- Don't make vague estimates without adequate details, which may lead to huge quantity variations / deviations and creation of extra and substituted items.
- Don't procure items without standard specifications.
- Don't make use of unspecified items to make estimate unrealistic.
- Don't incorporate conflicting and open ended conditions / clauses left at the discretion of contractor or EIC during construction stage.
- Don't include such items or scope of work which are not needed in the work, which may unnecessarily load and vitiate the tender.

- Don't revise the estimates to justify the received L1 rates after opening of the price bids.

TENDER STAGE:

Dos

- Do prepare the PQ criteria specific to the requirement of the work in clear terms. Remember here that there should be no ambiguity / reading between the lines, as it will be construed as favouring a certain vendor.
- Do fix in advance the minimum qualification, experience and number of similar works of a minimum magnitude satisfactorily executed in terms of quality and period of execution.
- Do define "Similar Works" in clear terms.
- Do re-tender if relaxation on PQ criteria becomes necessary for the reasons to be recorded in writing.
- Do not put Stringent PQ Criteria resulting in poor competition; Unduly restrictive criteria, creates entry barrier for potential bidders.
- Do match and verify Credentials of the bidders with the notified criteria.
- Do consider Indian Agents after verifying following aspects:
 - (i) Foreign Principal's proforma invoice indicating commission payable to the Indian Agent, nature of after sales service to be rendered.
 - (ii) Copy of agency agreement with the foreign principal and the precise relationship between them.
 - (iii) Copy of enlistment of the Indian Agent with Director General of Supplies & Disposals under the Compulsory Registration Scheme of Ministry of Finance, GOI.
- The above aspects are important one to examine the genuineness of the prices quoted by the Indian Agent, the nature of services which would be available from Indian Agent and compliance of Tax laws by the Indian Agent and, to prevent leakage of foreign exchange.

- Do prefer open tendering as far as possible.
- Do ensure in case of limited tender, the panel of vendors is prepared in transparent manner, after publishing of clear eligibility / qualification criteria, and panel is updated regularly.
- Do resort to Single Tender on exceptional circumstances only such as Natural calamities / Emergencies or for proprietary item.
- Do ensure that adequate & wide publicity to the tender is given; Global tender inquiries should be resorted to and published in ITJ and select National newspapers, copies of the tender notices should be sent to all the registered / past/ likely suppliers by UPC and also to the Indian Missions / Foreign Embassies of the countries from where the requisite goods / services can find a supply source/ or are likely to be sourced, in case of imported stores.
- Do give the organization website address in the advertisement / NIT published in the newspapers and follow e-procurement procedure and ensure documents are available for downloading. Now follow E - Procurement procedure only. In case of a decision not to adopt E - Procurement, record reasons for not doing the same and obtain sanction from the competent authority.
- Do ensure adequate time for submission of offers.
- Do upload NIT & Tender Document on web-site, even in case of limited tenders.
- Do provide all the relevant information related to tender, its sale, submission and opening of bids like estimated cost, EMD, place and period of sale of tender date of submission and opening of tender.
- Do make suitable arrangements for receipt of sealed tenders at the scheduled date and time through conspicuously located Tender Boxes in the case of manual tenders.

Don'ts

- Don't relax PQ Criteria during evaluation creating entry barrier to the other potential bidders fulfilling the relaxed criteria.
- Don't reject any tender without assigning any reason as tender accepting authority is bound to record clear, logical reason for all actions of acceptance / rejection.
- Don't forget to intimate any corrigendum issued for extension of date or any other information individually to the parties by various means and also to publish in the media and display on organization web site and Notice Boards.
- No activity of the organization should give an impression that it has special liking or disliking for a firm / company.

POSTPONEMENT OF TENDER OPENING:**Dos**

- Do record reasons for postponement of tender.
- Do notify to all the bidders any change in the tender terms and conditions, specification and tender opening date, etc., sufficiently in advance of the revised tender opening date.
- Do notify through the publication of corrigendum in the media and web site.
- Do extend tender sale date suitably so as to allow new participants in the bid in order to increase the competition, if technically possible.

Don'ts

- Don't extend date of submission or opening of tender on verbal request of tenderer.
- Don't extend date of submission or opening without any genuine reason.
- Don't disclose new date of submission or opening till it is officially approved by the Competent Authority.

OPENING OF TENDERS :

Dos

- Do open tenders in presence of the bidders /representatives who chose to be present.
- Do maintain transparency in opening of tenders.
- Do ensure that while opening the tenders, each tender should be numbered serially, initialed and dated on the first page.
- Do ensure that the each page of tender, particularly the price and important terms and conditions should be closely encircled and initialed with the date by all tender opening committee members.
- Do also ensure that all tender opening committee members encircle any cutting / overwriting / corrections / omissions / additions etc. in a price bid and the same are properly numbered and attested, accounted page-wise and initialed in red ink.
- Do prepare a statement giving details of the quotations received and other particulars like the prices, taxes / duties, EMD, any rebate etc. as read out during the opening of tenders.
- Do maintain a proper tender opening register preferably in a printed format containing information viz. date of opening including extension, if any, names and signature of all the persons present to witness the tender opening which should include the bidder's representatives also.
- Do ensure in cases involving the two part bid system that the tender opening committee members sign on the envelopes containing the price bid mentioning clearly the due date of opening of price bid. These envelopes should be kept in safe custody.

Don'ts

- Don't consider bids that are received after scheduled due date and at time of receipt of tender.

- Don't accept unsealed bids.
- Don't consider bids without earnest money & other pre-requisite requirements.
- Don't entertain any unauthorized person during tender opening.

TENDER EVALUATION:

Dos

- Do ascertain whether bid is responsive as per laid down criteria and shortlisted firms fulfill the eligibility criteria. No deviations from the notified criteria should be allowed. It has been observed that while tendering in civil construction works, it is generally notified that the bidder should have completed works to the tune of such value, over a certain period of time. Remember here, if it is notified like that in tender, then please ensure that the bidder has completed works to the tune as specified in entirety, and do not accept that although the bidder has completed the works to the extent as notified, but the works in totality has not been completed. The CVC does not accept this explanation, and is a deviation from the notified criteria.
- Always duly verify the experience certificate submitted by the bidder. Never accept the experience certificate from the contractor, on its face value
- Do open price bid of only those bids which are responsive.
- Do evaluate tender as per the notified criteria only.
- Do evaluate all pre-requisite criteria met by bidder before qualifying technical bid.
- Do finalize the acceptability of the bidding firms in respect of the qualifying criteria before or during holding technical negotiations with them.
- Do ask additional information only when it is mentioned in the tender, otherwise avoid calling bidder. Call tender again, if it is unavoidable.

- Do complete the exercise of short listing of qualifying firms before opening of price bid/calling price bids.
- Do open price bids (in two bid system) / call price bids of only those bidders whose design and other technical proposals are as per tender requirements.
- Do remember that conditions having financial implications are not altered after opening of price bids.
- Do, while evaluating bids, always record the deviations taken by the bidder, stand taken by the tender evaluation committee on these deviations regarding loading of the same in the bid for evaluation purpose etc.
- Do finalize tenders within validity period.
- Do Ensure that Contract Agreement is complete with all relevant papers such as pre-bid conference minutes etc.
- Do ensure that Contract Agreement is page-numbered, signed and sealed properly.

Don'ts

- Don't hold post tender negotiations even with L1 except in exceptional circumstances such as procurement of proprietary items, items with limited sources of supply and where there is suspicion of cartel formation; convincing reasons must be recorded by the authority recommending negotiations.
- Don't qualify tenders just to avoid situation of a single tender.
- Don't evaluate bids on the basis of information not furnished by bidder/tenderer in his bid.
- Don't entertain any new information/document after tender is opened and evaluated unless the same is called for.
- Don't disclose details of evaluation of tender till it is officially accepted/rejected.
- Don't deny any bidder pre-qualification/post-qualification for reasons unrelated to its capability and resources to successfully perform the contract.

MOBILIZATION ADVANCE :

Dos

- Provision of mobilization advance should essentially be need-based.
- Do clearly stipulate in the tender document if the management feels the necessity of interest free mobilization advance in specific cases. However, recovery of all such advances is time-based and not linked with progress of work.
- In the event of cases providing for interest free mobilization advance, Insert a clause in the Tender that "If the Contract is terminated due to default of the Contractor, the 'Mobilization Advance' would be deemed as interest bearing advance at an interest rate of % (to be stipulated on the prevailing rate at the time of issue of NIT) to be compounded quarterly".
- The Mobilization Advance should not be paid in less than two installments except in special circumstances, for which the reasons should be recorded and approval of competent authority be obtained. This will keep check on contractor mis-utilizing advance when the work is delayed considerably.
- Take part 'Bank Guarantees' (BGs) against the mobilization advance in as many numbers as the proposed recovery installments. Such guarantees should be equivalent to the tune of 110% of the amount of each installment.
- The Bank Guarantee taken for Mobilization Advance should be at least 110 % of the Advance, so as to enable recovery of not only principal amount but also the interest portion, if so required.
- Do properly examine / verify Bank Guarantee in lieu of mobilization advance, from the concerned banks, without any fail. This is extremely important.
- Do clearly stipulate rate of interest to be charged on

delayed recoveries either due to late submission of bill by the contractor or for any other reasons, besides the reason giving rise to the encashment of BG as stated above.

- Do clearly stipulate in the tender document, the amount of mobilization advance, interest to be charged, if any, its recovery schedule and any other relevant detail.
- Do verify the authenticity of such BGs from the issuing bank, confidentially and independently from the organization side.
- Do ensure in case of 'Machinery and Equipment advance', insurance and hypothecation certificates are taken from the contractor.
- Do ensure Utilization certificate from the contractor for the mobilization advance.
- Do provide preferably, mobilization advance in installments and subsequent installments should be released after getting satisfactory utilization certificate from the contractor for the earlier installments and after verifying actual utilization by the EIC.

Don'ts

- Don't forget to verify Bank Guarantee from the concerned bank regarding its genuineness before releasing of mobilization advance.

INSURANCE :

Dos

- Do incorporate and implement a comprehensive all risks insurance clause for men, material and construction so as to meet any contingency arising on account of fire/ earthquake, mishap during execution etc.
- Do also take care that safety precautions are taken at site during execution irrespective of insurance. Suitable relevant clauses should be inserted in the contract documents for compliance of safety instructions by the contractor. These contract provisions in the contract

documents should specify proposed actions to be taken against the Contractor, including imposing penalties etc., in case of failure on his part to observe all required safety measures / other precautions at site etc., as per the provisions of contracts.

Don'ts

- Don't make RA payment until insurances as specified in the contract are submitted by the contractor.
- Do ensure full insurance cover during the currency of contract and also during warranty period in line with the contract provisions as specified therein.

POST AWARD STAGE :

Dos

- Do ensure that Contract Agreement is complete with all relevant papers such as pre-bid conference minutes etc.
- Do ensure that all Insurance Policies, labour License, Performance Guarantee are obtained as per Contract Agreement, without any deviations. Remember here, obtain insurance policies valid from the date as envisaged in the contract, as it has been observed that insurance policies have been obtained by the contractor, from the effective dates much later than that envisaged in the contract, and thus has made savings on the premium of the policies. For these reported deviations, the CVC has taken a tough stand and recently ordered detailed investigation into a case.
- Do ensure that both Technical (skilled / semi skilled) and other Personnel as envisaged in the Contract, are deployed by the Contractor on the Site.
- Do ensure that Plant and Equipment, as envisaged in the Contract, are deployed by the Contractor on the Site.
- Do ensure that the Escalation should be paid to the Contractor, only as per the terms of the Contract. Especially, the date of start for calculation of average

indices, should be carefully worked out. It is generally mentioned in the Contract that the average indices are to be taken on a particular day, which comes after a certain period of days / months after the contract comes into effect. / contract signing. So, for calculation of the escalation at the start, the average indices after that particular date for the previous month should be taken into consideration. Rather, it has been observed that the average indices for the whole previous month were taken into consideration, which is incorrect.

- Retention money / Security Deposit is deducted as per contract.
- Recovery of income Tax / work contract tax (WCT) / service tax / other statutory taxes etc., is made as per the provisions of the Contract.
- Recovery of Mobilization / Equipment Advance, is made as per the provisions of the Contract.
- Glaring deviations are supported with adequate justification and are not advantageous to the Contractor.
- Proper system of recording and compliance of the instruction issued to the Contractor is maintained including site instruction book.
- Proper record of hindrances is maintained for the purpose of timely removal of the hindrances, and for taking action to levy liquidated damages.
- All mandatory tests are carried out as per the frequency prescribed in the Contract Agreement.
- Action for levy of liquidated damages is taken in case of delay / default.
- Ensure that the materials being used at the works are as per specifications / standards / specific brands (if mentioned in contract) as per the contract.
- As soon as any of the works quantities exceed beyond the limits prescribed in the contract BOQ, proceed to obtain

approval of the competent authority with proper justification / records, for execution of these additional quantities, and ensure issue of variation orders.

PAYMENT TERMS AND APPLICABILITY OF TAXES AND DUTIES :

Do's

- Do make clear the applicability of various taxes/duties at the outset in the instruction to the bidder's part of the bid document in the case of a composite contract for supply and erection.
- Do define payment terms unequivocally.
- Do make the payment to the contractors based on the actual progress of the work
- Do record the measurements of the items in the measurement book.
- Do attest the corrections in the MB, if any.
- Do get the prescribed test checks of measurements by officers of higher level.
- Do exercise appropriate check and control on the flow of funds while making the payments.
- Do pay the executed quantities beyond the stipulated time after deducting the LD as provided under the contract unless the valid time extension for the contract is given.
- Do reimburse taxes and duties, if applicable, only on the production of relevant documents.

Don'ts

- Don't vary the quantities/amount under the contract. If unavoidable, it shall not be made / paid without the approval of competent authority.
- Don't deviate from payment terms provided in the contract.
- Don't ignore any new taxes and recovery on this account, whether provided in the contract or not.

ARBITRATION :

Dos

- Do ensure that payment to contractor is made promptly after measuring works executed as per contract as it is most critical and key for successful & timely execution of works to avoid litigation and arbitration.
- Do remember that every clause of a contract has its meaning and fulfillment of each contract condition is binding on both the parties to avoid arbitration.
- Do remain vigilant that no opportunity is given to contractor for making any undue claim. Letter indicating so should be promptly replied to avoid any claim from contractor at a later date.
- Do process the case for appointment of the arbitrator, if so provided in the tender documents, well before its stipulated time and follow up constantly with Competent Authority so that the arbitrator is appointed within the time schedule and litigation is settled expeditiously otherwise the contractor may get chance to get arbitrator appointed through court.
- Do make a thorough check of track-record / background / credentials / antecedents and impartiality of the Arbitrators before their appointment. A copy of all orders to be issued regarding appointment of the Arbitrators along with track-record / background of the Arbitrators, be invariably furnished to the CVO
- Do insert suitable clauses in all the Contract Agreement having Arbitration provisions that "Arbitration in the case of dispute can only be resorted to by the Contractor, after he deposits a certain percentage of the total claim being made before the Arbitral Tribunal" (as in now being done by SJVN in the case of Dhaulasidh HE Project, wherein a contractual provision has been made regarding deposit of 5% amount of claim to be deposited for initiation of arbitral proceedings).

- Do remember that once a case is under arbitration, the correspondence with the agency should be done in consultation with Corporation legal expert. The legality and quality of replies being given to the contractors should be thoroughly checked.
- Do always keep in mind that a contractor always read in between the lines of the contract clause, hence one should be careful in dealing with the contract and the contractor.
- Do ensure listing of priority issues in the contract document.
- Do ensure that the important points are mentioned in the highest priority documents to avoid litigation.
- Do remember to put Arbitration clause in contract to appoint Permanent Machinery of Arbitration (PMA) in the contract between two PSUs, or PSU & Govt. as it is mandatory by DPE.
- Do remember that existence of a dispute is a pre condition for exercise of power by the arbitrator. The usual features of arbitration are the existence of a dispute between the parties and their agreement to refer it to the decision of a third person with the intention that he/she shall act judiciously.
- Do remember to consider all claims /receivable etc. beforehand so that claim/counter claim is comprehensive.
- Do remember that the policy of the Arbitration & Conciliation Act, 1996 is to minimize the intervention of the court.
- Do remember when some claim referred to the Arbitrator is omitted from consideration in the Arbitral Award, a party can make a request to the Arbitrator or the Arbitrator Tribunal to make an additional award with respect to such claim with a notice to the other party but within thirty days of the receipt of the award.
- Do remember that once arbitration proceedings in a dispute start, no adjournment of the AT proceedings shall be sought by the PSU. If the contractor seeks any adjournment of the

AT proceedings, then the notice shall be served to the Contractor with intimation to AT that no interest shall be payable on the awarded costs to the contractor for the adjournment period and vice versa, for which suitable contract provisions / clauses be introduced in the Contract agreements.

Don'ts

- Don't delay the rightful payment of executed works as per the contract to the agency to avoid unnecessary arbitration/court cases.
- Don't delay appointment of the arbitrator as per the contract. When one party raised a dispute and denied by the other, then the objections raised would be exclusively within the jurisdiction of the Arbitral Tribunal.
- Don't loose time to appoint arbitrator when it is asked by the aggrieved party.
- Don't forget to identify the type of dispute. The matter in dispute must be of civil nature for referring to the arbitration, though if a single act involves civil as well as criminal consequences and the injured party has either remedy at his disposal, he may agree to refer the matter to arbitration even if it has the effect of wiping out the crime.
- Don't forget to give reminders for appointment of arbitrator as per provision of law of contract.
- Don't take adjournment of Arbitral Tribunal proceedings; adjournment, if sought by Contractor, notice be given with intimation to AT for no interest to be paid on awards for adjournment period.