

Contracting Efficiency

[Improving Tendering Ecosystem of KoPT (Estimate Preparation)]

A. Concept Note

This study is the systemic analysis covering activities ranging from Estimate Preparation & Approval to Invitation of Tender in KoPT. The purpose of this study is to improve the overall tendering and contracting ecosystem of KoPT.

1.0 Analysis of current practice of Estimate preparation and approval:

For the purpose of studying the process flow of estimate preparation, the Civil Engineering Department of KDS was taken for analysis. In Civil Engineering, it is seen that the "estimate" is raised first by a Junior Engineer which gets checked by an Executive Engineer and subsequently recommended by a Superintending Engineer for "Technical Approval" of Chief Engineer. The Chief Engineer then sends this "estimate" file to another wing called "Contract Cell" which is a centralized wing to deal with the estimates received by Chief Engineer for "technical approval" from various sections of Civil Engineering department. The Contract Cells operate under the charge of Superintending Engineer (Contract). He, in turn sends the estimate to the Executive Engineer assisting him, who again perused the estimate forwarded to him by Superintending Engineer (Contract). Finally, after checking, it is put up back to Superintending Engineer (Contract), who then forwards the same to Chief Engineer for grant of "Technical Approval":

Presently an estimate prepared by an engineering section of Civil Engineering department undergoes two kinds of "approval" before an actual tender is floated on its basis – a "Technical Approval and then an "Administrative Approval". At present, all the estimate files which were generated by various sections, irrespective of value, are being marked to the Head of the Department i.e., Chief Engineer. This leads to congestion of files at the desk of Chief Engineer and multiply 2/4 times movements between CE and the Contract Cell. At present there is no specific Delegation of Powers (DoP) applicable to "approval of estimates". As a matter of practice the powers which are with the 'execution of contract' as appearing under Section-34 of DoP of 2015 are traditionally being followed.

While the above procedure is being followed by KDS Civil engineering Dept, the practice followed at HDC is quite different. In HDC, an officer of the level of Dy. HoD of the division/section [Senior Deputy Manager] grants "technical approval" for an estimate. After technical approval, all estimates pertaining to Civil, Mechanical and Electrical etc are routed through a single HoD, i.e., GM(Engg.) to Finance wing for obtaining "administrative approval". This is because, unlike KDS, one single HoD in HDC heads civil, electrical and mechanical departments. These processes indicate a lack of basic inconsistency in dealing with the estimate preparation/approval process.

2.0 The current procedure in framing Bid Document (Tender Booklet):

After technical and administrative approval of an estimate, an officer of the "Tender-Inviting-Department" (TID) prepares a document containing the terms and conditions which would be applicable to the proposed tender. The current practice is to constitute a "Tender Committee" for examining and vetting the bid document prepared by TID. The constitution

of this committee depends upon the approved estimated value. This is also the same committee which functions as the "Tender Committee" (TC) that submits recommendation for award of contract / re-tender / negotiations to the appropriate "Tender Accepting Authority (TAA)". The approval of tender booklet prepared by the TID consumes considerable time although in most cases the technical specification are simple and the terms are based upon GCC or identical work executed in past. A tender is invited only after this Tender Committee clears the Tender Booklet. In some case, Vigilance had found that the tender booklet goes all the way up to Board of Trustees for approval before invitation of tender even though the estimated value is not in the range of procurement power of BoT. Considering such inconsistency it may be prudent to avoid process repetition that contributes delay and avoidable diffusion of accountability.

3.0 Desirability of two-stage system for all tendering activities:

In most organizations, for "supply tenders", single stage tendering is the normal mode. In single-stage tendering, bidders are asked to quote the price for the tender item(s)/Work activities while confirm to terms and conditions contained in the bid document. In such a system, after tender-opening, all bids are opened and tested for their techno-commercial acceptability. Thereafter a contract is awarded to the "lowest evaluated" offer subject to reasonableness of rate. Only in case of purchase of complex plant and machinery, it is deemed appropriate to adapt two-stage biddingsystems.

In contrast to "supply tenders", two-stage-tendering (first opening the technical bids and evaluating them for techno-commercial conformance and then opening of price bids of only those bidders who pass through first phase) are more frequently encountered in works/consultancy tenders. The two stage tender increases the tender-processing time for obvious reasons. For example, in two stage tendering system, all bids received in first stage have to be checked for their eligibility/credential. In a single-stage tendering system, the tender deciding authorities may concentrate on verification of credentials for only those bids which are in the zone of rate reasonableness. This is obviously advantageous from time point of view. At present KoPT follows two-stage-tendering is the mandatory system for all most all "Supply/Works/Consultancy" tenders. There was a time when KoPT used to follow single-stage system for all their supply-tenders. But at some point of time, it is believed that some Board Resolution made two-stage system mandatory.

At this juncture, it may be pertinent to consider what CVC has said regarding the above matter in their circular No 01/02/11 dated 11/02/2011:

".. Procurement cases where technical specifications need to be iterated more than once, it would be prudent to invite expression of interest and proceed to finalize specifications based on technical discussions/presentations with the experienced manufacturers/suppliers in a transparent manner. In such cases, two-stage tendering process will be useful and be preferred.."

4.0 Making all documents as "essential document for bidding" and the phenomenon of shortfall documents:

During the last year analysis made by Vigilance shows that in many departments, documents which are not "essential" to decide the techno-commercial suitability of an offer are labeled as "essential" and listed under the "eligibility criteria" of the bid. It is found that some of these documents are actually not essential at the bidding stage and are relevant at subsequent stages like contract execution /bill passing. Listing of such documents under the

eligibility criteria means that if a bidder fails to submit any of these numerous documents then his bid will fail to qualify the first stage.

While some departments take a strict view of this and reject such bids outrightly, other departments allow a period of 15 days grace period after tender opening for such bidders to make good the shortfall in submission of such documents. Such differential practice may invite complaints from the bidders who may argue that the bidder who did not submit documents as per bid condition was ineligible and has been unjustly given an opportunity after bid opening. Interestingly, there appears to be a Board Resolution which actually allows such relaxation period for submission of shortfall documents. The corrective steps to solve this problem are outlined below which should be read along with an earlier system improvement issued in this regard vide Secretary/KoPT's administrative order no. Admn/Misc.689/V dated April 25, 2017.

B. System Improvement:

1. Deciding the Competent Authority for granting "Approval" for an Estimate:

At present there is no delegation of power specifically for "Approval" of Estimate whether such approval is technical or administrative in nature. As a result, there has been a practice to apply the same limits of financial power for estimate as that belonging to the power of Contract Acceptance, i.e., under Section-34 of DoP.

Since the delegation of Power does not envisage "tender acceptance power" to any authority below that of HoD, all estimate files, irrespective of their value up to Rs 1.0 Crore, are currently being marked to the desk of HoD for such technical approval. This is a major bottleneck in the process chain and a significant contributor of delay in estimate preparation.

It is not known as to whether a Port Trust can formulate their own limits of power in areas not covered by DoP such as the aforesaid matter of "estimate approval" which is distinct from exercise of procurement power by a delegated authority. This may please be ascertained from Ministry.

2. Desirability of a Centralized Contract Cell in KDS or low value procurement:

The desirability of keeping a Contract Cell for centralized monitoring of estimate received from the divisions/sections which have already been scrutinized by three engineers (viz. Junior Engineer, Executive Engineer and Superintending Engineer), needs to be analyzed by KoPT management. The double checking of estimates which have already undergone multiple checking is certainly not in the system for low value work, for routine maintenance work involving repair, maintenance and standard construction. In this context, it is further pointed out that in HDC no such centralized contract cell is currently in operation to technically vet / verified the estimates raised by different engineers making a realistic issue.

3. Methodology for a Realistic Estimate:

While preparing an estimate it should be kept in mind that estimate is an inalienable part of the "procurement decision making chain" and hence comes under the relevant provisions of GFR and the recently adopted "Manual for Procurement of Goods 2017 by the Ministry. This is the all the more important since more often than not

the “estimated value” of an item/work is taken as a benchmark for rate comparison/appreciation in the subsequent tender committee stage.

It is therefore important to realize that the concerned authorities who are in charge of preparation of estimate are responsible for making a realistic estimate for the item to be purchased or work to be done. In case of procurement of goods several methods have been elaborated in the “Manual for Procurement of Goods 2017, Para No.2.1.1 (iii) (e)”

As far as works tender are concerned, due diligence must be applied to take realistic rate for each constituent items of work in the tender schedule / BoQ. Generally, such rates are taken from CPWD / State PWD SoR (Schedule of Rate) which serves as a good indicator of market price provided such SoR are current. For Non-SoR items the current practice is to look for any LAR for same/similar item or conduct market survey. If LAR(s) for an item is to be taken as estimated rate care should be observed in ensuring that such LARs were not AHR (Abnormally High Rate) and ALR (Abnormally Low Rate) in the referenced past contract. There may be case where identical item of activities of work might have been executed in other parts. The collection of such data at the estimated stage is very helpful not only for preparation of realistic estimate but even for determining reasonableness of the rate at the subsequent tender committee stage. If a works tender is “supply-item-heavy” or “material intensive” in nature, then market survey by way of collection of multiple budgetary quotations should be made. The above methods are only illustrative in nature and not exhaustive. There are myriad ways to ensure preparation of a realistic estimate for a work / item. The basic objective is to comply with the fundamental principle of procurement as enshrined at Para No.2.1.1 (iii) (e) of Procurement of Goods 2017.

4. Red flags to avoid during estimate preparation:

The possible pitfalls to avoid while preparation of estimate for Works/Supply Tenders is amply evident from the following extract taken from an analysis of tenders made by CVC :

4.1 In cases of Works Tender Estimate :

“High-pitching of estimates :It is imperative to mention, in the tender notice (called the NIT- i.e. Notice Inviting Tender) the estimated cost of the given work/project which is supposed to be arrived at by collecting all relevant information carefully and intelligently. Normally, this is the responsibility of the Convenor-Member (to be) of the TC. However, many a time, the estimates turn out to be high-pitched. In most of the cases, this is done deliberately (for obvious reasons) by :

- a) Picking up “comparable works” selectively
- b) by picking up, for comparison, incomparable works,
- c) by willfully over-looking really comparable works – i.e. works awarded at competitive rates in the immediate past within or adjoining the particular area,
- d) by ‘assuming’ unreasonable rates towards labour cost, transportation, local taxes and such other variables – etc. In some cases, the high pitching of estimated cost could also be because of sheer apathy/callousness (i.e. not necessarily on a/c of motives) on the part of the official(s) entrusted with the job. At the same time, since such callousness and apathy eventually

result in the award of the given work at unreasonably high rates, the concerned official(s) cannot be let off scot-free simply on the ground that there was no malafide behind his/their act of omission or commission. After all, when the act of omission/commission of a public servant, though bereft of malafides, cannot be condoned if it has resulted in monetary loss to the Organization.

4.2 Similar red flags in Supply Tender Estimates are :

- (i) Generating artificial 'demand' for materials to justify purchases.
- (ii) Splitting up of demands/quantities with a view to bringing each case under the financial powers of the purchase of a particular officer
- (iii) Projecting artificial urgency to the purchase although no such urgency actually exists.
- (iv) Obtaining "supporting quotations" from fictitious/non-existent entities where the quoted rates are invariably higher vis-à-vis the rates of the predetermined supplier.
- (v) Effecting redundant purchases at exorbitant rates."

5.0 Dispensing with Tender Booklet Approval by Tender Committee and Adopting a deviation-based approach:

The existing procedure of vetting of tender booklet by a Tender Committee can be dispensed with the following checks and balances:

- a) If the first "tender booklet" is based on the standard terms and conditions such as GCC (as in several routine works/items) then there may not be any need to get the same evaluated by a "Tender Committee" before bid-solicitation. The Tender Inviting Department can directly put up the tender-booklet to TAA (based on estimate value of equivalent procurement power of DoP) for approval.
- b) If any deviation from GCC by way of Special Condition or otherwise is envisaged , then the TID should put up the list of such new conditions/ special conditions/deviations to TAA for approval after finance concurrence.
- c) Definition of "similar work" used in the eligibility criteria for various types of routine "tendering activities" should be prepared in advance and approved by the respective HoDs in consultation with the Finance Department. This will reduce tender condition preparation time and impart a degree of comprehensive objectivity.
- d) There are many areas where inconsistencies observed between the existing Civil Engineering Manual and GCC. Chairman is requested to constitute a team of senior officers of KDS &HDC with a definite time limit to streamline the same and get approval from BoT since these documents had been approved by BoT earlier.

6.0 Desirability of mandatory Two-stage-Tendering system followed in KoPT:

Organization like Railways which floats thousands of "supply" & "works" tenders every year, almost always the single-stage tendering mode is followed for supply-tenders. In case of work tenders floated by Railways, only those tenders whose estimated value is more than Rs. 10 crore is processed through two-stage-tendering system. In the context of port trust, Rs. 10 crore limit may be too high considering the fact that this is the procurement power currently delegated to the highest authority in a port i.e., of the Chairman.

However, taking a lesson from Railways tendering system, the desirability of fixing an appropriate financial threshold for "works tenders" below which only single-stage tendering is to be followed should be explored by the management. Similarly, a decision should be taken as to the desirability of adopting a two-stage-system for all supply tenders. This is an important area where the concerned port authority should discuss the issue and take an appropriate step with the approval of Chairman or Board of Trustees as needed.

7.0 Avoiding Shortfall document submission:

The first corrective action in this regard is to clearly mention in the bid document as to which document is "essential" and which document is "desirable" and at what stage.

The second is to enforce tender-discipline amongst prospective bidders at the very beginning itself. If any grace period is granted as matter of policy/routine then an automatic tendency would develop among bidders to be less careful in submitting all documents at one go in expectation of the grace period. In KoPT, in most large value tenders, pre-bid meetings are held which is a great opportunity to emphasize such tendering discipline. Allowing extra time for submission of shortfall documents would inevitably push back the tender processing chain by an equivalent period in addition to making such action prone to complain by rival bidders.

8.0 Creating Process Manual for each Department:

One of the important aspects emphasized by CVC is creation of a process manual by the respective departments of PSU / Autonomous Bodies. **In this connection, two years ago the then CVO had addressed a letter dated 23/11/2016 to all the Head of the Departments to undertake the manual creation activities (copy enclosed).** However, the mission remains largely unrealized and incomplete. The Chairman is urged to impress upon the respective departments about the importance and necessity of having the right kind of systems and procedure by codifying the same for their respective spheres of organizational activities in the form an approved manual.
