

Government of India
Ministry of Shipping, Road Transport & Highways
Department of Road Transport & Highways
(Roads Wing)

Transport Bhavan,
No.1, Parliament Street,
New Delhi 110 001.

No.NH- 14019/4/2008-P&M

Dated: 27.4.2008

To

- (i) The Secretaries of State PWDs dealing with National Highways.
- (ii) The Engineers-in-Chief/Chief Engineers of State PWDs dealing with National Highways.
- (iii) The Chairman, NHAI
- (iv) The Director General (Border Roads).

Sub:- Acceptance of single tenders for National Highways works.

Sir,

I am directed to say that as per the existing CVC guidelines, single tenders can be accepted only with detailed justification in support of the acceptance with the approval of Competent Authority including Associated Finance. In general, single tenders are not acceptable in the first instance. However, it has been observed that the State PWDs are accepting rates on the basis of single tenders without observing the prescribed procedure, which is a violation of CVC Guidelines (copy enclosed).

2. It is, therefore, decided that the State PWD may cancel the single tender received in the first call without opening the bid and re-invite the tender. If single tender is received, even after re-tendering, the State PWD may give the detailed justification in support of the single tender indicating the importance of the work and award the work after obtaining approval of the competent authority and consulting the internal finance within the delegated power to the State Governments (when the estimated cost based on tendered value is within 5% above the original sanction cost). However, in no case the negotiation with the tender should be resorted to.

3. In case where the estimate cost based on tendered value is beyond 5% the original sanctioned cost and where revised estimate is required to be submitted, the State PWD may follow the above procedure and obtain Ministry's approval for the Revised Cost Estimate before awarding the work.

4. This may be brought to the notice of all concerned for strict compliance.

Yours faithfully,


(K.R. Gaffi)

Under Secretary to the Govt. of India
Tel: 23710450

enquiry/Advertised tender enquiry, some of the Organizations are generally issuing limited tender inquiry to select vendors, irrespective of the value of purchase. Further, the credentials of the firms and the criteria adopted for selection of such vendors, in most of the cases, are not put on record. This not only results in lack of competition but also favoritism to the select vendors. It has been noticed that even in cases where Advertised/Global tender inquiries were issued, the same were published in the local dailies and not in any National Newspaper and particularly in Indian Trade Journal, Calcutta, which is a Government publication and is regarded as the standard medium for advertising tender notices in India. The main purpose of issuing Advertised/Global tender inquiry is to give wide publicity. It has been noticed that the Organizations do not forward the copies of the tender notices to the registered/past/likely suppliers and while in case of imported stores, the copies of the tender notices are not being forwarded to Indian Missions/Embassies of major trading countries.

- In order to give wide publicity, generate enough competition and to avoid favoritism, as far as possible, issue of Advertised/Global tender inquiries should be resorted to and published in ITJ and select National Newspapers. The copies of the tender notices should be sent to all the registered/past/likely suppliers by UPC and also to the Indian Missions /Embassies of major trading countries in case of imported stores.

6.2 It has also been noticed that for Advertised/Global tenders, against a normal time of four - six weeks, there are instances wherein time for tender opening of only 12 - 15 days was given. Similarly, in case of limited tenders, against a normal time of 21 - 30 days, there are cases where tenders were opened in a short period of only 7 days. The tender opening in such a short duration is normally resorted to in case of recorded emergencies, where in the purchaser sends the tender inquiries by faster means like fax/speed post. However, in most of such cases, neither urgency nor the proof of having sent the inquiries by fax/speed post could be established. In few cases, it was also noticed that though short term tenders were invited, expressing urgency of the requirement, however, the cases were processed in a very routine and casual manner without any consideration for urgency. On the other hand, in some cases, it was noticed that with the short time available, only 2 - 3 vendors who probably knew about the system, submitted their bids and, thereby forming a cartel and circumventing the system. In some of the cases of Global tenders, it was observed that though the Organizations had given a time of 6 - 8 weeks for tender opening but the tender sale was closed 2 - 4 weeks in advance of

tender opening, thereby effectively giving only one month time to bidders for purchase of tender documents. The very purpose of floating Global tender which is to give wide publicity and sufficient time to bidders to get the bidding documents and submit their offers, in such cases seems to have been defeated.

- With a view to have wider, fair and adequate competition, it is important that sufficient time of say 4 - 6 weeks in case of Advertised/Global tenders and 3 - 4 weeks in case of limited tenders is allowed, except, in cases of recorded emergencies, wherein also, a reasonable time should be permitted and tenders should be sent by faster means like speed post /fax. The tenders should preferably be kept open for sale till the date of tender opening or just one day prior to the date of tender opening. With the widespread use of Information Technology, the tender notices should also be put on the website and e-mail address of the organization should be indicated in the tender notice.

6.3 In case of proprietary purchases, the detailed justification for purchase from a single vendor is not being placed on record. As by issuing single tender, the competition is totally eliminated and the possibility of paying higher prices cannot be ruled out.

- It is imperative that the purchase on Single tender basis be made with the detailed justification in its support and with the approval of Competent Authority, including associated finance.

7.0 Tender/Bid Document

7.1 The terms and conditions being stipulated in the bid documents by some of the Organizations are quite insufficient and sketchy. Sometimes, the bid document contain obsolete, unwanted matter and conflicting and vague provisions, resulting in wrong interpretation, disputes and time & cost over-runs.

Even the time/date for receipt and opening of tenders is not being incorporated in the documents.

The important clauses relating to Earnest money, Delivery Schedule, Payment terms, Performance/Warranty Bank Guarantee, Pre-despatch inspection, Arbitration, Liquidated Damages/Penalty for the delayed supplies and Risk-

purchase etc. are not being incorporated in the bid documents. All these clauses are important for safeguarding the interest of the purchaser and also have indirect financial implications in the evaluation of offers and execution of the contracts.

- All the important clauses as brought out above need to be incorporated in the bidding documents so as to fully safeguard the interest of the Govt. and, for evaluation of bids on equitable and fair basis and in a transparent manner.

7.2 In some cases, it was noticed that the amount of Earnest Money Deposit stipulated in the tender document was grossly insufficient to protect the Govt. interest in case of breach committed by the bidder. Some of the organizations instead of ignoring the bids not accompanied with earnest money deposit along with the tenders as per bids requirements, asked the bidders to submit EMD, after tender opening.

- The primary objective of submission of Earnest Money Deposit is to establish the earnestness of the bidder so that he does not withdraw, impair or modify the offer within the validity of the bid. It also helps in restricting if not eliminating 'speculative', 'frivolous' or 'wait and see' bids. Since any relaxation regarding submission of Earnest Money Deposit has financial implications besides giving encouragement to the bidders to submit frivolous bids as indicated above; the terms & conditions should clearly stipulate that the offers without Earnest Money Deposit would be considered as unresponsive and rejected.

7.3 In case of tenders invited in Two-bid system, some of the Organizations stipulate Earnest Money Deposit as percentage of the tender cost instead of fixed amount. In the Two-bid system, if EMD is taken on the basis of some stated percentage of tender value and with the announcement of the amount of EMD submitted by the bidders at the time of tender opening, the same will give every bidder a good indication of the prices quoted by the competitors by making back calculations. A bidder can use this information to the disadvantage of his competitor, if prices are subsequently modified.

- The Earnest Money Deposit in case of Two-bid system needs to be incorporated as a fixed and reasonable amount on the basis of estimated value of the purchase.