

Chapter-2

# Framework of Rules



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### 2.1 Existing Framework

A comprehensive and well-defined framework of rules and procedures for tendering and contract management is essential for execution of works in an economic, efficient, effective and transparent manner. The rules and procedures for tendering and execution of works in the State are detailed in Public Works Account Rules (Financial Handbook Vol.VI) and Uttar Pradesh PWD Manual of orders and subsequent instructions issued from time to time.

The department adopted new Model Bidding Documents<sup>1</sup> (MBDs) in January 2007 for tendering of works. The MBDs were adopted to ensure uniformity in terms and conditions, eliminate arbitrariness and check the involvement of unscrupulous elements in tendering process and execution of works. E-tendering system was introduced in the State from August 2014 for contracts costing more than ₹ one crore.

Scrutiny of records revealed serious gaps in the existing rules, MBD and procedures in several areas. In some important areas, such as negotiation with bidders, system of calculation of bidding capacity of contractors, payment of advances, limit for e-tendering, etc., the procedures followed were not consistent with the best practices. This resulted in inconsistent/different actions taken by various divisions on similar issues. The gaps and ambiguities in rules left ample scope for providing undue favours to the contractors, manipulating price negotiations and qualifying ineligible contractors. Audit also noticed improper assessment of bidding capacities, lack of performance monitoring of contractors and absence of adequate deterrence against corrupt practices.

Important deficiencies noticed in the prevailing system are discussed in detail below:

### 2.2 Gaps in Framework of Rules

During scrutiny of records in test-checked districts, audit observed that on many important issues there were no specific orders of the Government or E-in-C which resulted in varied or deficient decision making by field officers as discussed below:

**2.2.1 Disposal of single bids:** Financial rules provide for award of contract on competitive basis. National Highways Authority of India (NHAI) mandates re-tendering, in cases of receipt of single bid in an open tender.

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<sup>1</sup>T1 for works costing upto ₹ 40 lakh, T2 for works costing more than ₹ 40 lakh and T3 for supply of material.

However, in UP PWD, the rules are silent about the manner in which single bid cases (where only one bid is received in an open tender) would be dealt with. It was noticed that no orders or instructions were issued by the Government or the E-in-C to establish a mechanism for disposal of single bids. As a result, the test-checked divisions awarded contracts to single bidders (paragraph 7.1) and did not carry out re-tendering in single bid cases to obtain competitive bids. This was despite the fact that large number of registered contractors existed in each district of the State. Further, Madhya Pradesh Government had ordered (January, 2011) that in case of receipt of single bids, financial bids would not be opened and fresh bids would be invited by the department.

In reply, the State Government stated (June 2017) that financial handbook does not restrict the acceptance of single bid.

Reply is not acceptable as the acceptance of single bid should not be encouraged as per NHAH guidelines. It can be only an exception and not as a general rule.

***Recommendation: Department should issue clear guidelines to deal with single tender cases in line with prevailing best practices in road sector.***

**2.2.2 Publication of NITs in newspapers:** The Department issued instructions (May 1999) directing that NITs would be published in newspapers with a minimum circulation of 50,000 copies. Audit observed that the department neither prescribed the minimum number of newspapers in which NITs were to be published nor prescribed the category of newspapers (national/State/regional) in which tenders of various financial value were to be published. This led to many deficiencies as discussed in paragraph 6.3. In this regard, audit noticed that NHAH and Madhya Pradesh Government have made specific provisions for publication of NITs.

The Government stated (June 2017) that the policy is already in place vide GO dated 12 May 1999 and that e-tendering has been adopted for all works with effect from April 2017.

Reply is not correct as the said GO does not prescribe the minimum number of newspapers and the category of newspapers (national/State/regional) in which NITs have to be published.

***Recommendation: The department should issue detailed guidelines prescribing the number and the category of newspapers for publication of NITs of different financial value.***

**2.2.3 Review of performance of contractors:** There was no system prevailing in the department for review of the performance of the existing contractors for safeguarding the interest of the Government by debarring or de-registering the persistent defaulters. Online data was also not available in this regard.

Government stated in reply (June 2017) that it proposed to issue administrative order based upon study report previously submitted by Lee International Pvt. Ltd.

### **2.3 Model Bidding Document**

Scrutiny of new Model Bidding Documents<sup>2</sup> introduced in January 2007 revealed several deficiencies which adversely affected the interest of the Government or execution of works as detailed below:

**2.3.1 Payment and recovery of advances:** MBD included provision for payment of interest-free Mobilisation advance and Equipment advance to the contractor against submission of an unconditional bank guarantee by the contractor issued by a Commercial bank, for an amount equal to the advance payment.

Contrary to the MBD provisions, Public Works Accounts Rules (Financial Hand book Volume VI) issued by the Finance Department articulates that advances to contractors are as a rule prohibited and every endeavor should be made to maintain a system under which no payment are made except for work actually done. Exceptions for cases are also stated clearly in paragraph 456 and 457 of FHB Volume VI. Under these rules, mainly two types of advances are admissible viz., an advance (secured advance) on the security of materials brought to site and an advance payment for work actually executed. Thus, provisions of MBD issued by the PWD were not consistent with the Public Works Account Rules issued by the Department of Finance. Further, payment of interest-free advance by State PWD under provisions was not in consonance with prevailing best practices. Moreover, MBD provisions did not specify the number of installment for payment of mobilisation and equipment advances.

Out of 170 test-checked works, interest-free mobilisation advance in 74 works of ₹ 155.20 crore and equipment advances in 72 works of ₹ 204.97 crore were given to the contractors by the divisions. Further, these advances were paid in single installment only and were also not in consonance with the guidelines issued by the CVC and practice prevailing in other agencies such as CPWD, NHAI and Government of Bihar which adopted a system of payment of interest bearing mobilisation and equipment advances besides, payment of mobilisation advance in two installments.

Similarly, audit observed that no time limit was fixed in the MBD for recovery of these advances. Due to lack of this provision recoveries from contractors were awaited even after expiry of scheduled completion periods as the progress of works for which advances were granted was very slow. Thus, the department indirectly benefitted the contractors who were free to utilise the amount of advance payments at their will.

E-in-C, accepted (August 2016) that no guidelines were issued for contract management except MBD. Government in reply stated that these provisions

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<sup>2</sup> T1: For works costing below ₹ 40 lakhs, T2: for works costing ₹ 40 lakhs and above and T3: for supply of materials.

were adopted in cases where the agreements were more than ₹100 crores and the matter is under consideration for all agreements less than ₹100 crore also.

Reply is not acceptable as the said “Standard Bidding Document” (SBD) did not contain specific provision in respect of number of installments in which advances would be provided and time limit for recovery of these advances.

***Recommendation: Keeping in view the best practices prevailing in other departments/agencies of central and State government, advances paid to the contractors should be made interest bearing and paid in two installments with proper hypothecation in case of equipment advance. The issue of inconsistency between financial rules and model bid documents should be resolved. Further, MBD should include specific provision for fixing time-limit for recovery of these advances.***

**2.3.2 Assessment of bid capacity of the contractors:** MBD prescribed that bid capacity of the contractors would be assessed on the basis of a formula- $A \times N \times M / B$  where A is maximum value of works executed in any one year during the last five years, N is number of years prescribed for completion of works, B is the value, at the current level, of existing commitments and on-going works and M is a constant whose value has been taken as 2.5. This implied that if a contractor had executed a work of maximum value of ₹ 10 crore in a year during last five years, he could be considered for award of work costing ₹ 25 crore for completion in a year.

Audit observed that the State PWD adopted liberal criteria for assessing the bid capacity of the contractors in MBD in comparison to other construction agencies. The bid documents of NHAI, CPWD and Bihar Government included the value of M as 1.5/2.0 in comparison to 2.5 used by UP PWD. Due to adoption of higher value of M in MBD, the bid capacity of the contractors was assessed 40/20 *per cent* higher for award of work and accordingly increased the risk of failure to perform by the contractors.

Further, for assessment of B, i.e., existing commitment and ongoing works of the contractor, the department was relying on the information provided by the contractor himself and did not independently verify the accuracy of claim made by the contractor. This has the risk of awarding large value contracts to contractors who are already overburdened with existing works. Audit noticed that work in progress by the existing contractors were not readily available on the departmental website. Audit also observed that the commitment of the contractors for works done outside the government was also not being assessed.

Thus, liberal assessment of bid capacity paves way for award of work to contractors who might be engaged elsewhere while the risk of failure to honour the contract terms by such contractors are not protected by the department.

The Government stated (June 2017) that adoption of “Standard Bidding Document” shall address the issue up to a large extent.

The reply is not convincing as the SBD does not provide for any mechanism to facilitate verification of the existing commitments of the contractors. In respect of assessment of bid capacity of the contractor, SBD prescribes value of M at 2.0. However, the SBD was adopted only in January 2016 that too for the works costing more than ₹ 100 crore.

**Recommendations:**

- *Department should put in place an effective mechanism to facilitate verification of the existing commitments of the contractors for proper assessment of their bid capacity; and*
- *The criteria used for evaluation of bid capacity of contractors should be reviewed to ensure that it is not too liberal and is in line with prevailing best practices in the road sector.*

**2.3.3 Key equipment required for road works:** As per MBD, Appendix to Invitation to bidder contains name and quantity of key equipment required for road works. Audit, however, noticed that though MBD prescribed two categories of key equipment (works costing up to ₹ two crore and costing more than ₹ two crore) and names of the required equipment, the quantity of equipment required was not mentioned in MBD. Audit observed that in the absence of prescription of quantity of equipment in the MBD, EEs/SEs prepared NITs containing different quantities of equipment for same types of works and it was noticed that in some cases even the relevant columns were left blank by SEs indicating that the provisions of MBD were deficient which are discussed in detail in paragraph 6.1.1.

**2.3.4 Solvency certificate of contractors:** Model Bidding Document prescribed that contractors would submit solvency certificate of required amount in prescribed form (T5) issued by District Magistrates. The form prescribed for solvency certificate envisaged the value of property held by the contractor along with the details of mortgage of the property. However, the certificates furnished by the bidders were accepted without ascertaining the above mandatory conditions. The certificates also did not consider other aspects of debt, liability, status of hypothecation, and cash in bank for correct assessment. Audit also noticed that solvency certificates attached were irregular as discussed in paragraph 7.3.1.4.

It was noticed that provisions of MBD have not been revised since 2007 and all the above mentioned deficiencies are persisting even today (September 2016).

## **2.4 Solvency limit of contractors**

Scrutiny of records revealed that the Government fixed (July 2008) the minimum solvency limit of ₹ 50 lakh, ₹ 40 lakh, ₹ 20 lakh and ₹ five lakh for class A, B, C and D contractors respectively.

Audit observed that despite substantial increase in prices of construction material in recent years, the solvency limit of contractors as per Enlistment of

Contractors Rule, 1982 was not revised since 2008. Audit compared the Whole sale Price Index (WPI) of all items from 2007-08 till 2015-16, and observed that the WPI was 116.63 *per cent* point in 2007-08. It increased to 176.67 *per cent* point in 2015-16 as a result of increase of 60 *per cent* point basis. Further, Audit compared the WPI (construction machinery) from 2007-08 till 2015-16, and observed that the WPI was 117.33 point in 2007-08 and increased to 141.50 point in 2015-16. Thus, even after lapse of eight years, the solvency limit of contractors remains the same which directly affects the interest of the Government, in cases of default by the contractors. Even Lea International, Canada, a consultant engaged for review of existing system in PWD had also recommended (October, 2007) an upward revision of solvency limit to eliminate casual contractors and to reflect the increase in the value of contracts.

Not revising the solvency certificate in line with increase in price compromised the safeguard of government interest. In Roads and Buildings Department of Gujarat, minimum solvency limit for highest category of contractors was ₹ one crore and ₹ 1.5 crore in Maharashtra.

The Government accepted (June 2017) the recommendation and stated that a departmental committee would be formed to give suitable recommendations in this matter.

***Recommendation: The Government should form the Committee at the earliest and revise the solvency limit of the contractors appropriately.***

## **2.5 Integrity Pact not included in NITs of big contracts**

For promoting integrity, transparency, equity and competitiveness in Government transactions, many departments of Central Government have adopted Integrity Pact in major contracts relating to procurement of goods as well as construction works. Central Vigilance Commission, New Delhi (CVC) also recommended (May 2009) the inclusion of Integrity Pact in big contracts and that the same be stipulated in NIT itself. Under this pact, bidders/contractors commit themselves to take all measures necessary to prevent corruption.

Scrutiny of records in test-checked districts revealed that though PWD had concluded large value contracts for construction of roads up to ₹ 400 crore, the department has not introduced the system of including Integrity Pact in its contracts. NHAI has adopted Integrity Pact for civil works contracts above ₹ 100 crore.

The Government stated (June 2017) that adoption of “Standard Bidding Document” shall address the issue.

The reply is not correct as SBD does not prescribe provision for signing of Integrity Pacts with contractors at the time of executing the agreement.

***Recommendation: In view of huge investments being made by the government in road sector, PWD may examine feasibility of introducing the system of signing Integrity Pacts with contractors in major contracts for promoting integrity and transparency in such contracts.***

## **2.6 Lack of system for Road Safety**

India with 1, 05,725 fatalities per annum (in the year 2006) accounts for about 10 per cent of total world's road fatalities. As regards number of persons killed due to road accidents, Uttar Pradesh ranks first in India with 16,284 deaths in 2014, out of a total of 26,064 accidents.

As per Indian Road Congress (IRC) provision, Road Safety Audit is a formal procedure for assessing accident potential and safety performance in the provision of new road schemes and schemes for the improvement and maintenance of existing roads. Further, Tata Consultancy Engineers recommended (June, 2002) creation of a Road Safety Cell at the headquarters and district levels for collection and analysis of data relating to road accidents, spotting black spots and removing them, adoption of appropriate road safety measures in the estimates conducting road safety audit before approval of work and before technical sanction, etc. and the Government accepted these recommendations in September 2001.

Audit observed that the department neither created any road safety cell nor established any framework for monitoring the issues of road safety. The test-checked divisions also did not follow the road safety provisions in execution of works as discussed in paragraph 5.1.7 and 5.1.8. Thus, the department lacked an institutional framework for a sensitive issue dealing with the lives of the people of the State.

The Government did not furnish any specific reply.

## **2.7 Obsolescence of Manual of Orders**

Uttar Pradesh PWD Manual of Orders Volume I and II which *inter-alia* contains procedure for preparation of design and estimates, execution of works and preparation of budget and accounts were published in 1933. Large numbers of government orders have been issued by the department from time to time on various aspects of departmental working. Not keeping on track with latest innovations and changing milieu of governance, the PWD Manual of Orders has not been revised and updated for the last more than eight decades. As the existing Manual is very old and most of its provisions have become redundant, there is no consolidated document available at present containing all the government and departmental instructions relating to public works for guidance and uniform application by the divisional officers.

On being asked, E-in-C replied (August 2016) that revision of the existing Manual of Orders was not proposed. The Government stated (June 2017) that revision and updating of Manual of Orders would be done.

***Recommendation: The Department should revise and update its Manual of Orders at the earliest to incorporate extant instructions and best practices to improve its efficiency and ensuring transparency in execution of works.***

