

CHAPTER-3 Tender Stage

Tender stage in public procurement can be sub-divided under four headings-

- i) Preparation of tender document
- ii) Inviting and opening of tenders
- iii) Pre-qualification
- iv) Evaluation of bids and award of work

Preparation of tender documents

The tender after acceptance and signing becomes ‘the contract’ – a legal document. An ambiguous agreement leads to poor contract performance and litigations. It also gives an opportunity to a contractor to make profit out of ambiguous conditions. It has been observed that the tender documents are prepared in a hurried manner without checking the conformity among the schedule of items, drawings, specifications, and contract conditions etc. This generally happens due to the reason that different parts of the tender document such as schedule of quantities, specifications, drawings, and general conditions prepared by different people are compiled without correlating them. Sometimes they are copied from old tenders without giving a thought to the applicability of the conditions to the present work.

A few examples highlighting some deficiencies in the preparation of tender documents are discussed below-

Case 1 (VR1)

For a Power Package, the scope included design, engineering, supply, installation etc. as per the general requirement of a Power Sector PSU. As per the tender requirements, bidders were required to furnish their detailed design and engineering proposal to suit the requirements of the PSU. The PSU while being aware of the above fact, still invited offers in a single bid format, i.e. only techno-financial bids were invited in a single envelope. When the scope of work includes design, engineering etc., it is always desirable and advisable to invite offers in a two-bid format or two envelopes, i.e. technical and financial so as to properly evaluate the various options and design philosophy proposed by the various bidders and the price bids of only such bidders whose design and other technical proposals are as per tender requirements should be opened.

Case 2 (VR2)

In one case, the tender notice envisaged design, manufacture, supply, erection, testing and commission (DMSETC) of the proposed package. This clearly indicates that the prospective bidders were expected to have the experience in DMSETC. But, one of the foreign bidders, a trading company, purchased the PQ documents and after finding that DMSETC is an essential requirement to participate in the PQ bid, represented to the organisation to waive this requirement so as to allow participation of trading firms also. Based on this representation, the organisation modified the PQ requirements and allowed participation by the trading firms with due authorization from such firms who were represented by these trading firms and who had experience in design and manufacturing of such E&M equipments. However it was noticed that the organization, i.e. the PSU had intimated this amendment only to those limited set of firms who had bought the tender documents against the initial advertisement. The amended PQ criteria was not published in the newspapers/web-site. This resulted in inadequate publicity.

Case 3 (VR3)

Evaluation Criteria: In a case of a Power Sector PSU, a broad marking scheme was made available to the firms for evaluation of their bids for short-listing as well as for techno-commercial evaluation before price bid opening. The detailed marking scheme for individual aspects/ parameters, i.e. financial capability, technical capability and experience etc., on which bid was evaluated, was treated as a confidential document and was not made available/known to the participating firms. Such a practice is not a transparent way of indicating evaluation criteria. By knowing the exact marking scheme, the bidders would have been more accurate and careful in projecting each aspect while furnishing the supporting documents in their bids.

Case 4 (VR4)

In another case, as per tender conditions, there was a provision of penalty in case of failing to meet the guaranteed power consumption. The penalty was with a ceiling of 10% of the contract value. However, there was no mention about the threshold or minimum guaranteed power consumption that was acceptable to the organization. Therefore, there were all chances that the bidders could deliberately keep the minimum guaranteed consumption on the lower side so as to take benefit during evaluation and in case of not

meeting with the minimum guaranteed parameter at the time of execution, get away with a limited penalty of 10% only. Therefore, the evaluation in such bids is not done in an objective manner. There is all likelihood that the work gets awarded to a firm who furnished wrong minimum guaranteed parameters willfully. In such cases, it is always advisable to mention a minimum threshold for parameters beyond which the offers shall stand rejected.

Inviting & Opening of Tenders

The award of Public Contract through open tender is to ensure - transparency in public procurement, to maximize economy and efficiency in public procurement, to promote healthy competition among tenderers, to provide for fair and equal treatment to all the tenderers and to eliminate irregularities, interference and corrupt practices by authorities concerned. This is also required by the Article 14 of the Constitution of India.

Normally three modes of tendering are adopted. Namely -

- Open Tenders
- Limited Tenders
- Single Tender/Nomination Basis

In an open tender, bids are invited giving wide and adequate publicity. This is the most preferred mode of tendering.

In the case of small value works, urgent works and in case only a few bidders are available in the market, limited tenders from such bidders who have been empanelled are invited. In case of Limited Tenders the empanelment should be done in a transparent way and updated periodically.

Award of contracts on nomination basis, which is also called a single tender is to be resorted to only under exceptional circumstances such as natural calamities and emergencies or there were no bids to repeated tenders or where only one supplier has been licensed (proprietary item) in respect of goods sought to be procured.

In one of the recent judgments of the Hon'ble Supreme Court in case of Nagar Nigam, Meerut Vs Al Faheem Meat Exports Pvt. Ltd. it has been emphasized that all the public tenders should be in an open and transparent manner with adequate publicity. In this judgment, Hon'ble Supreme Court

has stressed that award of contract on nomination basis should be resorted to in rare and exceptional cases only.

The Commission vide its Circular No. 06-03-02-CTE-34 dt. 20.10.2003 and Circular No. 15/5/06 issued vide letter no. 005/CRD/19 dt. 9th May 2006 has emphasized upon open tendering as the most preferred mode of tendering and insisted on transparency in the preparation of panel in case of limited tenders.

During intensive examination of various contracts awarded by many organizations, it is observed that they do not have a clear-cut policy for inviting tenders through various modes as discussed above.

Publicity

Widest possible publicity through well-circulated national and local newspapers is essential for greater transparency in open tenders. In addition to the existing rules and practices regarding publicity through newspapers, trade journals, the Commission vide their circular no. 98/ORD/1 dt.18.12.2003 has instructed for up loading the Notice Inviting Tender and also tender documents in a down loadable form on the web site. The web site publicity is to be given even in the case of limited tenders.

Receipt of tenders

In the various booklets issued by the CTE Organization of the Commission, the need to maintain transparency in receipt and opening of tenders has been emphasized and it has been suggested therein that suitable arrangements for receipt of sealed tenders at the scheduled date and time through conspicuously located tender boxes needs to be ensured. The Commission vide their Circular No. 05-04-1-CTE-8 dt. 8.6.2004 has further instructed that in case of bulky tender documents the provision for submission of bids to designated officials by hand should be made in the tender document itself.

Opening of Tenders

To maintain transparency in the opening of tenders, the Commission in its circular dated 8.6.04 has instructed to open the bids in the presence of bidders.

Despite the reiteration from the Commission regarding maintaining transparency in inviting & opening of the tenders, a number of cases indicating lack of transparency, openness and fairness have come to light.

A few examples highlighting the deficiencies in the tender stage are given below-

Case-1(04-WT-72)

One construction PSU was awarded an offsite area work of a power plant costing Rs. 31 crores. While going in for a pretender tie up, they invited offers from two arbitrarily chosen firms, M/s A and M/s B. M/s B became the lowest. The PSU then re-invited the bids from these two firms after deleting two items i.e. structural steel and sheeting. This time the inter-se seniority changed and M/s A became the L-1. Again a revised bid for the third time was invited only from M/s A after adding 1 item of sheeting. M/s A in their revised bid not only quoted higher rates for sheeting, but also increased their rates for other items also. Thus the total pre-tender tie up was entered into in a non transparent, unfair manner resulting in undue benefit to only one contractor.

Case-2 (O5-WT-48/77)

One construction PSU 'E' was awarded the SG area work of power project costing Rs.64 crores. The PSU invited bids from arbitrarily empanelled sub-contractors without specifying the qualification criteria. M/s 'A' offered highest margin and became H-1. However, they were rejected by the client power sector PSU 'N' on grounds that M/s 'A' were not meeting the requirements. It is to mention here that the PSU 'N' had not stipulated any particular qualification criteria for the sub-contractors. The PSU 'E' suggested some other agency 'B' arbitrarily. M/s 'B' also was rejected by the PSU 'N'. Ultimately, the PSU 'N' suggested three names arbitrarily, out of which only agency M/s 'C' showed interest, but back tracked later. Thus the whole process of sub-contracting was non-transparent and was left to the mercy of the client PSU.

In this case, a clear cut qualifying criteria for sub-contractors should have been stipulated by the PSU 'N' in the tender document itself, instead of arbitrary rejection of proposed sub-contractors. In fact the PSU 'N' should have kept itself away from suggesting the names of the sub-contractors. Similarly, the PSU 'E' should have prepared a panel of sub-contractors for various trades in a transparent way.

Case-3 (O6-WT-15)

One power sector PSU 'N', awarded the work of main plant and off site civil work of a power project to another construction PSU 'H'. The PSU 'H' had an ad-hoc panel of four firms for piling work. The PSU 'H' invited bids

from three firms and the 4th firm was left out. Two out of these three were not interested, so only one firm was left in the fray. Since there was no broad based panel of contractors that was prepared in a transparent way, there was lack of competition. The PSU 'H' got very low margin percentage. Even when, one **other** interested party contacted this PSU 'H', it even did not bother to consider their offer.

In the same work, the PSU 'H' made out a panel for pre-tender tie up by taking the six firms who had approached them and adding three more working contractors. The panel was prepared in a totally arbitrary manner.

Case-4 (06-ET-05)

At the time of formulating one power project costing Rs. **1700** crores, International Competitive Bidding was considered as the preferred mode of tendering. However the entire work was awarded to another PSU 'B' on nomination basis. Further some of the sub-contractors short-listed by the executing PSU 'B' were rejected by the client PSU 'A' without assigning any reasons.

In the same project, in one of the packages awarded to a PSU 'B' on nomination basis by a PSU, the PSU, which was awarded the work on nomination basis awarded the work to another PSU, which in turn awarded the work to a private contractor. Thus, ultimately work was executed by the 4th stage contractor.

Case-5 (06-ET-05)

The work of cooling tower (costing Rs. 62 crores) for a power project was awarded on nomination basis to a private firm even though there are a number of agencies in the market executing similar work . The concerned PSU should have invited competitive tenders from competent and experienced agencies.

Case-6 (VR1)

In one case, while inviting tenders, the publicity made for short-listing of bidders was stated to have been given in various newspapers and also through the website. But during CTE's inspection, a copy of only one newspaper cutting was made available. Organization was not sure if the same had appeared in all the newspapers envisaged. Also in the tender notice, no details of eligibility criteria, probable cost of work, etc. had been

mentioned. Nowhere in the bid was evaluation document for short-listing, was the date of publicity in various newspapers mentioned/ certified by the Evaluation Committee. On examining the entire case, it was found that the extent of publicity given to this case as stated was not established.

Case-7 (VR2)

In another case, the first call of tenders was cancelled and fresh NIT was issued thereafter. In the second round, the total time given to submit the tenders was only 15 days which is much less than the stipulated period of minimum 45 days.

Case-8 (VR3)

In one of the tenders a condition authorizing the buyer organization to award contract to the next lowest evaluated bidder in the event of the failure of the L1 bidder to sign the contract and furnish performance security, was incorporated. This violates Commission's guidelines on the subject which prescribes that if L1 bidder backs out due to any reason, there should be a re-tender in a fair and transparent manner.

Case-9(VR4)

In one case, the Tender Receipt Register was not found maintained. From the documents it was not possible to establish as to how many bids were received within the stipulated period. Further, the organization did not have proper arrangements for receiving the tenders through tender boxes. A proper arrangement for the receipt of tenders at the scheduled date and time through a tender box needs to be adopted. In cases where the tenders are required to be submitted by hand due to the bulky size of the tender documents, it is to be ensured that the names and designations of at least two officers are mentioned in the bid documents who shall receive the tenders by hand. The information about these officers should also be displayed at the entrance/reception of the premises where the tenders are to be deposited so as to ensure a convenient approach for the bidders.

Case 10(VR5)

In one case, the price bid opening process was found to be not as per the prescribed procedure. In this case and in a few other cases also, the amount quoted by the vendors was not being entered by the tender opening committee in the tender opening register, though as per the purchase manual, on the spot summary was to be prepared by the tender opening committee. In the instant case neither the quoted amount was entered in the tender

opening register nor the spot summary was prepared by the tender opening committee.

Case 11(VR6)

In one case, the original price bid of L1 bidder was checked and it was found that a stamp was put on each page of the price bid, which contained date of opening & signatures of the members of the tender opening committee. However the column for the number of corrections was kept blank and the number of corrections was not mentioned, thereby giving a chance for manipulation in the price bid at a later stage.

Case 12(VR7)

In the same case, the corrected quoted amount was Rs. 40.79 crores, which was just Rs. 5 lac less than the L-2 quote of Rs. 40.84 crores. In the price bid, a discount of 11% on total price is seen to have been mentioned below the stamp and signature of the tender opening committee. Incidentally, this insertion also was not attested by the tender opening committee leaving a doubt as to when the discount amount was added i.e. whether after the opening of the price bid? Such manipulations were possible in this case as the column reflecting number of corrections was blank and was prone to be misused by any interested party.

Case13(VR8)

In yet another project of a Power Sector PSU, the covering letter of the price bid of one of the bidders to whom the work was finally awarded was having a list of all the documents enclosed in the bid. However, in the same bid, a letter indicating a discount was also enclosed but this letter was not having any mention on the first page of the price bid which was containing the list of all the enclosures. Incidentally, this bidder could become L1 only after considering the discount as per this letter, which leaves enough room for suspicion that the discount letter might have been added at a later stage.

Case14(VR9)

In a case of award of a project of Rs.3400 crores by a Power Sector PSU to another Central PSU on negotiation basis, the justification was given that one State Government has also given the work to the same Power Sector

PSU on negotiation basis. By doing so, the PSU skipped the normal tendering procedure to award the work to the Central PSU. This procedure of awarding a work on nomination basis is not correct due to the following reasons: -

- a) The procedures followed by the State Government may not be taken as precedence to obviate procedures adopted in a Central Govt. Organization.
- b) Considering the amount involved and the long gestation period of the project it is not found prudent to skip the tender process just to save some time.
- c) As per the Govt.'s sanction, this project was to be executed in the 10th Plan period and, therefore, there was sufficient time available for the organization to go in for a regular tender process.

Case15(VR10)

While awarding various packages to private companies, a Central PSU after having obtained the main power project on nomination basis from another Central PSU chose to give limited publicity by giving a tender notice only in one newspaper, i.e. Financial Express (English) and that too in Kolkata Edition only. This particular newspaper is probably having the least circulation in the category of national newspapers, like, TOI, HT & the ET etc. Because of this limited publicity, in most of the packages, the offers received were only from 2 to 4 bidders and that too most of the bidders were from a particular place only.

- Opening of tenders in the presence of trade representatives should be scrupulously followed. While opening the tenders by the tender opening officer / committee, each tender should be numbered serially, initialed and dated on the first page. Each page of the tender should also be initialed with date and particularly the prices, important terms and conditions etc. should be encircled and initialed by the tender opening officer /committee. Alterations in tenders if any, made by the firms, should be initialed legibly to make it perfectly clear that such alteration, erasing or cutting was present on the tender at the time of tender opening and this fact be also recorded by the tender opening officer / committee.

Pre-qualification

The success of a project largely depends on the capability of the contractor/vendor. Pre-qualification is a process to select competent contractors having technical and financial capability commensurate with the requirements of the particular procurement (Project / supply of goods/ hiring of services).

The pre-requisites of pre-qualification process are-

- Transparency
- Fairness
- Maintenance of competition

The Commission has issued guidelines vide circular No12-02-1-CTE-6 dated: 12.12.2002 and 07.05.2004 advising the organizations to frame the pre-qualification criteria in such a way that it is neither too stringent nor too lax to achieve the purpose of fair competition.

During intensive examinations of the works of the organizations dealing with the power projects, following deficiencies were observed-

- Stringent PQ Criteria resulting in poor competition.
- Unduly restrictive criteria, creating entry barrier for potential bidders.
- Evaluation criteria not notified to the bidders, making the PQ process non-transparent.
- PQ Criteria relaxed during evaluation, thus creating entry barrier to the other potential bidders fulfilling the relaxed criteria.
- Credentials of the bidders not matched with the notified criteria.
- Credentials of the bidders not verified.

A few examples on the above deficiencies are as follows-

Case-1 (04-NH-74)

As per the notified qualification criteria for a housing project costing Rs. 13 crores, bidders were required to have experience in housing project. Four bidders were qualified. Two bidders M/s A and M/s B were qualified on the basis of their experience in the construction of hospital building and office building respectively. Remaining two bidders M/s C & D were qualified on the basis of their experience in the construction for private firms. Without verifying the credentials, M/s D was awarded the work.

The organization should have re-invited the bids with relaxed criteria so that contractors having experience in other type of multi-storied buildings could have also participated. Further the organization as a matter of policy should verify the credentials and obtain the TDS certificate from the clients for non govt. works.

Case-1 (05-NH-36)

One organization called tenders for prequalification for civil works of a Hydro power projects (costing Rs 600 crores) from eleven firms. Even though, sufficient was available for call of open tenders. Calling prequalification tenders from arbitrarily selected 11 firms for such a huge project is a serious lapse.

One of the pre-qualification criteria for the above project was “ the firm should have achieved concreting of volume 2500cum per month more than once in one project. One firm A was insisting on lowering the said limit from 2500 cum per month to 2000 Cum per month. Later on the same firm submitted experience certificate of having achieved 2500 cum of concreting per month more than once in one project. The organization did not verify the authenticity of the certificate. Since there was a request from the contractor ‘A’ to lower the limit of concreting, it is obvious that the contractor A did not have the certificate. In such a situation, the organization should have taken special care to verify the genuiness of the certificate. Subsequently the firm became L1 and work was awarded to them. It is quite possible that the work **had been awarded to an in-eligible contractor.**

Case-2 (05-WT-44)

One PSU for their transmission line project costing 65 crores stipulated that the contractor will demonstrate the available manufacturing capacity in respect of steel towers considering their manufacturing capacity as well as known commitments (Manufacturing capacity- Commitments = Available manufacturing capacity). It was observed during intensive examination that the manufacturing capacity and the commitment in respect of M/s K to whom the work was awarded was 54000MT and 29000MT only respectively. Thus the available manufacturing capacity was only 25000MT against the requirement of 48000 MT of steel towers. Thus the contractor did not meet requirement.

Case-3 (05-WT-44)

In a transmission line project, pre-qualification criteria was made ambiguous. As per pre-qualification criteria the bidder should have successfully completed at least two project of similar nature and route length of 200 KM. An obvious interpretation is that the firm should have executed two projects each of minimum length of 200 KM. The PSU qualified the contractors by taking the cumulative length in number of project in stead of 200 KM length in each project.

The PSU should have made the pre-qualification criteria exhaustive yet specific.

Case-4 (05-SH-38)

Qualifying requirements in a dam project, were made stringent in the first instance. The suggestions made by one of the official for stipulating lesser length of a tunnels and also the suggestion of the consultant for stipulating any type of tunnel instead of water way tunnel were ignored before finalizing QR. This stringent criteria resulted in exclusion of some capable contractors. Even though the suggestion of relaxing above 2QRs were ignored, the committee relaxed some other criteria to includes other firms.

Case-5 (06-SH-13)

Pre-qualification criteria for a power project costing Rs.220 crores was not made exhaustive. Minimum value of work completed by the bidder in support of their past experience was not stipulated. Five reputed and large firms having experience in power projects, were excluded from participation on flimsy ground of executing small value works. Since no minimum value of work was mentioned, this ground of exclusion of these firms was totally unfair. Out of the two firms qualified, one firm PSU 'B' was having experience of the work costing only Rs. 31.00crores. If the same yard stick was applied uniformly, other excluded firms also would have qualified. The second firm 'S' which ultimately became L-1 was qualified on the basis of work in progress against the requirement of completed work. Thus on one hand eligible firms were disqualified an ineligible firm was qualified on other hand. There appeared to be hardly any competition. The quoted rates of PSU 'B' was unreasonably high (Rs.320Crores) as against the L-1's rates (Rs. 220 crores) clearly indicating its role as a supporting firm only.

Case-6 (06-ET-05)

As per notified PQ criteria for the work of coal handling plant for power project. the contractors were to be selected on the basis of their experience in 2 similar completed works of certain value. In the last five years. However, it was observed that L1 contractor was pre qualified on the basis of ongoing works. Thus, evaluation was not done as per notified criteria.

Pre-qualifying contractors on the basis of their experience in ongoing work, rather than on the basis of completed works was observed in number of cases.

Case-8 (06-ET-61)

As per NIT condition of 'Tail Race Diversion' work of a hydro power project, bidders were required to have experience of having successfully completed certain number of similar works of certain value during last 7 years ending May 04. On scrutiny of credentials of M/s X, who was awarded the work, it was observed that the work on the basis of which, M/s X was qualified was in progress on 31st May 2004. Thus the work was awarded to ineligible contractors.

Case-9 (05-ET-33)

While pre-qualifying contractors for a transmission line project, two contractors were qualified on the basis of experience of the same work. One contractor was awarded the work. Even after lapse of two years, the department could not explain the anomaly, obviously they had not verified the credentials. The same lapse was observed in a hydro power project also.

Case-10 (06-ET-45)

As per standard pre qualification criteria for power transmission line, the bidder were required to have certain experience as a prime contractor/member of a joint venture. In one of the package, this standard pre qualification criteria was relaxed to the extent that even bidders having experience as a sub contractor were allowed. It appears that the experience in the capacity of a sub contractor was added only in the standard document to suit one particular bidder. Even this relaxed pre qualification criteria in this particular tender paper were not fulfilled by the L1 contractor. The L1 contractor had experience in the capacity of sub contractor in erection of transmission line and not a complete work.

Case-11 (05-ET-46)

In number of cases pertaining to one organization, it was observed that pre-qualification criteria was relaxed after issue of NIT and fresh relaxed criteria was publicized. Thus, pre-qualification process was not transparent.

Case-12 (05-SH-38)

In one of the power projects, the qualifying requirements was initially framed stringent and was relaxed later on to include more number of firms. The criteria considered was number of firms applied for the PQ documents rather than the requirement of work.

Case-13 (05-SH-06)

Pre-qualification through open press advertisement was not done for one of the major power projects. Offers were invited from the selected firms on the basis of pre-qualification done for some earlier project. Initially, one firm was excluded but at later stage, again this firm was considered as pre-qualified. The process of pre-qualification lacks clarity and transparency because no clear-cut policy was adopted for adding/deleting names of the particular firm

Case-14 (07-SH-13)

For a power project costing Rs.260 crores fresh pre-qualification offers were not invited rather arbitrarily one firm was drawn from an earlier executed project. It will be pertinent to mention that this arbitrarily chosen firm was not pre-qualified in the earlier project for the work similar to the instant one. In fact by way of misrepresenting the competence, this firm was considered qualified despite having no experience in the similar field.

Case15 (VR1)

In the case of a Power Project, the Qualification Requirement (QR) envisaged a cut off time for considering the experience as from the date of tender opening, i.e. the works executed within a certain time period were to be considered for qualification purpose. However, as the response was poor against the first call of tenders, the QR were revised but the criterion made was even more stringent. Removing the cut off limit of time period resulted in qualifying firms who had executed similar works as long back as 15 years probably with obsolete technology.

Case16 (VR2)

In a case of award of mechanical package by a Power Sector PSU, the PQ criteria appeared to be skewed in favour of a particular firm to whom work was finally awarded. For this project of 2000 MW, only two works of 200 MW were envisaged to be completed by the prospective bidders. Against this, a firm to whom the work was awarded produced two certificates having completed works of 200 MW and 210 MW only. Incidentally, the firm provided these two certificates also only after opening of bids.

Case 17(VR3)

In a case of award of E&M package by a Power Sector PSU, the case was finalized without properly examining the eligibility criteria vis-à-vis the proposals submitted by the bidders. Whereas the eligibility criteria envisaged major share of contribution by the leader in case of the Joint

Venture bidder, but as per the proposal submitted by a Joint Venture, to whom the project was finally awarded, the distribution of work was indicated in an ambiguous manner. In the initial offer, the leader being a foreign company indicated major supplies from their offshore work but in the price bids, the distribution of works appeared such that major portion would be supplied from Indian partner. Prima-facie, the joint venture bagged the award by circumventing the prescribed eligibility criteria in the tender.

Case 18(VR4)

In one case, a PSU issued amended the Qualification Criteria through a corrigendum in such a way that suited a particular firm, i.e. the successful bidder. Normally the offered equipments are required to have a proven performance for a certain period say two years or one year on the date of opening of the bid. But in this case the amended qualification criteria did not specify any period and rather envisaged that the equipment should be in satisfactory operation as on the date of bid opening. This requirement was fulfilled by the said firm based on a user certificate stating that the offered equipments were working satisfactorily since November 2000 as against the bid opening date of 4.6.2001. Incidentally the original Qualification Criteria envisaged, a specific technology based equipment having satisfactory operation for at least two years as on the date of opening of bids. The period of successful operation of the equipment was deliberately not specified in the amended qualification criteria to suit a particular firm.

Case 19(VR5)

In one case, the Certificate of Work Experience submitted by the bidders did not have the details regarding the date of starting of the work and the scope of work etc. It appeared that the evaluation of the QR was not done in an elaborate manner. In the certificates, it was not mentioned whether the works were completed in time or otherwise. Timely completion of works is an important attribute while evaluating the credentials of the bidders.

Case 20(VR6)

In some of the Power Sector PSUs, instead of pre-qualification, post-qualification evaluation is adopted, i.e. the offers are scrutinized in terms of QRs after opening the price bids. The firms are selected through a process of elimination, i.e. if L1 bidder meets the QR, the work is awarded to such bidder otherwise L2 bidder is evaluated vis-à-vis QRs and so on. In such a system since the evaluation is done after knowing the price ranking, there

are chances that the recommendations get biased because of one reason or the other. Such a system can be considered fool proof only when the QRs are defined absolutely in clear terms and without any scope for mis-interpretation and manipulation by the bidders.

- The purpose of any selection procedure is to attract the participation of reputed and capable firms with proven track record. It should be ensured that the PQ criteria are exhaustive, yet specific and there is fair and adequate competition. It should be ensured that the PQ criteria are clearly stipulated in unambiguous terms in the bid documents.

Tender Evaluation and Award of Work

This is the most sensitive area susceptible to corruption. Corruption is inversely proportional to transparency and fairness. To ensure that evaluation is done in most transparent and fair & open manner ,following points should be taken care of

- Evaluation of tenders exactly as per the notified criteria.
- Timely decision within validity period.
- Complying with commission's circular regarding negotiation.
- Ensuring that conditions / specifications are not relaxed in favour of contractor to whom the work is being awarded.
- Ensuring that L1 is not ignored on flimsy grounds.
- Compliance with the purchase preference policy of the govt.
- Ensuring that work order / supply order is placed within justified rates.

CVC guidelines in this regard have been issued vide following circulars-

- Circular No. 8(1)(H)/98(1) dated 18.11.98,
- Circular No. 98/ORD/1 dated 24.8.2000 / 15.3.99,
- CVC'S Office Order No. 13/3/05 (005/VGL/4) dated 16.3.2005,
- Circular No. 06-03-02-CTE-34 dated 20.10.03,
- Circular No. 004/DSP/11-6594 dated 24-2-2005
- Circular No. 005/CRD/012 dated 3.03.2007

Some of the deficiencies observed in evaluation and award of work of power projects are as below-

Case-1 (04-NH-73)

Eleven firms were pre-qualified and tenders were invited on item rate basis for a housing project and eight agencies submitted their price bid. The rates quoted by L 1 contractor M/s A were found on higher side for certain items and the bid was considered as front loaded. Once this L1 firm was asked to submit the bank guarantee against the difference for abnormally low rated (ALR) items, the firm asked for the analysis of rates of the department on the basis of which these items were categorized as ALR. Rather than supplying the information to the contractor, the department opted for snap bidding on percentage rate basis from the bidders who submitted the price bid. In the snap bidding, some other firm became L1, but the rate of this L1 bidder M/s B were higher by Rs.40 lakhs than the rates of M/s A. The organization could have shared the information with M/s A and accepted their offer keeping safeguard for front loaded bid.

Case 2 (05-WT-44)

For a transmission line, tenders were invited in six packages in the same period. Incidentally, in all the six packages only one firm became L1 and all the six packages were awarded to this firm on rates varying from 4% to 19 % above the estimated cost. Since, all these six packages were similar in nature and were to be executed in similar terrain, then award of works at different rates does not appear to be in order.

Case 3 (05-WT-60)

In the work of main plant and off site area, costing Rs.37 crores, the rates of L1 bidder were 20% above the estimated cost. In order to justify these higher rates, the organization, obtained a single quotation from a local builder for aggregate and sand. In fact they should have gone for market enquiry and obtained quotations from various suppliers. This, casual approach resulted in award of work at higher rate.

Case 4 (05-SH-55)

In a case of a work of a central PSU, tenders were invited under International Competitive Bidding. After detailed evaluation of the bids, a JV firm with its quoted price of Rs. 650 crores emerged as lowest bidder (L-1). Accordingly, this firm was invited for post tender discussions. But during discussion, this firm started putting certain unwarranted conditions regarding exemption of taxes and duties etc. These conditions were not mentioned in the firms offer and the bid/offer same was in total conformity with the terms of tender documents. Sensing the reluctance on the part of the firm, the PSU conveyed this firm that in case they did not come forward

for post tender discussion, their action would be treated as withdrawal of bid.

In the mean time, the minor partner of the Joint Venture approached the PSU concerned with the request that since the major partner of the JV is backing out, they might be allowed to replace the major partner with the firm of required credentials. Incidentally the PSU while considering the request, allowed this minor partner of JV to propose a new major partner within a period of four weeks. Despite this leaverage the minor JV partner could not suggest an acceptable replacement for major partner in the JV. In this background a decision was taken by the PSU to go for a snap bid among the agencies who participated in the original bidding and finally one of those emerged as L-1 bidder with its quoted price of Rs. 665 crores, which was Rs. 48 crores above the quoted price of earlier L-1, JV firm.

Surprisingly, after taking a stand initially, that the action of the initial L-1 bidder would be treated as withdrawal of bid on account of putting the unwarranted conditions during post bid discussion, a new line of thought emerged whether this action of the original L-1 bidder should be treated as withdrawal of offer or the bid had become non-responsive. Taking shelter of the legal opinion sought in some other case, a decision was taken to not to forfeit the bid security of Rs. 9.0 crores on the plea that the bid had become non-responsive. It would be pertinent to mention that on this issue, the opinion of General Manager (Law) of the PSU was that since the conditions put forth by L-1 firm were unwarranted and were after opening of the bid, as such their action amounted to withdrawal of bid necessitating forfeiture of bid security of Rs. 9.0 crores. Top of all the opinion of GM(Law) was not placed before the board for taking decision on this issue.

In view of the foregoing background and with the facts that the original L-1 bidder was called for post tender negotiations, it is amply clear that their offer was in conformity with the bid conditions and cannot be treated as non-responsive on whatsoever ground. Therefore, putting any conditions contrary to the bid requirements, at the time of post tender negotiations amounts to stalling the process of finalisation of tender and, eventually, withdrawal of the offer. The view taken by the PSU that too, against the advice of its Law Department, appears to have given an undue financial benefit of Rs. 9.0 crores to the bidder.

Case 5 (06-SH-44)

A power sector PSU 'A' invited tenders for main plant area of a thermal power plant wherein, one PSU 'B' bidder had quoted Rs.14950/- per unit rate for an item, but calculated item amount taking the unit rate of Rs.24950/-. As per the ambiguity clause, rate of the items quoted by the bidders had precedence over the amount worked out. The organization should have calculated item amount taking Rs.14950/- as a unit rate. However the organization considered Rs.24950/- as unit rate on the request of the bidder against violation of the tender condition.

Had the bid been evaluated as per terms of the tender document, the PSU bidder 'B' was L-1 with quoted amount of Rs.24.56 crores, but once the item rate was considered Rs.24950/- instead of Rs.14950 the PSU bidder 'B' became L2 with tendered amount Rs. 26.66/-. This PSU 'B' availed purchase preference and finally was awarded the work at Rs. 26.13 crores. Thus, power sector PSU 'A' awarded the work to PSU 'B' at higher rate by Rs. 1.57 crores (Rs.26.13 cr.-Rs.24.56) by violating ambiguity clause of tender document.

Case 6 (06-ET-05)

One PSU 'A' who was awarded a power plant project on nomination basis, divided the civil works in four packages, while sub contracting one package, the PSU 'A' did not extend the purchase preference policy to PSU 'B'. The work was awarded to L-1 private contractor who subcontracted the work to the same PSU 'B'. PSU 'B' further sub contracted to another private contractor. Thus, ultimately work was executed by 4th stage contractor.

Case 7 (05-ET-33)

In a power transmission line work, tender documents stipulated completion period as 27 months. However, before award of work, the period of completion was increased to 44 months. Thus, the L1 contractor got undue benefit on account of extended completion period. The relaxation extended to L1 created a discriminatory treatment to others.

CASE 8 (05- ET-80)

In case of an Effluent Water Utilizations Project, four tenders were received, out of which only two were not techno-commercially acceptable and one firm M/s A did not submit the required earnest money, thus it was a single tender. However, M/s A's tender was also considered, apparently to avoid a situation of a single tender.

Case 9 (05-SH-39)

In one of the power project, initially a particular sub-contractor proposed by the main contractor was disqualified on some flimsy grounds, but later on the same sub-contractor was considered qualified without any change in the status of the experience etc. of that sub-contractor.

Case 10 (05-SH-62)

In one of the power sector PSU for a particular project, feedback regarding the performance of the contractor was asked for the work considered for pre-qualification before award but it was observed that in spite of adverse feedback regarding the past work, this firm was awarded the work.

Case 11(VR1)

In one case, a Joint Venture (JV) quoted their prices in a way giving them an advantage of 15% purchase preference allowed to indigenous manufacturers as per the Govt. policy for Mega Power projects. In the schedule 1 of the price bid which consisted of only CIF component, the JV kept disproportionately lower amounts so as to avoid the financial loadings and hence, resulting in a disadvantage to the other bidder, i.e. a JV between a Central PSU as leader and a foreign partner.

Case 12 (VR2)

In another case, a bid guarantee of Rs.10 crore given by L1 bidder was initially valid up to 31.10.2004 but after processing the case, the LOI was issued to this bidder on 3.12.2004, after the validity of the bid guarantee was over. It was only after placement of LOI, that the bid guarantee was got extended up to 6.12.2004, which is abnormal and needs to be discouraged as there was no bid guarantee during the intervening period from 1.11.2004 to 6.12.2004 during which the case was being processed.

Case 13 (VR3)

In a case of award of mechanical package by a Power Sector Undertaking, the bid evaluation criteria envisaged a large number of loading factors with unrealistic presumptions. For example, the SG (Boiler) efficiency was loaded for every 0.1% variation from the base for 25 years, presuming therein that efficiency can be consistently measured to such a minute precision. Moreover, the quoted efficiency is found to vary widely and the same is not consistent as seen from the offers submitted by the bidders. For example the successful bidder quoted efficiency of **84.92** % in case of one project but quoted **86.26** % efficiency in case of the other within a short span

after losing the contract in the earlier tender, indicating a wide variation in acceptance of efficiency. Similarly, Coal Pulverizer components' wear and tear is worked out for 25 years, whereas these components are replaced every two to three years. Incorporation of such clauses gives a leeway/handle to manipulate/change the Inter-se-seniority. Further, what recourse could be taken by the PSU is not on record if after a period of 4-5 years of the commissioning of the Plant, it comes to light that the efficiencies prescribed or committed have not been attained /found not attainable. By then, the ineligible vendor would have already bagged the contract for such a large sum of a few thousand crores.

Case 14 (VR4)

In one Power Project, a PSU invited two types of price bids. One for mega power project status and the other one for non- mega power project status. Later on, the price bid with mega power project status was opened and the work was awarded after evaluation. However, the mega power project status was not accorded by the competent authority, i.e. the concerned Ministry, to this particular project till date of inspection when over half the project had been completed, though all the benefits had been extended in this case by considering the same as mega power project. It is worthwhile to mention here that there are certain concessions given to the bidders for mega power projects and processing the case without requisite approval of competent authority might have resulted in undue benefits to a particular bidder, i.e. the successful bidder in this case.

Case 15 (VR5)

One Power Sector PSU awarded a package to a Central PSU after considering the purchase preference entitlement to the Central PSU in case the value addition by such PSUs is minimum 20%. While quoting, the Central PSU stated that value addition would be minimum 20% but during execution of the work, it was found that the Central PSU off loaded most of the work to private companies on a back-to-back basis and it was established that the actual minimum value addition by the PSU was not 20% as there was no document to substantiate this fact.

Case 16 (VR6)

In yet another case of Power Project, the price preference of 15% on CIF component in a mega power project was found manipulated by a private sector company to beat an Indian PSU competitor. As per policy on mega power projects, a 15% loading is done on CIF component of the price bid. While quoting, the private company kept CIF component deliberately on the

lower side so as to avoid this 15% price loading. However, in the supply order the CIF component was included in another schedule of the price bid, which was mainly for the Indian Rupee component of the price and thus, the purchase preference given by Govt. was wrongfully availed by a private company, to the disadvantage of a public sector company, who quoted mainly in Indian Rupees and was the bona-fide beneficiary of the price preference.

Case 17 (VR7)

In one case, the price bid was required to be given in two parts, i.e. supply portion and civil & erection work. The L1 bidder, who was finally awarded the work, quoted a very small portion in the civil & erection work and kept a major portion of the price part in the supply portion. However, while placing the LOAs (Letter of Acceptance), the work was redistributed in the two LOAs, which was not as quoted in the price bid. For e.g. civil & erection work as quoted in the price bid was only Rs.50,000/- but the same was enhanced to Rs.1.50 crore in the LOA while reducing the same amount in the other LOA for supply only. Although the over-all cost of the contract was same, but redistribution of the proportion of the cost in this manner may result in undue benefits to the contractor and hence needs to be severely discouraged.

Case 18 (VR8)

While evaluating the bids, the price reasonableness of the projects is not uniformly applied before accepting the tenders. In one case, the award value was Rs.240.69 crore against an estimated amount of Rs.385.75 crore for the E&M Package of the Power Project. The per MW cost for this package worked out to Rs.47.20 lakhs in Oct.'01 whereas while making a comparison with another project awarded in Jan.'99, the per MW cost for similar package came to Rs.73.20 lakhs. This indicates that the project awarded in Jan.'99 was at a very high cost and also gives an impression that a wide range of per MW cost is being justified while awarding the packages.

A few check points are suggested to prevent above deficiencies-

Preparation of tender documents

- Adopt updated standard bidding document

- Ensure conformity among nomenclature of items, specifications, drawings, general and special conditions.
 - Avoid stipulating such conditions in the contract, which are not feasible to be operated.
 - Stipulate performance guarantee clause to eliminate non serious bidders
 - Conduct pre-bid meeting i) to bring clarity regarding spirit of various provisions & ii) to bring necessary modifications, if required. Make minutes of the pre-bid meeting as part of agreement.
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- Provide clause to deal with ambiguous provisions (order of precedence) in the tender document and ambiguity in the tender submitted by the contractor.
 - Stipulate all prevailing govt. policy orders such as purchase preference policy (cvc's circular no. Dated 15.03.99 & DPE's circular dated 18.07.05), customs exemptions for material to be imported etc.
 - Provide enough safeguards against misuse of mobilisation advance (CVC's circular No.4CC-1-CTE-2 dated 10.04.07).
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 - otify objective evaluation criteria in the tender document.
 - Stipulate condition regarding splitting of quantities, if required, in the tender document
 - Notify criteria of splitting in the tender document itself if splitting of work / supply order is envisaged (splitting is envisaged when L1's capacity is less than required or to avoid heavy reliance on one firm)

Inviting tenders

- Prefer open tendering as far as possible
- In case limited tenders are resorted to, prepare & update panel of contractors/ vendors in a transparent way.
- Ensure adequate & wide publicity. (Web publicity is necessary even in case of limited tenders)
- Ensure adequate time for submission of offers.
- Upload NIT & tender document on web site, even in case of limited tenders (cvc's circular dated 11.2.2004).
- Notify complete address of place of tender submission (cvc's circular dated 8.6.2004).

Opening of Tenders

- Open the bids in presence of bidders.
- Attest and account for corrections, omissions, insertions, overwriting
- Prepare 'on the spot summary' in tender opening register

Pre-qualification

- Keep the PQ criteria neither too stringent nor too lax.
- Prepare the PQ criteria specific to the requirement of the work in clear terms.
- Notify the evaluation criteria in the PQ document.
- Verify PQ credentials.
- Evaluate the bids exactly as per the notified criteria
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- Retender if relaxation in PQ criteria is necessary.