

The Indian Procurement System with Special Reference to Water Resources and other Infrastructure Projects

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Abstract

India has no uniform countrywide procurement policy for construction projects. Organisations in the private sector and in the public sector (under the Central and State Governments) are governed by their own set of rules. While many of these rules are common, there are differences as well. No major change in the procurement rules has taken place in the last 73 years since India became independent. There is a growing need for upgrading the prevailing contractual system. This paper is an overview of the present system of procurement and suggests some remedies which would apply especially to Water Resources Projects.

Introduction

The finalisation of a contract broadly consists of preparation of the bid document, issuing notice inviting tenders, opening of tenders and formulation of comparative statements, negotiation with bidders and signing the formal contract agreement. Preparation of the bid document is the client's responsibility and, at times, the consulting engineer does it. The bids may be categorised under – Turnkey, Cost plus, Item Rate, and other categories.

India is today passing through a phase of massive construction in various sectors - Water Resources; Infrastructure; Environment; River Valley; Roads; Railways; Bridges; Flyovers; Industries - light, medium, heavy and various services. Of these, the projects relating to Water Resources may be broadly classified under:

Surface water - Dams; Hydroelectric projects; Barrages; Canals with headworks; Irrigation and flood control; Water treatment and distribution; River training; Interlinking of rivers;

Desalination of coastal sea water, etc;
Groundwater exploration and conservation - Rainwater harvesting and recharging;
Prevention of Arsenic contamination and saline water intrusion, etc;
Storm water drainage; Sewage and effluent treatment and disposal/recycling;
Protection and improvement of the overall environment.

Conditions of Contract

Most authorities follow standard conditions generally conforming to the ICE (Institution of Civil Engineers-UK) Conditions of Contract. In recent years, FIDIC (International Association of Consulting Engineers) Conditions of Contract are being adopted on internationally funded projects.

During preparation of bid documents, the following aspects are relevant:

Visualisation of every possible item which need to be executed, thereby minimising the possibility of extra items coming up at a later date;
Proper estimation of quantity and cost minimising deviation from the contract scope;
Proper drafting of contract conditions minimising contractual flaws and ambiguities.

Tender Notice

The notice inviting tenders may be of the following types:

Open tender-

for normal stereotyped jobs including those relating to Water Resources and Infrastructure.

Limited tender-

where the client is choosy about selecting a proper contractor. This process should be preceded by Pre-Qualification of Bidders.

Single-Party Tender-

where the client has a special preference for a certain contractor keeping in view the specialised nature of the job and the pre-selected contractor's performance record.

Tender Opening

Opening of tenders and preparation of comparative statement of bids from technical and commercial considerations is the next step followed by negotiation with bidders and the signing of the contract agreement.

Normally, the bid must be submitted in two separate sealed covers containing the Technical Offer and the Priced Bid. Apart from the bidder's technical competence, the financial capability of the bidder also deserves due consideration.

For some authorities, it is practically obligatory to put the Place Order (PO) on the lowest bidder (L1). However, the most technically competent bid (T1) should be given due consideration even if he is not the lowest bidder. A break-even is made between T1 and L1 that is, technical competence and price competitiveness.

In most cases, L1 can be rejected only if it can be proved conclusively that the contractor cannot execute the job within the stipulated time, cost and quality parameters. This, at times, becomes difficult to establish. Contractor's health and safety record is also an important issue but it is rarely taken into account in deciding the PO.

Myth of Lowest Bid (L1)

In 1860, John Ruskin warned against accepting the Lowest Bid (L1).

“It is unwise to pay too much but it is worse to pay too little. When you pay too little, sometimes you lose everything because the thing you bought was incapable of doing the thing it was bought to do. If you deal with the Lowest Bidder, it is well to add something for the risk you run.”

Unfortunately, in India, even today, we run after the Lowest Bidder (L1) and usually face the obvious consequences.

Some Hidden Issues

In India, behind the scene, issues like bribery, corruption, kick-back, percentage cut on bills, political pressure, donation to political parties, powerful references, pressure from the top, etc sometimes decide the issue of Place Order (PO). In India, rarely is a contract is decided on techno-commercial considerations.

Good Contract

A good contract would mean a minimum of deviation from the signed contract with the least possibility of Arbitration, Litigation and Extra Claims. While firming up contracts, the following must be kept in mind:

Conceive and define work packages clearly ensuring coverage of the entire work avoiding duplication of responsibilities;

Choose a suitable party to execute the job and provide for his reasonable compensation;

Ensure that the party engaged in the type of trade can conveniently perform and fulfil his obligations under the contract taking into consideration his obligations under his other ongoing contracts. Very frequently, it is found that the party is already overbooked and wants to put more in his mouth than what he can chew. The concerned project would be the worst

sufferer.

Contracting Process

The contracting process is the planned utilisation of resources, engineering skill, labour, material, time and money in such a way that both of the parties to the contract derive maximum benefit from the resources expended by the client in a Win-Win situation. In India, there is a tendency towards formulating one-sided contracts by attempting to penalise the contractor on each and every issue. Such contracts do not yield the desired result. It must be understood that the contractor is in business and he must be permitted to enjoy his share of profit. The contract must be fair to both sides.

Types of Contract

Construction contracts, particularly those in the Water and Infrastructure sector may be of the following types:

- Overall Project Management or PMC;
- Engineering, Procurement and Construction or EPC;
- Works Contract, that is, Construction Contract;
- Engineered Turnkey Contract;
- Non-engineered Turnkey Contract;
- Service Contract.

Considering the methodology of compensation or remuneration, these contracts may be categorised as:

- Lumpsum Contracts;
- Cost Reimbursable plus fixed fee contracts;
- Item Rate contracts; etc.

Contracts with private sector participants may be:

- BOT-Build, Operate, Transfer;
- BOO-Build, Own, Operate;
- BOOT- Build, Own, Operate, Transfer;
- BOLT- Build, Operate, Lease, Transfer;
- D&B- Design and Build, etc.

Conclusion

The present contractual system in India needs a thorough overhauling with a view to modernising and upgrading it and bringing it to par with the international contractual system.

Apart from the FIDIC and ICE conditions of contract largely followed in this country, we need to have a nationwide Form of Contract applicable to the construction sector in general with special provisions for Water Resources and other Infrastructure Projects. Nodal bodies in the public and private sector, leading professional institutions, consulting engineers and construction contractors are welcome to take a lead in drafting and finalising this national Form of Contract.

References

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