

Directorate General of Works
Central Public Works Department.

* * *

No. DG(W)/CON/21.

New Delhi,
Dated the,

12 अगस्त 1988
AUG

OFFICE MEMORANDUM

Sub :- * Common irregularities in execution of works-
Tenders and contracts.

A copy of letter No. DR-1-CTE-14 dated 1st Feb 88 received from Chief Technical Examiner, New Delhi, on the above mentioned subject is sent to All CEs, SEs/SSWs, EEs/SWs for their information and necessary action.

Encl: As above.

P.C.SUD

(P.C.SUD).

Financial Officer to D.G.(W).

(Issued from file No. 4/14/88-CWBd.)

To,

1. All CEs/SEs in CPWD (including Hort. Directorate, Delhi Admn. and Arunachal Pradesh).
2. All EEs(Civil) in CPWD (including Horticulture Directorate, Delhi Admn. and Arunachal Pradesh).
3. F.O. to DDG(BW), Deptt. of Telecom, 6th Floor, Sanchar Bhavan, New Delhi- 1.
4. CE(Civil) Construction Wing, AIR Samachar Bhavan New Delhi.
5. SE-in-Charge, AIIMS, Ansari Nagar, New Delhi.
6. Engineer Member, DDA, Vikas Minar, New Delhi.
7. Director of Audit, CW & M, New Delhi.
8. Municipal Engineer, Municipal Corporation of Delhi, Town Hall, New Delhi.
9. Chief Technical Examiner, CVC, New Delhi.
10. Chief Engineer, Ministry of Development, PWD, Bhutan.
11. Arbitration Cell, Ministry of Urban Development.
12. Director of Accounts, Works Audit Section Directorate of Accounts, Panaji, Goa.
13. Chief Engineer (irrigation and Flood), Delhi Admn. ISBT Bldg., Delhi.
14. Director, Light House and Light Ship. Ministry of Shipping and Transport, East Block, R.K.Puram, New Delhi.

3

No. DR-1/CTE-14
Govt. of India
Central Vigilance Commission
(CTE's Organisation)

Block 10/A,
Jamnagar House

New Delhi, 1.2.88.

To

All Chief Vigilance Officers.

SUBJECT: Common irregularities in execution of work.

Sir,

A list identified as list no. II of common irregularities observed by this Commission in execution of works is enclosed herewith.

Based on this list action may please be taken to improve the system of execution of works in your organisation. The list may also be circulated among the Engineers of your Organisation so that effective steps are taken by them to prevent recurrence of such irregularities.

Yours faithfully,

Sd/-
(J.L. Pinto)
Chief Technical Examiner.

Encls: List of common
irregularities.

(COPY)

Common irregularities in execution of
works - Tenders and contracts.

.

1. Qualified acceptance of offers:

A contract consists of an offer and an acceptance. For a contract to be valid the acceptance should be clear and unqualified. Very often it is seen that the acceptance is qualified and additional conditions are stipulated which may not be acceptable to the Contractors. The net result is that there is no agreement and therefore there is no contract.

It is therefore necessary that the offer should be taken in complete shape and in the form acceptable to the Organisation (after negotiations, if necessary) so that the offer can be accepted by the Organisation unconditionally.

2. Standard Contract form:

Very often it is seen that the Organisation does not have a standard contract form approved by the Legal and Finance Department. The contract forms produced by the Architects contained a lot of * material, contradictions and ambiguities which sometimes result in a loss to the Organisation.

* obsolete

3. Prequalification of contractors:

Very often it is seen that only Contractors known to the officials of the Organisation and to the Architects are placed on the select list. This system gives considerable scope for malpractices, favouritism and corruption. It is therefore necessary to fix in advance the minimum qualifications, experience and number of works of a minimum magnitude satisfactorily executed in terms of quality and period of execution. After fixing the basic criteria to be fulfilled, applications should be invited by advertisements in the Press supported by certificates of satisfactory completion in respect of quality and time. It has to be ensured that all firms satisfying the minimum criteria are placed on the select list and also that no firm which does not satisfy the minimum criteria is placed on the select list.

4. Call of Tenders:

For works of a small magnitude where prequalification is not resorted to, tenders should invariably be invited by advertisement in the Press from Contractors registered with Central Government Departments and Public Sector Enterprises. This will ensure that unqualified persons do not tender for works and that the lowest tenderer will not be ignored on the pretext that he is unqualified or his performance is unsatisfactory.

5. Approval of tender documents:

Very often it is seen that the draft tender document is not approved by the Organisation before call of tenders. The result is a contract document with lot of ambiguities and contradictions giving considerable scope for corruption and resulting in a loss to the Organisation.

6. Guarantee Bonds:

It is very necessary to take guarantee bonds from Specialised Firms dealing with specialised works like anti-termite treatment, water-proofing works etc. in which the nature of the chemical used is not divulged. This will ensure that Spurious firms do not take up such works.

7. Market Rate Estimates:

Before inviting tenders for a work it is very essential to prepare a realistic market rate estimate for the work so that the reasonableness of the lowest tender received can be gauged. Very often the lowest tendered rates are found to be very high because of the formation of a cartel by the tenderers, lack of competition with a small select list, or misunderstanding of the description and specifications of the items.

The reasonable profit margin for Engineering works is 15. to 20%. In many cases it has been found that contracts were awarded with profit margins ranging from 30 to 100%. The profit margin in a particular case can be gauged by preparing a detailed estimate based on prevailing market rates and a standard rate analysis handbook like the NBO Handbook or the C.P.W.D. Handbook.

8. Publicity:

Very often, even though the records show that advertisements have been inserted in the Press, in actual fact the advertisements are not actually sent to the newspapers or the advertisements appear in the papers after the date of opening of the tenders. It is therefore necessary to keep on record the full page of the newspapers in which the advertisements appear so that the actual date of insertion of the advertisements can be established and it can be ascertained that adequate time was given to the contractors for tendering.

Wherever prequalification is resorted to, notices inviting tenders should be sent to all Contractors on the select list by Registered A.D. and the acknowledgements should be kept on record.

9. Tampering with tender documents:

In many cases it has come to notice that the description of items, specifications or rates in the tenders have been tampered with in order to favour a particular contractor. In order to reduce the scope for such malpractices, it is very essential that each correction, overwriting or addition found in the tender should be encircled in red ink initialled and numbered by the officers opening the tenders. The number of corrections, overwritings or addition should be invariably recorded by the officers opening the tenders at the bottom of each page.

10. Negotiations:

When a number of conditional tenders are received with different conditions in each tender it is necessary to bring all the tenders on a common basis before a comparison can be made. For this purpose the following three systems are in vogue:-

(i) Each special condition stipulated by the Contractor is evaluated and the evaluated amount loaded on to his tender. After such loading of tenders is done, negotiations are held only with the lowest tenderer to arrive at an agreement acceptable to both the parties.

(ii) On analysing the tenders received, the final terms and conditions acceptable to the Organisation are decided. Thereafter all the tenders are called for negotiations and are asked to submit fresh bids based on the finally acceptable terms and conditions. This virtually amounts to spot retendering by firms who have originally tendered.

(iii) Two envelope system: In this system the contractor is required to submit the price bid in a separate sealed envelope and the technical and commercial conditions in a separate envelope. The latter type of envelopes are opened first and thereafter a set of acceptable and unacceptable * is drawn up. The Contractors are then required to submit the additions or deductions from their tendered amounts with the modified set of acceptable conditions. Thereafter the envelopes containing the price bids are opened and the contract awarded to the lowest tenderer.

*conditions

Very often it is seen that the above systematic procedure is not followed and tenders with unacceptable conditions having financial implications are accepted or undue favour is shown by calling only a few contractors for negotiations and leaving out the others.

13. Abnormally high and low rated items:

Very often it is seen that the contractors quote speculative rates with the intention of getting the quantities of abnormally high rated items increased

and the quantities of abnormally low rated items decreased. This results in undue favour to the contractor and a loss to the organisation. For this purpose, the market rate estimate is very helpful in pinpointing the abnormally high and low rated items. It is necessary to keep a close watch on the quantities of such items.

14. Earnest Money:

In many cases it was found that there was no fixed policy in regard to the earnest money. Sometimes tenders without earnest money were considered and sometimes they were rejected outright in order to favour a particular contractor. The primary purpose of earnest money is to ensure that the contractor starts the work when his tender is accepted. In case of his failure to do so, his earnest money is forfeited. Therefore the general policy should be that tenders without earnest money will also be considered but the contractor will be required to deposit earnest money will also be considered but the contractor will be required to deposit earnest money in the prescribed form before the acceptance letter is issued to him.

15. Bank Guarantees:

Very often Bank Guarantees are taken from the Contractor before the Mobilisation Advance or Security Deposit is released. It is often found that these Bank Guarantees are not got revalidated on the due dates and the organisation is unable to recover the advance or deposit.

16. Payment of Final Bill:

In many cases it was found that the final bill was paid and security deposit refunded without effecting recoveries based on the C.T.E's observation.

17. Relaxation of contract conditions:

It is often found that loans and advances are given to the contractor on conditions of contract having financial implications are relaxed in favour of the contractor. Such undue favour to the contractor is very serious. In the case of Govt. Departments no such relaxation of contract conditions or payments to contractors outside the strict terms of the contract may be authorised without the prior approval of the S/o Finance. Each organisation has to fix the authority competent to approve such relaxations. In no case should the competent authority be lower than the Board or Directors.

18. Extra and inflated billings:

Very often it is found that the extra and inflated billings are heavily inflated to give undue benefit to the contractors. It is very necessary

to specify in the contract the manner in which the rates for such items should be derived e.g. clause 12 of the C.P.W.D. Contract Form. It is also essential that the extra and substituted item statement along with their supporting analysis of rates prepared by the Architect are carefully checked by the Engineers of the Organisation.

19. Issue of unstipulated materials:

The issue to a contractor of materials which are to be procured by the contractor is a deviation from the contract. If at all it becomes necessary to issue such materials to a contractor, this should be got approved by a senior officer and the issue rate fixed should be the highest of the following 3 rate formula:-

- (i) The element of the cost of the material in the rate quoted by the contractor for the finished items,
- (ii) The market rate prevailing,
- (iii) The stock issue rate of the Organisation,

This will ensure that no undue benefit accrues to the contractor.

20. Theoretical requirement of cement and steel and other departmental materials:

At each running bill stage it is very essential to calculate the theoretical requirement of cement, steel or any other departmental material stipulated for issue to the contractor. These theoretical requirements should be checked with the actual quantities issued to ensure that the specified quantities have been used and that the balance with the contractor is not sold in the market.

21. Alternative Items:

Very often it is seen that alternative "rate only" items are provided without any quantities in tender documents. Contractors invariably quote exorbitant rates for such items because amounts corresponding to such rates are not reflected in the comparative statement. After the contract is awarded these alternative "rate only" items are operated to give a huge undue benefit to the contractor. It is necessary for Architects and Engineers to make up their minds about the items to be executed. No alternative items should be provided in the tender document. If at all any such change becomes unavoidable it is always safer to work out a rate for such an item according to the procedure laid down in the contract for extra and substituted items.

22. Excess issues of materials:

Sometimes it is seen that the quantities of materials issued to the contractors are very much in excess of the requirements for the next two to three months or even in excess of the total requirements for the whole work. All such materials were sold by the contractor in the market to obtain more capital, and in many cases, the cost of the excess material could not be recovered from the contractor.

23. Substitutions to favour the contractor :

Very often it is seen that contract items which give a lower profit margin to the contractor are substituted by other items which give high profit margin to the contractor. This results in considerable undue benefit to the contractor and a corresponding loss to the Organisation. Therefore before taking such a decision, it is essential to prepare analysis of rates for the original and substituted items based on the prevailing market rates for materials and labour and to work out the profit margins with the original item and with the substituted item so as to ensure that the contractors profit margin are not increased by the substitution.

Sd/-

(J.L. PINTO)

Chief Technical Examiner,
Central Vigilance Commission.