

GOVERNMENT OF KARNATAKA

NO: PWD 121 SO/FC 2003

Karnataka Government Secretariat,
Vidhanasoudha,
Bangalore, dated 26th September 2003.

NOTIFICATION

In exercise of the powers conferred by Sub Section (1) of Section 25 of the Karnataka Transparency in Public Procurement Act, 1999 (Karnataka Act 29 of 2000), the Government of Karnataka hereby makes the following rules further to amend the Karnataka Transparency in Public Procurements Rules, 2000, namely:-

1. Title and commencement:- (1) These rules may be called the Karnataka Transparency in Public Procurements (Amendment) Rules, 2003.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. Amendment of rule 2 :- In rule 2 of the Karnataka Transparency in Public Procurements Rules, 2000 (hereinafter referred to as the said rules) after clause (d), the following shall be inserted, namely:-

"(e) **Consultancy Services**" includes activities such as Policy Advices, Institutional reforms, Management, Engineering Services, Construction Supervision, Financial Services, Investment and Merchant Banking Services, Social and Environmental Studies, Identification, preparation and implementation of projects to complement Government of Karnataka capabilities;

(f) **"Consultants"** means Individuals, Firms or Organisations engaged for providing Consultancy Services in accordance with Chapter VI A.

(g) **"Client"** means the Procurement Entity engaging the Consultants,

(h) **"Party"** includes that Client or the Consultant, as the case may be and "Parties" means both of them."

3. Amendment of rule 3 :- In rule 3 of the said rules, in sub-rule (1) for clause (i) and (ii), the following shall be substituted, namely:-

"(i) Construction;

(ii) Supply of goods and services; and

(iii) Consultancy Services."

4. Insertion of new chapter VIIA and rules 28B to 28K:- After Chapter VII of the said rules, the following chapter and rules shall be inserted, namely:-

"CHAPTER VIIA

CONSULTANCY SERVICES

28B. Selection Methods :- The following methods of selection of Consultants shall be adopted as found appropriate for the assignment.

(a) Quality and Cost Based Selection (QCBS);

(b) Least Cost Selection (LCS);

(c) Single Source Selection (SSS);

28C. Quality and Cost Based Selection (QCBS) :- The quality and cost based selection is based both on the quality of the proposals and the cost of the services to be provided. In this method, the technical and financial proposals shall be received in separate sealed envelope. The technical proposals shall be opened first (unopened financial proposals are kept under security) and the evaluation report of the technical proposals shall be prepared and the approval of Tender Accepting Authority shall be obtained. The financial envelopes of those consultants who submitted responsive technical proposals meeting the minimum qualifying scores shall be opened in the presence of the consultants or their representatives. The proposals shall then be evaluated. Once the financial proposals are evaluated, a combined evaluation of the technical and financial proposals shall be carried out by weighing and adding the quality and the cost scores, and the Consultant obtaining the highest combined score shall be invited for negotiations. Since price is a factor of selection, staff rates and other unit rates shall not be negotiated.

28D. Least Cost Selection(LCS) :- The Least Cost Selection method is more appropriate to selection of consultants for assignments of a standard or routine nature (audits, engineering design of non-complex works and so-forth) where well established practices and standards exist. Under this method a minimum qualifying score for quality is established and indicated while inviting proposals. Short-listed consultants shall submit their proposals in two envelopes. The technical proposals shall be opened first and evaluated. Proposals scoring less than the minimum technical qualifying score shall be rejected, and the financial envelopes of the rest shall be opened in public. The Consultant with the lowest evaluated price shall be selected.

28E. Single Source Selection (SSS) :- Under Single Source Selection, the Client selects a specific consultant and requests him to prepare technical and financial proposals, which are then negotiated. Since there is no competition, this method is acceptable only in exceptional cases and made on the basis of strong and convincing justifications where it offers clear advantages over the competition, because,-

- (i) the assignment represents a natural or direct continuation of a previous one awarded competitively (the estimated cost of the continuation assignment is not more than 50% of the previous competitively awarded assignment), and the performance of the incumbent consultant has been satisfactory; or
- (ii) a quick selection of the consultant is essential e.g., in emergency operations such as natural disasters and financial crisis; or
- (iii) the contract is very small in value (i.e., less than rupees 5,00,000 for consulting firms or organisations and less than Rs. 1,00,000 for individual Consultants); or
- (iv) only one Consultant has the qualifications or has experience of exceptional worth to carry out the assignment.

28F. Steps in the Selection Process :- Depending on the selection method adopted, the selection process carried out by the Client generally shall include the following steps:

- (i) Preparation of the Terms of Reference (TOR) for the assignment;

- (ii) Preparation of the cost estimate to determine the budget of the assignment;
- (iii) Advertising to invite the expressions of interest from Consultants (mandatory in respect of assignments estimated to cost more than rupees 20 lakhs);
- (iv) Short-listing to identify consultants; qualified for the assignment;
- (v) Preparation and issuance of the Request for Proposals (REP);
- (vi) Preparation and submission of proposals by the consultants;
- (vii) Evaluation of the technical proposals i.e., quality evaluation;
- (viii) Evaluation of financial proposals;
- (ix) Final combined quality and cost evaluation to select the winning proposal (QCBS); and
- (x) Negotiations, if any signing of contract between the Client and Consultant.

28G. Contracts :- Two main considerations determine the type of contract to be used for the various consultant assignments; the nature and degree of the definition of the assignment, the distribution of risks between the Client and Consultant and the level of contract supervision the client will be able to provide. The following are the various types of contracts that can be adopted for appropriate assignments, namely:-

(I) Lump Sum (Firm Fixed Price) contracts :- These are used mainly for assignments in which the content and length of services and the required output of the Consultant are clearly defined and for these reasons the Consultant can generally control the scope of work and duration of services. In these contracts payments are linked to clearly specified outputs.

(II) Time-Based contracts :- Under this type of contract, the Consultant provides services on a time basis according to quality specifications, and Consultants remuneration is based on, agreed unit rates for Consultant Staff multiplied by the actual time spent by this staff in executing the assignment and reimbursable expenses using actual expenses and agreed unit prices.

(III) Percentage Contracts :- It is one where consultants are paid an agreed percentage of the actual project cost.

(IV) Indefinite Delivery Contracts (Price Agreement or Standing Offers):- These refer to contracts in which a Consultant is hired for a specified period to undertake tasks as and when the need arises.

28H. Standard Requests for Proposals (RFP) and Contract Formats:- Standard RFP (Requests for Proposals) and Contract Formats as may be issued by the Government of Karnataka from time to time shall be used. The Instructions to Consultants (ITC), Formats for submission of Proposals (unless specified otherwise) as well as the General Conditions of Contract (GCC) shall not be changed. However the Data Sheet and Special Conditions of Contract enable the Procurement Entities to amend or supplement Instructions to consultants (ITC) and General Conditions of Contract (GCC) to reflect local conditions and characteristics of assignment.

28I. Supervision of the Consultancy Contracts:- The Client is responsible for supervising the assignment. He shall make arrangements to monitor the progress of work, the timely completion of deliverables, the staff months and money expended

(for time-based contracts) and determine where, within the contract, changes in the scope of work might be appropriate. The Contract usually requires that the Consultant shall submit regular progress reports and other periodical reports. The Client shall ensure providing comments on these reports in a timely manner. For large assignments, a Committee shall be constituted to review Consultant's work.

28J. Individual Consultants versus Consulting Firms :- (1) Individual Consultants may be employed to assist the Client in various areas of the project preparation and implementation. Individuals may be engaged on assignments for which.-

- (a) the experience and qualifications of the individual must be dominant;
- (b) no support from an organization is needed for the individual; and
- (c) team work or multidisciplinary approach is not necessary.

When integrated technical work and joint responsibility for the Consultants' output are important, it is necessary to hire a Consulting Firm. The TOR of the assignment provides the basis for decision. As a general rule, when dealing with project preparation services of a complex nature, it is advisable to hire a firm, whereas individuals can be considered for advisory services assignments or technical opinions on specific matters in which specialist individual knowledge is the key issue. As a practical rule, if three or more individuals are needed for an assignment, it is often better to hire a Consulting firm, so that the firm will be responsible for identifying the best individuals, ensuring cohesiveness and technical solvency, as well as backup and transparent administration.

28k. Hiring of Government Officials, officials of Government Undertaking, Corporation etc., Government officials and officials employed in Government Undertakings or Corporations shall not be engaged under consulting services, since there could be a conflict of interest. This applies regardless of their being on leave or on deputation. University Professors or Scientists from Autonomous Research Institutes may be contracted individually, provided they are permitted by their service conditions to undertake assignments for a specified period in a year. Individual Consultants shall not be hired by Agencies, where the relatives of the Individual Consultant, are employed in position of influence.

By Order and in the name of Governor of Karnataka

ASHOK S. JIVARAGI

Under Secretary to Government,
PWD (Finance Cell).