

GOVERNMENT OF KARNATAKA

NO.PWD 1359 SO/FC 2001(P-2)

Karnataka Government Secretariat,
Vidhana Soudha,
Bangalore, dated 3rd December 2002

CIRCULAR

Subject: Guidelines of conducting negotiations before award of the contract.

1. It is observed that the Tender Accepting Authorities of Government Departments, State Government Undertakings, Local Authorities, Autonomous bodies and Corporations established by or under law and owned and controlled by the Government, sometimes negotiate with the lowest tenderer, before passing order accepting the tender in terms of Sub Para 3 under Section 13 of the KTPP Act.

2. It has to be recognized that:

- Negotiations even with the lowest tenderer defeats the very ethics of competitive tendering and should not be resorted solely for the purpose of reduction of rates;
- When negotiations are conducted in a routine manner, there is every possibility that the tenderer would have jacked up the prices considerably and would reduce the prices marginally to satisfy the Employer/Purchaser with the result that the Employer/Purchaser may in most cases end up paying more than real cost of the work/goods;
- Negotiations very often leads to delay in award of the contracts; and
- Negotiations opens up opportunities for corruptive practices.

3. After careful consideration of the practices being followed in the various organizations the following Guidelines are issued for conducting negotiations, if needed be, in respect of Works Contracts.

3.1 Negotiations solely for the purpose of obtaining lower prices would be appropriate only in exceptional circumstances, such as lack of competition (less than three), single bid, suspected collusion, or where the lowest evaluated responsive bid is substantially above the estimated cost. In such cases also, the first choice is for rejection of all tenders and reinviting fresh tenders.

3.2 A substantially high tender is defined as under;

Period of contract and provision of Price Adjustment	Update Estimated cost of the .. Work .. Upto Rs. 20 lakhs.	Updated Estimated cost of the Work Rs. 50 lakhs and above
(a) Contracts where price	10% above the update estimate or	10% above the updated* estimate	10% above the updated* estimate

adjustment is not provided	Rs. 1 lakh whichever is more	..	updated* estimate
(b) Contracts where price adjustment is provided from the date of tenders	Does not arise ...	Does not ...	5% above the updated estimate or Rs.5,00,000 whichever ever is more.

* Estimate based on the current rates of labour and materials such as cement, steel and other key materials.

- 3.3 In all cases where the tenders amount is not substantially high (refer definition of substantially high given in Para 3.2 above), the Tender Accepting Authority shall pass orders accepting the lowest evaluated responsive and qualified tender only.
- 3.4 In respect of exceptional cases, as listed in para 3.1 above (other than those that are considered substantially high), the Tender Scrutiny Committee or the Evaluating Officer as the case may be, depending on the value of contract may choose to propose to the Tender Acceptance Authority to reject all tenders and reignite fresh tenders or negotiate. In case the proposal is for rejection and reinvitation, the causes leading to the rejection, shall be examined by the Tender Scrutiny Committee or the Evaluating Officer, who shall propose the changes, if any, to be made in the estimated cost, specifications, provisions in the Special Conditions of Contract or packaging, before reinviting the tenders.
- 3.5 The Tender Accepting Authority shall pass orders for reinviting tenders with changes if any on the tender document. Pre-tender conference shall be held to explain the qualification criteria, specifications and conditions of contract and clarify any reservations if any to the prospective tenderers. The reservations if any pointed out by the prospective tenderers shall be made in the bidding documents.
- 3.6 After reentering the tenders shall be processed as per 3.1, 3.2 and 3.3 above.
- 3.7 In respect of tenders which are determined high in terms of Para 3.2 above the Tender Scrutiny Committee or the Evaluating Officer as the case may be, depending on the value of the contract, shall (i) identify the item (s) for which the rates are considered high and are contributing to the increase; (ii) get the break up of rates (s) from the lowest evaluated responsive tenderer and make a through examination of the reasonableness. If the Tender Scrutiny Committee or the Evaluating Officer is satisfied with the explanation by the tenderer it shall make its recommendation for the acceptance of the tender.
- 3.8 In case where the Tender Scrutiny Committee or the Evaluating Officer decides in favour of negotiation (in all exceptional cases listed in para 3.1

above), he shall seek the permission of the Tender Acceptance Authority, detailing the reasons and the points on which negotiations are proposed to be conducted. The Tender Accepting Authority shall after careful examination of the proposals approve the points (including the change in scope, specifications, packaging etc.) on which negotiations are to held, appoint a Negotiating Committee consisting of Tender Inviting Authority, a representative of the Tender Scrutiny Committee or the Evaluation Officer and Tender Accepting Authority. The Committee shall conduct negotiations on the approved points and make a record of the proceedings of the negotiations. The Committee shall submit the proceedings to the Tender Accepting Authority for taking decision. If the negotiations are successful and the Tender Accepting Authority accepts the recommendation of the Negotiating Committee, the tender is accepted at the negotiated rates/terms and conditions and contract is concluded.

- 3.9 If the negotiations fail, the Tender Accepting Authority shall issue orders on the future course of action to be taken by the Tender Inviting Authority, which may include adoption of revised procurement strategy (to include repackaging, execution by departmental forces/facilities etc.)
4. In respect of Procurement of Goods, since there are no Schedule of Rates and rates for equipment/goods satisfying the minimum functional requirements vary widely, depending upto the quality, specifications of the material input, award should generally be made to the tenderer who is technically and commercially responsive and meets the stipulated qualification criteria and who is determined to perform the contract satisfactorily. If the tendered rate is considered unreasonable (one of the method of determining the reasonableness being the comparison with the market rate for the same brand and specification of equipment,) negotiations shall be conducted with the lowest tenderer. The procedure as outlined in Para 3.7 and 3.8 above should be adopted scrupulously. Here also the first choice would be to reject and reinvite the tenders, after analyzing the causes leading to the rejection of tenders.

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- 5.1 The above instructions are applicable only to Works/Goods tenders received against notice inviting competitive tenders and not for Consultancy Proposals, for which separate instructions would follow. It is also not applicable for tenders invited to fix rate contracts.
- 5.2 The above instruction shall apply to all Procurement Entities as defined in Section 2(d) Chapter I of the KTPP Act.
- 5.3 The above Guidelines shall not be applicable to tenders invited for Projects funded by International Financial Agencies or Projects covered under International Agreements for which the rules of funding agencies shall apply (Refer Section 3 of KTPP Act)

6. Procurement Entities shall ensure that the above Guidelines are followed strictly. It may be noted that any violation of the KTPP Act 1999 and Rules 2000 attracts the penal provision under Section 23 of the Act.

(Approved by Principal Secretary
Finance Department)

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