

*Module 4 –**Contract Management – Tender and its Process***INVITATION TO TENDER (ITT):-**

An invitation to tender (ITT) is the initial step in competitive tendering, in which suppliers and contractors are invited to provide offers for supply or service contracts, the ITT is one process in IT procurement.

An ITT document specifies all requirements of the organization, including goods, services and timelines, as well as the evaluation process that will be followed. Invitations to tender are often used by public sector organizations, which are legally obligated to offer contracts for goods or service requirements by that process in many countries.

PREQUALIFICATION OF TENDER:-

The main objectives are for implementation of good risk management, promotion of environmentally sustainable practices and provide industry development opportunities. Prequalification is the first stage of the tender process. The Territory intention is to only deal with prequalified suppliers where practical, and hence prequalification provides potential access to tender opportunities which are not available to suppliers who are not prequalified.

Administrative approval:-

For every work (excluding repairs) initiated by, or connected with, the requirements of another department, it is first necessary to obtain the concurrence of the department concerned to the proposals. The formal acceptance by the department concern is termed “administrative approval” of the work, and is, in effect, an order to execute certain specified works at a stated sum to meet the administrative needs of the department requiring the work. Such approval should not, however, be accorded until the professional authorities have intimated that the proposals are structurally sound and that the preliminary estimate is sufficiently correct for the purpose. In the case of works required to meet the administrative needs of the Public Works Department, the administrative approval should be accorded in that Department.

Technical sanction:-

For every work proposed to be carried out, except petty repairs the cost of which is not likely to exceed Rs. 2,500, and annual repairs for which a lump sum provision has been sanctioned by the Superintending Engineer, a properly detailed estimate must be prepared for the sanction of competent authority; this sanction is known as the technical sanction to the estimate. Such sanction can only be accorded in respect of works to be executed through the Public Works Department by Government in the Public Works Department, or, where power has been delegated to them, by officers of that department.

BID SUBMISSION & BID EVALUATION:- A tender, or 'bid' is a submission made by a prospective supplier in response to an invitation to tender. It makes an offer for the supply of goods and/or services.

Bid evaluation is the process that takes place after the tender submission deadline. It involves the opening and examining of the bids to identify the preferred supplier(s) for the project. Negotiations may then be entered into with one or more suppliers, and the successful supplier awarded the contract. Generally, bid evaluation will be carried out in accordance with evaluation criteria or a selection methodology specified in the invitation to tender. Criteria or other factors that were not included in the invitation to tender should not be used to evaluate bids, and ideally, the same evaluators should evaluate all bids.

Bidding parties should submit clear and well-organized bids, but nonetheless, a great deal of thoroughness is required in the bid evaluation process, to ensure that proposals are properly understood, bids are compliant with invitation to tender, no information is overlooked and that correct conclusions are reached

There are a number of criteria upon which a preferred bidder can be identified:

- Lowest price
- Most economically advantageous tender (MEAT)
- Mean value
- Exclusion of the extremes

Evaluation of the Bid has following parts,

- Technical Evaluation
- Commercial Evaluation
- Capacity Evaluation

BID EVALUATION or TENDER EVALUATION

The following steps are to be followed:

Step 1: RECEPTION OF THE BIDS

Following advertisement of the tender, ensure that every tenderer who pays the required, non-refundable, fee receives the documents, design drawings, quantities (but no guideline costs), any Community Agreement, the date of the site visit and details on where the tender documents are to be delivered, the deadline for delivery and the location and time of tender opening.

Step 2: OPENING OF THE BIDS

The responsible officer opening the bids should first advise all those present of the procedure he/she will follow. Brief details on the evaluation process (already provided in the documents and based on the guidelines above should be given to assure potential bidders that the evaluation is to be fair and equitable.

Step 3: REVIEW OF THE DOCUMENTATION

As each bid is opened, the responsible staff member may name the bidder but then must check that the bid is complete and conforms to the advertised conditions. If for any reason it is not complete (for example the site visit certificate is missing), the bid should be rejected and the bid price not disclosed. The whole document has to be returned to the bidder with a covering letter stating why it had been rejected. There is no appeal on this matter.

Step 4: TECHNICAL EVALUATION

Once the bids are declared valid, the actual points evaluation procedure can begin. Tenders should initially be assessed, in accordance with the evaluation methodology being utilized, against non-price criteria, that is, on their technical merits. The evaluation team should not have access to the tender price at this stage. The assessment of the non-price criteria is to be documented before moving onto the next stage of the evaluation.

Step 5: FINANCIAL ASSESSMENT

Once tenders have been assessed against the technical criteria, a financial evaluation of the prices tendered (or quoted) can then be undertaken. The results of the financial assessment are to be documented before moving onto the next stage of the evaluation.

Step 6: ASSESSMENT OF 'BEST COMBINED OFFER'

Having separately assessed tenders against technical and financial criteria, a comparison of 'technical worth' and 'price', is undertaken in accordance with the criteria established in the tender document, to determine which tender represents the best combined offer. This stage will establish the final ranking of the tenders.

Contract Formulation:-

Contract life cycle management “is the process of systematically and efficiently managing contract creation, execution and analysis for maximizing operational and financial performance and minimizing risk”.

Importance of contract management Organizations in both the public and private sectors are facing increasing pressure to reduce costs and improve financial and operational performance. New regulatory requirements, globalization, increases in contract volumes and complexity have resulted in an increasing recognition of the importance and benefits of effective contract management.

Awarding the contract:-

Following tender evaluation and, where appropriate, negotiation, the project team will satisfy itself that an offer has been made which meets its requirements in all respects, including budgetary, and consider that it is in a position to accept an offer and award the contract to the tenderer who has made the most economically advantageous offer to the organization. It may then move directly to the award stage or make a recommendation to higher authority levels within the organization for acceptance.

This stage should also include activities such as:

- Ensuring that all relevant parties are aware of their roles and responsibilities in the immediate implementation and transition process.
- Checking that the agreed processes for contract management are in place by all the parties.
- The knowledge transfer from the procurement or project team (which may not have included members of the contracts management team) to the contracts management team takes place to ensure successful management of the contract.
- The continuity plans for the seamless transition of the service from one contractor to the new contractor will be carried out as agreed.

Letter of Intent:-

Ideal for expressing and outlining one intent with respect to another the letter of Intent template is perfect. It finds use in various arenas like a real estate purchase, negotiations in business, acceptance of offers and for proposing formal offers as well. The template gives you an entire format to follow and keeps you from going off topic. Mostly used for scholarship acceptance and purchases such template is capable of meeting more than one

need. With a complete layout for basics like subject matter, contacts, names of concerned people, name of concerned institution, number as well as title of funds etc. The letter of intent sample guides you through the entire process of writing a letter of intent while being concise and staying on top of it.

Letter of Acceptance:-

After determining the successful evaluated bidder, Client shall issue a Letter of Acceptance (LOA) in duplicate, who will return one copy to Client duly acknowledged, accepted and signed by the authorized signatory, within Three (3) days of receipt of the same by him.

The issuance of the Letter of Acceptance to the bidder shall constitute an integral part and it will be a binding to the contract.

The time taken between the date of issue of LOA and Notice to Proceed shall not prevent the contractor to mobilize the man power.

Elements of Standard Tender Documents (Source; PUBLIC WORKS DEPARTMENTAL (PWD))

- General
- Accounting Procedures:
- Safety and Economy in contracts:
- Chief Engineer (Communication and Buildings):
- Chief Engineer (National Highways):
- Legal Cell:
- Chief Architect:
- Specification for Buildings, Roads & Bridges:
- Standard Rate Analysis:
- Karnataka Highways Act:
- Register of Lands under control of PWD:
- Safeguarding Government Lands:
- Execution of works:
- Contracting strategy:
- New materials of construction:
- Acts and Rules:
- Right to Information Act and Rules:
- Continuing Education Program:
- Training for rural youth in construction:

- Computerization in Department:
- Powers of PWD officers:
- e-Governance in Public Works, Ports & IWT Department:
- Disaster Management:
- Constant Innovations:

Law of Contract as per Indian Contract Act – 1872:-

This Act may be called the Indian Contract Act, 1872. Extent, commencement - It extends to the whole of except the State of Jammu and Kashmir; and it shall come into force on the first day of September, 1872. Enactment repealed - Nothing herein contained shall affect the provisions of any Statute, Act or Regulation not hereby expressly repealed, nor any usage or customs of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

Interpretation –clause

In this Act the following words and expressions are used in the following senses, unless contrary intention appears from the context:

- (a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal;
- (b) When a person to whom the proposal is made, signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise;
- (c) The person making the proposal is called the "promisor", and the person accepting the proposal is called "promisee",
- (d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;
- (e) Every promise and every set of promises, forming the consideration for each other, is an agreement;
- (f) Promises which form the consideration or part of the consideration for each other, are called reciprocal promises;
- (g) An agreement not enforceable by law is said to be void;
- (h) An agreement enforceable by law is a contract;
- (i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract;

(j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

The Indian Contract Act – 1872 which consists of following chapters.

- Chapter 1:- Of the communication, acceptance and revocation of proposals (Section 1 – 9)
- Chapter 2:- Of contracts, violable contracts and void agreements Section (10 – 30)
- Chapter 3:- Of contingent contracts (Section 31 – 36)
- Chapter 4:- Of the performance of contracts which must be performed (Section 37 – 67)
- Chapter 5:- Of certain relations resembling those created by contract (Section 68 – 72)
- Chapter 6:- Of the consequences of breach of contract (Section 73 – 75)
- Chapter 7:- Sale of goods (Section 76 – 123)
- Chapter 8:- Of indemnity and guarantee (Section 124 – 147)
- Chapter 9:- Of bailment (Section 148 – 181)
- Chapter 10:- Agency, Appointment and authority of agents (Section 182 – 238)
- Chapter 11:- Of partnership (Section 239 – 266)

Contract:-

A contract is an agreement between two or more persons and is enforceable by a court of law or equity. To be enforceable, a contract must contain certain basic information that courts have determined over the past several centuries to be necessary. The principles of what must be agreed for a contract to be enforceable date back nearly to the foundations of the English common law. Use of a written contract in the business aspects of artists' affairs facilitates, to some extent, the performance of the agreement, because a party that breaks a contract may be sued in court for the damages caused by the breach, or for specific performance of the obligation not yet discharged. Even absent litigation, a well-formed contract may induce the "other side" to make a decent out-of-court settlement, thus saving the expense of legal proceedings. An oral contract is also enforceable according to law. However, the difficulty of proving the significant terms of an oral contract renders its enforceability far more difficult.

Types of Contracts:-

Lump Sum Contract

A lump sum contract, sometimes called stipulated sum, is the most basic form of agreement between a contractor and a customer. A lump sum contract or a stipulated sum contract will require that the contractor agree to provide specified services for a stipulated or fixed price.

In a lump sum contract, the owner has essentially assigned all the risk to the contractor, who in turn can be expected to ask for a higher markup in order to take care of unforeseen contingencies. A contractor under a lump sum agreement will be responsible for the proper job execution and will provide its own means and methods to complete the work. This type of contract usually is developed by estimating labor costs, material costs, and adding a specific amount that will cover contractor's overhead and profit margin. If the actual costs of labor and materials are higher than the estimate, the profit will be reduced. If the actual costs are lower, the contractor gets more profit. Either way, the cost to the owner is the same. A lump sum contract is a suitable if the scope and schedule of the project are sufficiently defined to allow the contractor to fully estimate project costs.

Item Rate Contract or Unit Price Contract

In a unit price contract, the work to be performed is broken into various parts, usually by construction trade. This contract type is based on anticipated quantities of items which are counted in the project in addition to their unit prices. The final price of the project depends upon the quantities required to carry out the work. For example, painting is typically done on a square foot basis. Unit price contracts are seldom used for an entire major construction project, but they are frequently used for agreements with subcontractors which involve accurate identification of different types of items, but not their numbers, in the contract documents. They are also often used for maintenance and repair work.

Percentage rate contract

In this form of contract, the client's department draws up the schedule of items according to the description of items sanctioned in the estimate with quantities, rates, units and amounts shown therein.

Labour contract

This is a contract where the contractor quotes rates for the item work exclusive of the elements of materials which are supplied by the client's Department.

Piece-Work agreement

This is that for which only a rate is agreed upon without reference to the total quantity of work to be done or the quantity of work to be done within a given period.

Target Contract

This is the type of contract where the contractor is paid on a cost-plus percentage work performed under this contract. In addition, he receives a percentage plus or minus on savings or excess effected against either a prior agreed estimate of total cost or a target value arrived at by measuring the work on completion and valuing at prior agreed rates

Cost Plus Contract

Cost plus contract – The cost plus contract is an agreement which involves the buyer's consent to pay the complete cost for material and labor in addition to the amount for contractor overhead and profit. This contract type is favored where the scope of work is highly uncertain or indeterminate in addition to the types of labor, material, and equipment being similarly uncertain in nature. Here, the contractor's profit is set at a fixed amount. If actual costs are lower than the estimate, the owner keeps the savings. If actual costs are higher than the estimate, the owner must pay the additional amount. The advantage of a cost plus contract is that, generally speaking, the project will result in the building that was envisioned, even if costs run high. The builder is less likely to cut corners or argue for less expensive materials because his profit is not in jeopardy. Three key types of cost plus contracts are: • Cost + Fixed Percentage Contract - Compensation is based on a percentage of the cost. • Cost + Fixed Fee Contract - Compensation is based on a fixed sum independent the final project cost. The customer agrees to reimburse the contractor's actual costs, regardless of amount, and in addition pay a negotiated fee independent of the amount of the actual costs. • Cost + Fixed Fee with Guaranteed Maximum Price Contract – Compensation is based on a fixed sum of money. The total project cost will not exceed an agreed upper limit.

Time and Material Contracts

Time and Material Contracts are usually preferred if the project scope is not clear, or has not been defined. The owner and the contractor must establish an agreed hourly or daily rate, including additional expenses that could arise in the construction process. The costs must be classified as direct, indirect, mark-up, and overhead. Sometimes the owner might want to establish a cap or specific project duration to the contractor that must be met, in order to have the owner's risk minimized.

Incentive Contracts

Compensation is based on the contracting performance according an agreed target - budget, schedule and/or quality. The two basic categories of incentive contracts are

- Fixed Price Incentive Contracts
- Cost Reimbursement Incentive Contracts Fixed Price Incentive Contracts are preferred when contract costs and performance requirements are reasonably certain. Cost Reimbursement Contract provides the initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs. This type of contract specifies a target cost, a target fee, minimum and maximum fees, and a fee adjustment formula. After project performance, the fee payable to the contractor is determined in accordance with the formula.

Guaranteed Maximum Price Contract

A Guaranteed Maximum Price (also known as GMP, Not-To-Exceed Price, NTE, or NTX) contract is a cost type contract where the contractor is compensated for actual costs incurred plus a fixed fee subject to a ceiling price. The contractor is responsible for cost overruns, unless the GMP has been increased via formal change order (only as a result of additional scope from the client, not price overruns, errors, or omissions). Savings resulting from cost under runs are returned to the owner. This is different from a lump-sum contract where cost savings are typically retained by the contractor and essentially become additional profits. Sometime, savings are shared between the owner and the contractor as an incentive to keep costs down.

Design-Build Contract

A design-build contract is appropriate when the project delivery method is design-build. Traditional contracts are awarded using a design-bid-build system, where the project owner starts by hiring an architect. Once the architect has finished the design phase, the project is put out for bid to general contracting companies. The contractor with the lowest bid is awarded the project and is responsible for completing the job according to the plans created by the architect. With a design-build contract, the owner awards the entire project to a single company. It is typically awarded to a contractor, though architects or engineers may be awarded one in some specialized cases. Once the contract is signed, the contractor is responsible for all design and construction work required to complete the project. This system allows the owner to deal with a single source throughout the duration of the job, rather than coordinating between various parties. When this type of contract is awarded to a contractor, he must hire all architects and engineers required to complete the design work. The owner is still given the right to approve or reject design options, but is no longer responsible for coordinating or managing the design team. Once the owner approves the design, the same contractor then oversees the construction process, hiring subcontractors as

needed. Most of these contracts are awarded through negotiation rather than through a bid process.

Integrated Project Delivery Contract

Integrated Project Delivery (IPD) contracts represent the latest trend towards a more collaborative approach to delivering construction projects. IPD contracts are unique in that they require the involvement of owners, designers, contractors, and key stakeholders on a project as early as possible— sometimes even at the conceptual stage. This contract type results in more transparency among all the parties involved on a construction project. Additionally, both risk and reward are shared by the parties who enter into the IPD contract, resulting in greater integration of resources, processes, and expertise than would be possible under more traditional contract arrangements, as well as maximizing efficiency through all phases of design, fabrication, and construction.

Engineering, Procurement and Construction (EPC)

EPC stands for Engineering, Procurement, Construction and is a prominent form of contracting agreement in the construction industry. The engineering and construction contractor will carry out the detailed engineering design of the project, procure all the equipment and materials necessary, and then construct to deliver a functioning facility or asset to their clients. Companies that deliver EPC Projects are commonly referred to as EPC Contractors.

The EPC phase of the project is also known as the Execution phase which normally follows what is known as a FEED or Front End Engineering Design phase. The FEED is a basic engineering design used as the basis for the EPC phase. The FEED can be divided into separate packages covering different portions of the project. The FEED packages are used as the basis for bidding on when the client offers the EPC work to the market.

Build–Operate–Transfer (BOT)

It is a form of project financing, wherein a private entity receives a concession from the private or public sector to finance, design, construct, own, and operate a facility stated in the concession contract. This enables the project proponent to recover its investment, operating and maintenance expenses in the project.

Due to the long-term nature of the arrangement, the fees are usually raised during the concession period. The rate of increase is often tied to a combination of internal and external variables, allowing the proponent to reach a satisfactory internal rate of return for its investment.

subcontract

Agreement, purchase order, or any such legal instrument issued under a prime contract (by the prime contractor to a third party the subcontractor), calling for the performance of a defined piece of work or production and/or delivery of specified goods or services. Subcontracts contain special terms and conditions that are unique to the prime contract, and flow-down provisions that proceed from it.

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