

OFFICE OF THE ENGINEER-IN-CHIEF (CIVIL), ODISHA,
NIRMAN SOUDHA, KESHARI NAGAR, UNIT-V, BHUBANESWAR-751001

Tuesday, January 31, 2012
Conference Hall, 2nd Floor,
O/o the E.I.C. (Civil), Odisha,
Nirman Soudha, Bhubaneswar-751001

Subject: Training on Procurement and Contracts Management (World Bank Projects)

AGENDA

(Day-1)

Morning Session

- | | |
|-------------------|---|
| 10.00 AM--10.30AM | Registration |
| 10.30AM--10.45AM | Welcome Address by Chief Engineer (World Bank Projects), Odisha |
| 10.45 AM--11.00AM | Inaugural Speech by Engineer-in-Chief-cum-Secretary, Works Department, Government of Odisha. |
| 11.00AM--1.30PM | Overview of Procurement in Bank funded projects (Procurement of Goods, Works and Non-Consulting Services) by Mr. Yash Gupta, Procurement Specialist, the World Bank |

1.30PM --3.30PM Lunch Break

Afternoon Session

- | | |
|----------------|--|
| 3.30PM--5.30PM | Procurement/ Hiring of Consultants in Bank funded Projects by Mr. Yash Gupta, Procurement Specialist, the World Bank |
| 5.30PM-5.45PM | Feedback |
| 5.45PM | Session Adjourn |

Day-2 Training Session : Wednesday , February 1, 2012

10.30AM , Conference Hall, 2nd Floor,O/o the E.I.C. (Civil), Odisha, Nirman Soudha, Bhubaneswar-

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Wednesday, February 01, 2012
Conference Hall, 2nd Floor,
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Nirman Soudha, Bhubaneswar-751001

Subject: Training on Procurement and Contracts Management (World Bank Projects)

AGENDA

(Day-2)

Morning Session

- | | |
|-------------------|---|
| 11.00 AM--12.00AM | Contract Management
Module-1: Introduction Contract program, Records roles of :
Employer, Engineer and Contractor

Module-4: Check list By Mr Narayan D Sharma, Engineer –
<i>Advocate (Member, SC Bar Association, Nepal)</i> |
| 12.00AM—01.30 PM | Contract Management
Module-2: Risk allocation; EOT Variation By Mr Narayan D
Sharma, |
| 1.30PM --3.30PM | Lunch Break |
| | <i>Afternoon Session</i> |
| 3.30PM--4.30PM | Contract Management
Module-3: Claims Dispute Resolution By Mr Narayan D Sharma, |
| 4.30PM--5.45PM | Case Studies By Mr Narayan D Sharma |
| 5.45PM—6.00 PM | Feedback |
| 6.00PM – 6.15 PM | Closure of Training program. |

Proceeding of two days workshop on Procurement & Contract Management was held on 31st Januray 2012 & February 1st 2012 in the conference hall of O/o the E.I.C (CIVIL), Odisha , Nirman Soudha , Bhubaneswar

1. Objective of the Workshop:-

A two day workshop on Procurement and Contract Management on 31st Januray 2012 to 1st February 2012 was held to update and familiarize the PMU officers and other officials dealing with World Bank Aided projects on contract Management, Procurement of Works , goods and services . It covered contract programmes, procurement details, description, roles of Employer, Engineer, Contractor, dispute resolution, EOT variations, claim, bidding process.

2. Inauguration session

The Welcome address was delivered by Chief Engineer (World Bank Projects), Odisha followed by Inaugural speech by Engineer- in –Chief – Cum – Secretary to Government in Works Department, Odisha. An over view of procurement in World Bank funded projects was delivered by Mr Yash Gupta, Procurement Specialist of The World Bank.

3. List of participants

Name	Designation
Sri G. pradhan	Addl Secretary to Govt.(works)
Sri M.K Mohanty	Deputy Secretary to Govt.(works)
Sri P.K Rout	F.A.(works)
Smt M. Das	A.F.A.(works)
Sri J.N Das	Under Secretary to Govt.(works)
Sri M. Naik	Under Secretary to Govt .(works)
Miss Jayashree Tripathy	Under Secretary to Govt .(Finance)
Er.Nalini Kanta Pradhan	Chief Engineer , World Bank
Er. Ramesh Chandra Nayak	Superintending Engineer,P.M.Unit
Sri M.B Acharya	F.A
Er. Rashmi Ranjan Bohidar	Executive Engineer
Er. Bijoy Chandra Tripathy	Executive Engineer
Dr.Narayan Chandra Pal	Executive Engineer
Er.Fakir Mohan Panigrahi	Executive Engineer
Er. Saroj Kumar Misra	Executive Engineer
Er.Digambar Biswal	Executive Engineer cum Resident Engineer-P01
Er.Anil Kanta Tripathy	Executive Engineer cum Resident Engineer-P02
Er.Manoranjan Mishra	Executive Engineer cum Resident Engineer-P03
Mr.Pradipta Kumar Nanda	Dy.Comm(LA) ,P.M.Unit
Mr.Sukanta Kumar Behera	Sp.LAO,P.M.Unit
Mr.Jayadev Misra	Sr.DAO,P.M.Unit
Mr. Ajit Kumar Satpathy	DFO,P.M.Unit
Er.Sameer Hota	Asst. Engineer
Er.Amiya Nayak	Asst. Engineer
Er. Ramesh Chandra Panda	Asst. Engineer
Er. Bidhan Chandra Majhi	Asst. Engineer
Er.Akshya Kumar Sahoo	Asst. Engineer
Er. S.S.Swain	Asst. Engineer
Er.Abani Kanta Das	Asst. Engineer
Er. Kasinath Patra	Junior Engineer
Er.B.B.Rao	Junior Engineer

Er.Pradeep Kumar Mishra	Junior Engineer
Er.Prafulla Kumar Behera	Junior Engineer
Er.Rajendra Kumar Behera	Junior Engineer
Er.Narayan Prasad Behera	Junior Engineer
Er. Nancy Pattanaik	Junior Engineer
Er. Babula Behera	Junior Engineer
Er.Manoranjan Das	Junior Engineer
Er.Bhuti Prakash Mohanty	Junior Engineer

4. Procurement Aspect of the Training (Day-1) :-

The procurement aspect of the training programme was delivered by Mr .Yash Gupta , Procurement specialist of the World Bank on 31.1.2012.

The salient features of the training programme are mentioned as below:

- The detailed procedure & applicable guidelines for consultancy services in World Bank financed projects
- General terms and conditions on selection procedures.
- Preparation of TOR
- Preparation of RFP which includes
 - a. LOI (Letter of invitation)
 - b. ITC(Information to consultants)
 - c. TOR
 - d. Technical and financial forms
 - e. Draft of proposed contract
- Advertisement (seeking EOI)
 - A- UNDB
 - B- National , International News paper
 - C- Technical Magazines
- Evaluation strategy :- Proposed key staffs, General qualification of staffs
- The procedures of Formation of Evaluation committee.
- Methods of QCBS, QBS, LCS, SSS.
- Types of contracts & Important provisions for contracts
- Guidelines for procurement of work , goods , consultancy.
- Project implementation
- Business community perception
- Methods of procurement
- Limitations of ICB & NCB.
- Direct contracting
- Performance security
- Evaluation of bids for civil works
- Service standards.

Qurries of participants & the response

1. Whether e-procurement system can be followed for National Competitive Bidding (NCB)?

Ans:-“E-procurement” system may be followed for the National Competitive Bidding (NCBs). To substantiate it was informed that the Bank had cleared to adopt the e-procurement system in the Assam State Procurement earlier.

2. Whether the bids can be rejected at bid opening stage?

Ans:- No bid should be rejected at bid opening stage. Even if a firm have not submitted its bid security along the bid document then it is advisable to do the bid evaluation and then reject the bid at the evaluation level mentioning the Non-submission.

Non submission of Bid Security may not result in non opening of bid document.

3. Whether bidders proposal can be rejected if bidder does not submit the previous year's financial turnovers?

Ans:- As the previous year financial turnover can be categorized as information of "historical nature" and which cannot be created, hence we may seek, clarification regarding the same from the firm (within a certain time frame) and may proceed with whatever documents submitted/received.

5. (Day-2) on 1' February 2012

Aspect of the Training :

The contract Management aspect of the training was delivered by Mr Narayan D. Sharma, Engineer, Advocate (Member SC Bar Association, Nepal) on 1.2.2012.

The salient features of the training are mentioned as below:

a- Contract Management :

- 1- Introduction & background to FIDIC contracts
- 2- Description of FIDIC :
 - A- Red Book (1957)
 - B- Yellow book (1999)
 - C- Silver book (1999)
- 3- Contact procedures, project management, Contractor's programs, Guidelines for preparing and maintaining the update of records , communication
- 4- Working strategies of Employer, Engineer, and Contractor.
- 5- Descriptions of risk allocation, entitlement of EOT, procedures for granting EOT, Variations in contracts.
- 6- Claims and dispute resolution in contract management.
- 7- Check lists of contract Management.
- 8- Core principles relating to delays & compensations.
- 9- Guidelines on Protocol's position on core principles matters relating to delays and compensations.

Replies to the queries made by different participants were given with reference to the clauses of the contract.

The meeting ended with a vote of thanks to the Chairman.

Approved

Chief Engineer
World Bank Projects, Odisha

PROCUREMENT OF WORKS AND GOODS IN WORLD BANK FINANCED PROJECT



YASH GUPTA
January 31, 2012

- Bank has developed Guidelines for procurement of Goods, Works, and Consultancy.
- Bank Guidelines explain the various procedures acceptable, and these are applicable only to the extent provided in the Legal Agreements for specific projects.
- Bank is a co-operative institution of 189 countries and equal business opportunities have to be provided to bidders from all countries .
- Impartial administration of procurement among all eligible bidder is essential to maintain Banks ability to raise financial resources from its member countries and in the capital markets.

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PROCUREMENT

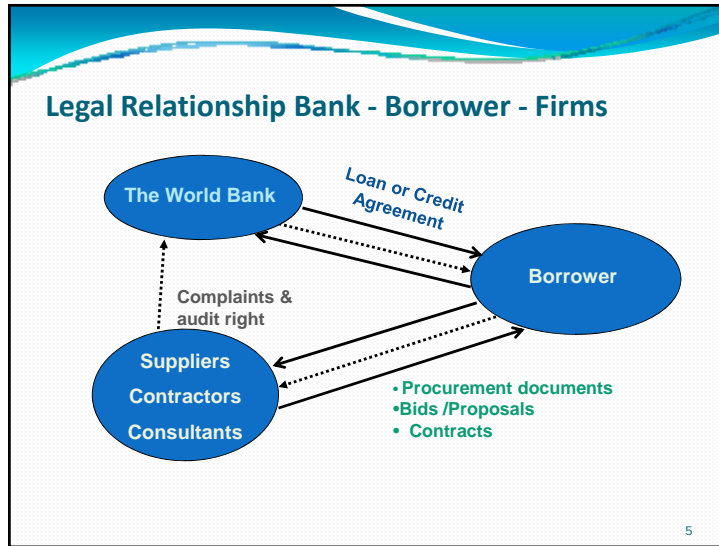
- Procurement is an important aspect of Bank's operation.
- Bank loans/credits are normally disbursed as expenditures are incurred. Since delays in procurement delays disbursements, every effort should be made to ensure prompt handling of procurement.
- Good procurement practices alone cannot assure that the Bank assisted projects will achieve their development goals. But poor procurement practices virtually guarantee that these goals will not be fully achieved.

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- **The responsibility for execution of the project, and therefore, award and administration of the contracts under the project rests with the Borrower [RE : Paragraph 1.2 of the Procurement Guidelines]**



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- ### Project Implementation
- What does the Bank do during Procurement implementation?**
- Evaluate the Borrower procurement action's compliance with the LoA
 - Monitor adherence to Procurement Plan
 - Monitor progress in the action plan agreed, incl. capacity building of Borrower
- How does the Bank do?**
- Procurement prior review
 - Supervision missions according to supervision arrangements on PAD:
 - Follow-up of the action plan & procurement plan in PAD
 - Procurement post reviews
 - periodic risk assessment: update of mitigation measures/action plan → ISR
 - Mid-Term Review: evaluation of progress in procurement implementation
 - Revision of procurement risk: update of mitigation measures & action plan
 - Evaluation of impact of major changes to procurement implementation
 - Update procurement plan
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- ### FOUR CONSIDERATIONS GENERALLY GUIDE PROCUREMENT IN BANK FINANCED PROJECTS
- Need for economy and efficiency in the execution of the project
 - Banks interest as a co-operative institution in giving all eligible bidders from developed and developing countries the same information and equal opportunity to compete
 - Banks interest as a development institution in encouraging the development of domestic contracting and manufacturing industries
 - The importance of transparency in procurement process [RE : Paragraph 1.2 of the Procurement Guidelines]
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- ### PREFERRED PROCUREMENT PROCEDURES
- International Competitive Bidding [ICB]; open to all eligible bidders with an element of domestic preference
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FEATURES OF BANK'S MODEL PROCUREMENT DOCUMENTS

- Incorporation of suitable qualification criteria
- Sharing of risks between the parties of the contract
- Incorporation of precise and fair evaluation criteria
- Incorporation of minimum broad technical specifications
- Ensure transparency by public bid opening
- Disclosure of qualification and evaluation criteria
- Application of criteria without any bias or discrimination
- Absence of negotiations
- Award to the lowest evaluated responsive bidder meeting the specified qualification criteria
- Award to be published on UNDB
- Satisfactory award appeal/challenge/debriefing procedures
- Dispute resolution mechanism

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BUSINESS COMMUNITY'S PERCEPTION

- **Timely and accurate information on business opportunities;**
- **Predictable procurement system;**
- **Level playing field; and**
- **Open competition.**

METHODS OF PROCUREMENT

International Competitive Bidding [ICB]:

- Affords opportunity to all eligible prospective bidders from all countries to bid

To be Adopted :

- Generally for packages costing more than the threshold stipulated in the Procurement Plan/Loan Agreement [Goods and Works have different threshold]
- Irrespective of value, where supplies need import and entail payment in foreign currency

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REQUIREMENT - ICB

- Publication of Invitation for Bid [IFB] in the United Nations Development Business [UNDB] on line -- Bank will arrange this [minimum period required 7-10 days]
- Transmission of IFB to those who have expressed interest in response to the General Procurement Notice
- Publication of IFB in national newspapers having wide circulation in all regions of the country
- Use of Banks Standard Bidding Documents
- Sale of bidding documents to start only after publication of IFB in UNDB and national newspapers
- Bidding period 6-12 weeks from the date of start of sale of bidding documents

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STEPS - ICB

- Notification/advertising
- [Pre-qualification, if provided in the legal agreement]
- Issue of bidding document
- Submission of bid
- Public opening of bids
- Evaluation
- Selection of lowest evaluated responsive bid - based on post-qualification
- Contract award
- Publication of award in Development Business and web
- Contract performance

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OTHER METHODS OF PROCUREMENT

To be adopted :

- Where ICB would not be most economic and efficient method of procurement and where other methods are deemed more appropriate
- As provided in the Legal Agreement

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LIMITED INTERNATIONAL BIDDING [LIB]

Essentially ICB by direct invitation to selected bidders of proven capacity cum capability without open advertisement.

Domestic Preferences are not applicable in evaluation of bids under LIB.

LIB TO BE ADOPTED WHERE:

- There are only a limited number of suppliers of the particular Goods or Services needed
- Other exceptional reasons justifying departure from full ICB procedures

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STEPS - LIB

- Same as ICB, except for advertisement and domestic preference which are inapplicable
- Bids must be invited from a list of potential suppliers broad enough to ensure receipt of competitive bids

NATIONAL COMPETITIVE BIDDING [NCB]

Competitive bidding advertised nationally for procuring Goods or Works which by their nature or scope are unlikely to attract foreign competition. Currency specified is Local Currency for bidding, as well as for payment. However, foreign bidders are not to be precluded from participation, if they wish to bid; but they are also to be paid only in Local Currency

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NCB - TO BE ADOPTED

- Where the contract values are small
- In cases where works are scattered geographically or spread over time
- Where works are labour intensive
- When the Goods and Works are available at prices below the international market
- Foreign firms are not likely to be interested

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REQUIREMENT - NCB

- Publication of IFB in newspapers having a wide circulation in the country
- Use of Agreed Bidding Document
- Sale of bidding documents to start only after publication of IFB in newspapers
- Bidding period 4 weeks to 8 weeks from the date of start of sale of bidding documents
- Payment in local currency
- If foreign firms wish to participate, they shall be allowed to do so

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STEPS - NCB

- Same as ICB, except for UNDB advertisement and domestic preference, which are inapplicable

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DIRECT CONTRACTING [DC] INCLUDES

- Extension of existing contract

RATIONALE

- Standardization
- Proprietary items
- Process design requires critical items from specific supplier as condition of contractor providing performance guarantee
- In exceptional cases such as response to natural disaster
- Award to be published in UNDB online/web

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SHOPPING

PROCUREMENT METHOD BASED ON COMPARING PRICE QUOTATION OBTAINED FROM SEVERAL SUPPLIERS OR CONTRACTORS WITH A MINIMUM OF THREE

Appropriate :

- Where values are small
- For procurement of off the shelf goods
- For procurement of standard specifications commodities
- Simple Works

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SHOPPING - NO FORMAL BIDDING DOCUMENT

Requests for quotations to provide :

- Delivery, time and place
- Description of quantity of goods
- Written quotations
- Quotations by telex or facsimile are acceptable
- Usually, at least three quotations should be there [to ensure competitive prices]

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FORCE ACCOUNT [FA]

Force Account is construction by the use of Borrowers own personnel, materials and equipment where :

- Quantities of work involved cannot be defined in advance
- Works are small and scattered or in remote locations where mobilization costs for contractors would be unreasonably high
- Work must be carried out without disrupting on-going operations
- The risk of unavoidable work interruption are better borne by the Borrower than by a contractor
- There are emergencies needing prompt attention

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IMPORTANT POINTS TO BE NOTED IN BANK-FINANCED CONTRACTS

- **Principal criteria followed in bank procurement procedures**
 - ✎ Transparency, Economy and efficiency;
 - ✎ Opportunity and same information to all eligible bidders
 - ✎ Encouraging development of domestic contracting and manufacturing industries
- **Before invitation of bids :**
 - ✎ Detailed design and engineering, including soil investigation
 - ✎ Acquisition of land for works
 - ✎ Preparation of technical specification for equipment

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BID SECURITY

- **2 to 5 % for Goods, and 1 to 3 % for Works**
[For small value purchases and in specific cases, where bid security is considered not essential (for example, Vehicles), it could be dispensed with]
- Can require bidders to sign a declaration accepting that if they withdrew/modify their bids during bid validity or refuse to sign the agreement, bidder can be suspended for a specified period.

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PERFORMANCE SECURITY

- **WORKS**
5 % of contract price

[Valid till 28 days from the date of issue of certificate of completion]
- **GOODS**
5 to 10 % of contract price

[Performance security could be reduced to 2 % after delivery and acceptance of goods to cover suppliers' obligations during the period of warranty]

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RETENTION MONEY

- **WORKS**
5 % of the contract price
 - **GOODS**
Nil
- [50 % to be retained till completion of the entire work, and 50 % to be retained until the end of the defects liability period]*
- **Bank Guarantees submitted by bidders/contractors/suppliers should be unconditional and to be in specified formats**

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- No filtration in the sale of bidding document. It should be sold to all, whosoever requests for it, and made available by mail as well.
- Where bidders are not pre-qualified, minimum post-qualification criteria are to be clearly specified in the bidding document, and enforced.
- Contractors should be made responsible to provide all materials, including cement and steel, etc
- The time for the bid opening should be the same as that for deadline for receipt of bids, or promptly thereafter [to allow only sufficient time to take the bids to the place announced for public bid opening]

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- **Minimum Bidding Period**

For NCB – 4 weeks
For ICB – 6 weeks

from the date of publication of IFB in press/UNDB, or, the date the documents are made ready for sale, whichever is later

PUBLICITY OF BID NOTICES

- ICB
- NCB

UNDB online and dg
Market Publication -----

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PUBLICITY OF BID NOTICES [Contd.]

<ul style="list-style-type: none"> • ICB <p>Copies to bidders who have expressed interest in response to the General Procurement Notice [GPN]</p> <ul style="list-style-type: none"> • Publicity in national press having a wide circulation in all regions of the country 	<ul style="list-style-type: none"> • NCB <p>Copies to bidders who have expressed interest</p> <ul style="list-style-type: none"> • Publicity in national press having a wide circulation in the country
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PUBLICITY OF BID NOTICES [Contd.]

<ul style="list-style-type: none"> • ICB <p>For large specialized, or important contracts, publicity in well-known technical magazines, newspapers and trade publications of wide international circulation</p>	<ul style="list-style-type: none"> • NCB <p>-----</p>
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- No preference to any bidder of class of bidders, either for price, or for other terms and conditions.
- All bids received should be opened and read out at the time of bid opening
- No bid should be rejected at bid opening, except for late bids, which shall be returned un-opened to the bidder
- Minutes of bid opening must be prepared and one copy forwarded to the Bank for information
- No negotiations are permissible
- Re-bidding shall not be carried out without the prior concurrence of the Bank.
- Two or three envelope system shall not be used.

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- Evaluation of bids should be made strictly in terms of the provisions in the bidding document
- Evaluation report should be drafted in the prescribed format
- Single bids should also be considered for award, if it is determined that publicity was adequate, bid specifications/conditions were not restrictive or unclear, and bid prices are considered reasonable
- Award should be in favour of the lowest evaluated responsive bidder, who is determined to be qualified to perform the contract satisfactorily [meeting specified criteria and having good performance record]

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EVALUATION OF BIDS

Evaluation of Bids for Civil Works

- Before proceeding for evaluation, it should be ascertained whether the bids:
 - i) meet the eligibility requirements specified in paras 1.6 to 1.8 of GL;
 - ii) have been properly signed;
 - iii) are accompanied by the required securities [in case of JV, the bid security must be in the name of all partners to JV];
 - iv) are substantially responsive to the requirements of the bidding documents;

Evaluation of Bids for Civil Works

- A substantially responsive bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,
 - (a) if accepted, would
 - i) affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or
 - ii) limit in any substantial way, inconsistent with the Bidding Document, the Employer's rights or the Bidder's obligations under the proposed Contract; or
 - b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids.

Evaluation of bids for Civil Works:

- All substantially responsive bids should be evaluated in detail as per procedure stipulated in bidding documents.
- In evaluating the bids, the Employer will determine for each Bid the evaluated Bid price by adjusting the Bid price as follows:
 - (a) making any correction for errors;
 - (b) excluding provisional sums and the provision, if any, for contingencies in the Bill of Quantities, but including Day work, where priced competitively;
 - (c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers; and
 - (d) making appropriate adjustments to reflect discounts or other price modifications offered.

Evaluation of bids for Civil Works:

Unbalanced Items

If the bid, which results in the lowest Evaluated Bid Price, is seriously unbalanced or front loaded in the opinion of the Employer, the Employer may require the Bidder to produce detailed price analyses for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analyses, taking into consideration the schedule of estimated Contract payments, the Employer may require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract.

Evaluation of bids for Civil Works:

Comparison of Bids:

Compare all substantially responsive bids in accordance with ITB 34.2 to determine the lowest evaluated bid.

Qualification of the Bidder:

Determine whether the Bidder the lowest evaluated and substantially responsive bid either continues to meet (if prequalification applies) or meets (if post qualification applies) the stipulated qualifying criteria

Award Criteria :

Lowest evaluated qualified to be selected for award

EVALUATION AND AWARD DECISION

- Evaluation and award decision of bids including Bank review should be completed within the initial period of bid validity
- An extension of bid validity, if justified by exceptional circumstances, shall be requested in writing from all bidders [of valid bids only], before the expiration date
- The extension shall be for the minimum period required to complete evaluation, obtain necessary approvals, and award of contract

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EVALUATION AND AWARD DECISION [Contd].

- In case of fixed price contracts, if award is delayed by more than 56 days beyond the initial validity the contract price shall be adjusted as specified in the request for extension. Such an increase in the bid price shall not be taken into account in the bid evaluation
- In the case of prior review contracts, Bank's prior approval will be required :
 - for first extension of bid validity period, if the period exceeds 4 weeks; and
 - any subsequent extension of bid validity period

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- The system of rejection of bids outside a pre-determined margin or bracket should not be used.
- During execution of contracts, all material modifications or waiver of the terms and conditions of contract or material extension of stipulated time or change order which would increase the contract price by over 15 % should be informed to the Bank for no objection, as per Paragraph 3, Appendix I of the Procurement Guidelines
- Awards are to be published in UNDB/web

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REVIEW OF CONTRACTS

- Thresholds will be fixed in the Project Appraisal Document [PAD]/Legal Agreements

PRIOR REVIEW

Prior review consists of :

- Bidding documents
- Any Amendments to the Bidding Document
- Bid evaluation report
- Procurement Plan
- Modification to Contract resulting in increase of contract price by 15%

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Procurement Prior Review Thresholds (in \$ million)

Type of Procurement	PS/PAS	RPM	OPRC
Works, Turnkey and S&I of Plant and Equipment	< 25	< 50 & ≥ 25	≥ 50
Goods	< 10	≥ 10 & < 30	≥ 30
IT systems, and Non-consultant Services	< 5	≥ 5 & < 20	≥ 20
Consultant Services	< 3	≥ 3 & < 15	≥ 15
Direct Contracting & Single-Source Contracts with Firms	≥ 0.1 & < 0.5 (< 0.1 by TTL for consultants)	≥ 0.5 & < 5	≥ 5
Single-source Contracts (Individual Consultants)	≥ 0.05 & < 0.25 (< 0.05 by TTL)	≥ 0.25 & < 1	≥ 1

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SERVICE STANDARDS

Comments on bidding documents and evaluation reports:

(a) under RPM mandatory review limits	7 working days (wds)
(b) subject to RPM review	10 working days (e.g., 3 wds additional for RPA)
(c) subject to OPRC review	17 working days (e.g., 10 wds additional for OPRC)

Reply to procurement complaints

(a) within authority of PA or PAS	3 working days
(b) within clearance authority of RPM	5 working days
(c) within clearance authority of OPRC	10 working days

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REVIEW OF CONTRACTS [Contd.]

POST REVIEW

- Post review is review of the final concluded contract[s] and supporting documents for all other cases

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Thank You



HIRING OF CONSULTANCY SERVICES IN THE WORLD BANK FINANCED PROJECTS

For PMU of OSRP

YASH GUPTA
January 31, 2012



APPLICABLE GUIDELINES


All services required for the Project and to be financed out of the proceeds of the Loan shall be procured in accordance with World Bank's

"Guidelines Selection and Employment of Consultants by World Bank Borrowers" published by the World Bank in May 2004 revised Oct 2006



2. GENERAL CONSIDERATIONS

- Need for high-quality services;
- Need for economy and efficiency;
- Need to give qualified consultants from all countries an opportunity to compete in providing the services financed by the Bank;
- Bank's interest in encouraging the development and use of national consultants; and
- Importance on transparency in the selection process.



GENERAL CONSIDERATIONS

The Bank considers that, in the majority of cases, these considerations can best be addressed through competition among qualified short-listed firms in which the selection is based both on the quality of the proposal and on the cost of the services to be provided (Quality- and Cost-Based Selection [QCBS]). Section II of Consultancy Guidelines, describes the procedures for QCBS. However, there are many cases when QCBS is not the most appropriate method of selection. For complex or highly specialized assignments or those which invite innovations, high downstream impact etc., selection based on the quality of the proposal alone (Quality-Based Selection [QBS]), as described in Section III of CGL, would be more appropriate. The procedure to be followed in all cases is given below in brief:

STEPS IN SELECTION

- Prepare the Terms of Reference (TOR);
- Prepare cost estimate and the budget for the consultancy service;
- Advertise in national news papers and UNDB;
- Prepare the shortlist of consultants;
- Prepare and issue the Request for Proposal (RFP) consisting of;
 - (i) Letter of Invitation (LOI);
 - (ii) Information to Consultants (ITC); and
 - (iii) Draft of Proposed contract;

STEPS IN SELECTION

- Receipt and opening of proposals;
- Evaluation of technical proposals : consideration of quality;
- Evaluation of financial proposal;
- Combined evaluation of quality and cost;
- negotiation with and award of the contract to the selected firm.
- Publish award of contract in web and debriefing of unsuccessful consultants.

TERMS OF REFERENCE

should include:

- A precise statement of objectives;
- An out line of the tasks to be carried out;
- A schedule for completion of tasks;
- The support/inputs to be provided by the client;
- The final outputs that will be required of the Consultant;

TERMS OF REFERENCE

should include:

- Composition of Review Committee (not more than three members) to monitor the Consultant's works and procedures for;
- Mid term review and Progress Reports required from the Consultant;
- Review of the final draft report; and
- List of key positions whose CVs [1 to 6, exceptionally 8] and experience would be evaluated.

PREPARATION OF COST ESTIMATES

Should be based on the borrower's assessment of the resources needed to carry out the assignment; staff time, logistical support, and physical inputs (for example, vehicles and laboratory equipment). Costs shall be divided in to two broad categories;

- (a) fee or remuneration; and
- (b) reimbursable cost and further divided into foreign and local costs.

ADVERTISEMENT

Advertisement (seeking Expression of Interest) for preparation of short list.

- UNDB;
- National Newspapers;
- International Newspapers; and
- Technical Magazines

(The advertisement is mandatory for all consultancies valued equivalent to US \$200,000 and more)

SHORT LISTING

- Six firms - with no more than two firms from any one country and at least one firm from a developing country, unless qualified firms from developing countries are not identifiable.
- Can be only national consultants if value < US\$ 500,000.
- Capability and Resources to fulfill the contract
- Eligibility (1.11 of GL)
- No Unfair advantage (1.10 of GL)
- Conflict of Interest (1.9 of GL)
 - Conflict between consulting services and goods, works and non consulting services
 - Conflict amongst consulting assignments
 - Relationship with borrower's staff
 - Consultant to submit one proposal

REQUEST FOR PROPOSAL (RFP)

The RFP shall include:

- Letter of Invitation (LOI);
 - Information to Consultants;
 - Terms of Reference (TOR);
 - Technical and Financial Forms; and
 - Draft of proposed contract.
- Borrowers shall use the standard RFP issued by the Bank (Standard RFP, August 2010)

RECEIPT & OPENING OF PROPOSALS

- Proposals in two envelopes - one envelope containing technical proposal. First, only the technical proposals are opened and financial proposals are kept in safe custody
- The evaluation of the technical proposals to be done as per criteria specified in RFP.
- Technical Evaluation Report –as per format specified and to be forwarded to Bank for review and “no objection”, for all prior review cases, before price envelopes are opened publicly.

RECEIPT & OPENING OF PROPOSALS

- Financial proposals are opened publicly.
- Combined evaluation report along with its recommendations of the winning firm are sent to Bank for information.
- Negotiations with highest ranked firm.
- Minutes of negotiations & draft contract to Bank for NOL.

Evaluation Criteria

Evaluation Factors		As per Guidelines
• Quality (Each should have a sub-criteria not exceeding three)	• Experience	0 – 10
	• Methodology <ul style="list-style-type: none"> - Technical approach and methodology - Work plan - Organization and staffing 	20 – 50
	• Key Personnel <ul style="list-style-type: none"> i) General qualification. ii) Adequacy for the assignment. iii) Experience in the region and language 	30 – 60
	• Transfer of Knowledge	0 – 10
	• Nationals in key staff	0 – 10
• Combined	• Quality	Usually 80
	• Cost	Usually 20

PROPOSED KEY STAFF (30-60 POINTS)

Key professional staff: Points for qualification and competence to be divided; for example out of 55 points, Team Leader may be given 15 Points and 10 points each for four key experts. Each key staff to be judged on three Sub-criteria:

- (i) General qualification.
- (ii) Adequacy for the assignment.
- (iii) Experience in the region and language

**SUB- CRITERIA-GENERAL
QUALIFICATION (20-30%)**


Poor (40%): less experience than specified or less than 10 years of relevant experience
Satisfactory (70%): 10 years or more of experience with relevant academic education and training
Good (90%): More than 15 years substantial part on similar assignment, steady increase in responsibility in the past
Very Good (100%): More than 20 years of specialist experience, fully up to date in concerned discipline, and other attributes of "Good" rating

**Sub-Criteria-Adequacy for
Assignment (50-60%)**


Poor (40%): Expert occasionally worked in similar position, junior professional
Satisfactory (70%): experience fits the assigned position, completed at least one project of similar nature
Good (90%): In addition, held several similar positions in similar assignment
Very Good (100%): In addition, qualification and experience exceeds substantially the requirement

**SUB-CRITERIA-EXPERIENCE IN
REGION AND LANGUAGE (10-20%)**


Poor (40%)- never or occasionally worked in similar countries and language skills insufficient
Satisfactory (70%)- Worked in similar cultural, administrative environment and has knowledge of one official language of the Bank
Good (90%)- In addition, worked recently in the region, is fluent in more than one official language of the Bank
Very Good(100%)- In addition, has detailed and direct knowledge of country through years of professional work

BEST PRACTICE

Evaluation Committee

- Three to five qualified members
- Exercise highest ethical standard
- Committee to consist of individuals of comparable hierarchical level
- Members to confirm that they: (i) have no conflict of interest; (ii) understand the rating and scoring system; (iii) have been provided with evaluation work-sheet; and (iv) agree on how to evaluate proposals

NEGOTIATIONS

- Negotiations shall include discussions of the TOR, the methodology, staffing, Borrower's inputs, and special conditions of contract.
- The selected firm should not be allowed to substitute key staff, unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment.
- Financial negotiations shall include clarification of the consultants' tax liability in the Borrower's own country (if any), and how this tax liability has been or would be reflected in the contract.

NEGOTIATIONS

- QCBS - Lump sum, contract price shall not be negotiated;
- QCBS (Time Based) - proposed unit rates for staff months and reimbursable shall not be negotiated (since these have already been a factor of selection) unless there are exceptional reasons. Reimbursable are paid on actual upon presentation of receipts and hence not subject to negotiation. If client wants to fix a ceiling he should do so by indicating in RFP.
- In negotiations fail, borrower will invite next ranked firm for negotiations in consultation with Bank.

NEGOTIATIONS


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- In negotiations fail, borrower will invite next ranked firm for negotiations in consultation with Bank.

PRIOR REVIEW BY THE WORLD BANK

- Terms of Reference;
- Shortlist;
- RFP Documents containing Letter of Invitation, Information to Consultants and Conditions of Contract;
- Evaluation Report of the technical proposals in the Bank's format;
- Report of combined evaluation (Technical & Financial) with recommendations of the winning firm **for information of the Bank**;
- Negotiated draft contract of the winning firm together with minutes of negotiations
- Rejection of all proposals
- Substantial extension and modification of contract beyond 15% of the original amount



PUBLICATION OF AWARD & DEBRIEFING



Publication of Award

In QCBS/SS/CQS method of selection, award should be published in UNDB/online

Debriefing (2.29 of GL)

Consultants desirous of knowing why they were not selected, should be debriefed as detailed in paragraph 15 of Appendix 3 of CGL

Section –III: Other Methods of Selection

Section –III: Other Methods of Selection QBS

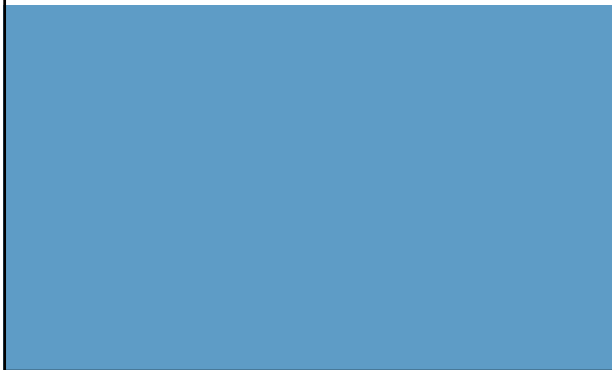
QBS PROCEDURE



Fixed Budget - FBS is appropriate only when the assignment is simple and can be precisely defined and when the budget is fixed.



QBS PROCEDURE



LEAST COST SELECTION (LCS)



CQS PROCEDURE

- CQS may be used for small assignments for which the need for preparing and evaluating

SINGLE SOURCE SELECTION (SSS)

Single-source selection of consultants does not provide

SECTION – IV: TYPES OF CONTRACTS & IMPORTANT PROVISIONS

Types of Contracts

SECTION – IV: TYPES OF CONTRACTS – CONTD

❖ Time Based Contracts

**SECTION – IV: TYPES OF CONTRACTS -
CONTD**



**SECTION – IV: TYPES OF CONTRACTS -
CONTD**



**SECTION – IV: TYPES OF CONTRACTS -
CONTD**



**Section IV - IMPORTANT CONTRACT
PROVISIONS**



CONTRACT ANNEXES

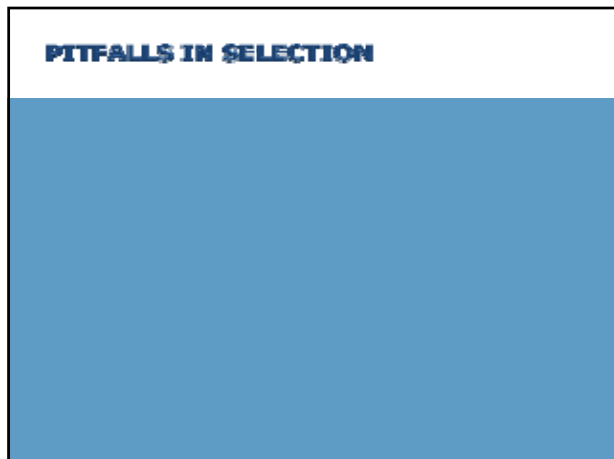
* Description of Services

SECTION V: SELECTION OF INDIVIDUAL CONSULTANTS

PROCEDURE FOR SELECTION OF INDIVIDUAL CONSULTANTS

INDIVIDUAL CONSULTANTS ON SOLE SOURCE BASIS

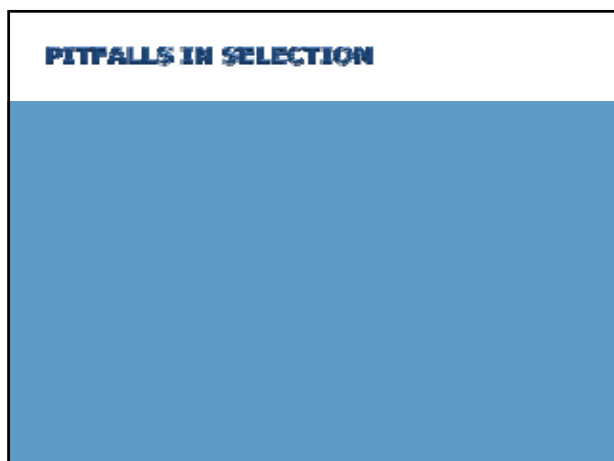
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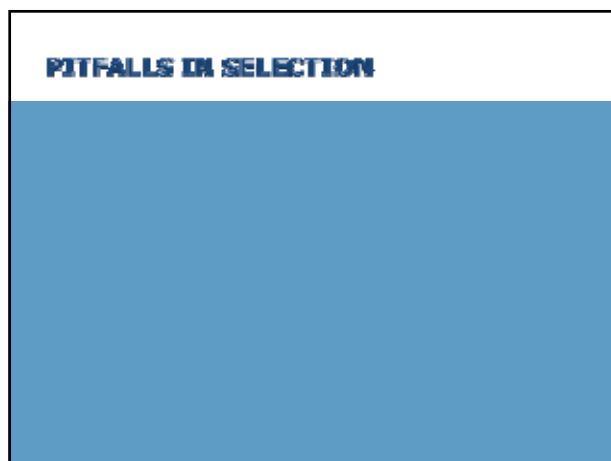
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PITFALLS IN SELECTION



PITFALLS IN SELECTION



CONTRACT MANAGEMENT

MODULE 1
INTRODUCTION
CONTRACT
PROGRAM
RECORDS
ROLES OF:
EMPLOYER, ENGINEER and
CONTRACTOR

1

INTRODUCTION TO PRESENTATION

- The presentation I am going to make today is based on my past experience on National and International contracting. The views expressed are purely personal with my “intellectual rights” having no relationship whatsoever with World Bank position on the issues.
- Further, I shall refrain from making any comments on issues related to your current contracts.

2

INTRODUCTION

INTRODUCTION TO FIDIC:

- FIDIC is the Federation of International Consulting Engineers also addressed as International Federation of Consulting Engineers
- Represents more than 1.5 million in 86 countries;
- FIDIC publishes Contracts for Infrastructure industry
- Provides Training for Consultants

3

INTRODUCTION

Background of FIDIC Contracts:

- FIRST edition of Red Book was published in 1957
- Red Book 4th edition was published in 1987 and reprinted in 1992, and a Supplementary arrangements comprising an option of a Dispute Adjudication Board, and an option for payment in lump sum instead of based on BOQ

4

INTRODUCTION

FIDIC Yellow Book 1999:

- **Design – Build – supervised by the Employer’s appointed Engineer**
- **General Conditions wordings 80-85 percent are identical**
- **Used for Electro-Mechanical works and also Building and Engineering Works designed by the Contractor.**

5

INTRODUCTION

The FIDIC Silver Book (1999):

- **Used for Power Plant on a Turnkey basis**
- **One entity take total responsibility for the design and execution**
- **It is also called Engineering, Procurement and Construction (EPC) , in which the Contractor carries all the responsibility.**

6

CONTRACT MANAGEMENT

CONTRACT DEFINITION

- **A Contract is an agreement between two or more parties whereby each party promises to do, or not to do, something: a transaction involving two or more individuals whereby each has reciprocal rights to demand performance of what is promised**
(Friedman, Jack P., Dictionary of Business Terms, page 123)

7

CONTRACT MANAGEMENT

CONTRACT:

- **Employer and Contractor agree to terms, have the right to demand performance**
- **more important : this promise to do and not to do something, is enforceable by law and incorporates remedial rights for non performance**
- **a contract will be interpreted in accordance with the law of the Employer’s country**

8

CONTRACT MANAGEMENT

CONTRACT contd:

- each contract is unique
- employer and contractor must agree
- prepare on the basis of equality and mutual benefit
- prepare in line with the applicable law
- avoid confusion and legal gaps
- make sure you know your contract

9

CONTRACT MANAGEMENT

Project Management:

- Project Management has been defined as 'the overall planning, control and co-ordination of a project from inception to completion aimed at meeting a client's requirements and ensuring completion on time, within cost and to required quality standards'

10

CONTRACT MANAGEMENT

Contract Management encompasses: Procurement and Administration

- efficient contract procurement is a prerequisite to an efficient contract administration
- legal framework and country's procurement environment will have impact on efficiency and economy in procuring a contract
- procurement of a reputable Engineer will have far reaching effect on procurement and administration of contracts

11

CONTRACT MANAGEMENT

PROGRAM

12

PROGRAM

CONTRACTOR'S PROGRAM

- Reflect Contract requirements
- Include Contract milestones
- Show sequence of works
- Incorporate resource and other constraints
- Supported by Method Statement

13

PROGRAM

Progress Reporting:

- Regular updates
- Treatment of original and previous programmes
- How to measure progress?
- How to deal with variations?
- Benefits – control and cause / effect

14

CONTRACT MANAGEMENT

RECORDS

15

RECORDS

- Site Diaries, Delivery Notes;
- Progress Meeting Minutes
- Day Work; Time sheet
- Disruptions
- Programs;
- Variations; Costs
- Photos and Videos

16

COMMUNICATION

COMMUNICATION:

- *Verbal*
 - Meetings – to be followed by written minutes?
 - Discussions – to be confirmed in writing?
 - Verbal instructions – allowable, subsequent action?

17

COMMUNICATION

Written:

- Letters, minutes of meetings, records etc
- Notices
- Progress reports

Summary:

- Set up Accurate Reporting System
- Record and Agree facts as they happen
- Use record to avoid/reduce disputes

18

CONTRACT MANAGEMENT

ROLES OF: EMPLOYER, ENGINEER AND THE CONTRACTOR:

19

ROLE OF EMPLOYER

ROLE OF EMPLOYER:

- Making available possession of site and access thereto (Clause 2.1) -Time limit!!
- Retain competent Engineer (Clause 3.1)
- Understands the role of Engineer (implied)
- Prompt action on all contractual matters requiring assistance, comments or approval (Clause 2.2)
- Preparedness to carry the financial risks for unforeseen events and other risks attributable to him (CIs 4.12 and 17.3)

20

ROLE OF EMPLOYER: N

Role of Employer Contd.

- Making Financial arrangements and providing evidence to the Contractor (Clause 2.4)
- Making prompt payments (Clause 14.7)
- Advance budget appropriation and planning approval
- Proving timely approval to the Engineer's recommendations on – variations, EOT and all others (different ; some are- 4.12, 13.1&13.3)
- Cooperating with the Contractor for arrangements for prompt dispute resolution (cl.20.2)

21

ROLE OF EMPLOYER:

Role of Employer Contd.

- Prepare for taking-over (Clause 10)
- ensuring compliance with the Loan Agreement (including the Gl.s.), to avoid mis-procurement of any contract element, e.g., subcontract, plant, materials, etc
- providing the Bank with regular progress reports.

22

ROLE OF ENGINEER

ROLE OF ENGINEER:

- supervise progress;
- give instructions (Clause 3.3);
- act fairly in determination (Clause 3.5);
- issue variation orders (Cl.13.1);
- Evaluation of varied works (Cl. 12.3);
- certify preliminary and final completion (10.1) ; and
- measure work and certify payment (cl. 12.1)

23

ROLE OF CONTRACTOR

ROLE OF CONTRACTOR:

- Submit program for approval (Cl.8.3)
- manage and perform work (several Cls)
- respect specifications and instructions
- care of works in progress (Cl. 17.2)
- carry certain risks (other than employer's risks) Clause 17
- insure against risks (Cl.18)
- commence/complete on time (Cls. 8.1, 8.2)
- remedy defects (Cl. 11.1)
- follow claims procedures (20.1)
- Present claims, if any, in a timely manner (cl.20.1)²⁴

CONTRACT MANAGEMENT

MODULE 2

RISK ALLOCATION
EOT
VARIATION

1

CONTRACT MANAGEMENT

- Modern contracts provide clear risk allocation between the parties. Good contracts assign risk to the party who can best manage them.
- WB document based on FIDIC and MDB Harmonized aims to be fair and equitable by allocating risks to the party best able to control, deal with and manage them.

2

CONTRACT MANAGEMENT

This new document somewhat reduced the Contractor's exposure to certain risks. Some are:

- the definition of events comprising Force Majeure was broadened;
- the Contractor recovers time and money for Force Majeure;
- the Contractor has greater power in relation to the Employer's ability to pay and in ensuring that payment is made in full and on time.

3

RISK Allocation

Cl	Risk	Employer	Contractor
1.9	Delayed drawings and instructions	√	
1.9	Error in Employers requirements	√	√
2.1	Right of access to the site	√	
4.7	Setting out	√	√
4.12	Unforeseeable physical conditions	√	

4

RISK Allocation

Clause	Risk	Employer	Contractor
4.24	Fossils	✓	
7.4	Testing delays by the Employer	✓	
7.5	Rejection of Materials		✓
7.6	Remedial works		✓
8.4(a)	Extension for time for completion - Variation	✓	

5

RISK ALLOCATION

Cls	Risk	Employer	Contractor
8.4(b)	Extension for time for completion – delay giving entitlement to EOT	✓	
8.4(e)	Exceptionally adverse climatic conditions	✓	
8.4(d)	Unforeseeable shortages and the availability of personnel or goods caused by epidemic or by government action	✓	

6

RISK ALLOCATION

Cls	Risk	Employer	Contractor
8.4(e)	Delay, impediment or prevention caused by the Employer its personnel or other contractors	✓	
8.5	Delay caused by Authorities	✓	
8.6	Rate of progress		✓
8.9	Consequences of Suspension	✓	

7

RISK ALLOCATION

Cls	Risk	Employer	Contractor
9.4	Failure to pass Tests on Completion		✓
11.4	Failure to remedy Defects		✓
12.1/ 14.1	Increase of quantities	✓	

8

RISK ALLOCATION

Cl's	Risk	Employer	Contractor
12.4	Omission of work through a Variation	√	
12.4	Failure to pass tests after Completion		√
13.3	Variation procedure	√	
13.7	Adjustment for changes in legislation	√	√
13.8	Adjustment for changes in cost	√	√

9

RISK ALLOCATION

Cl's	Risk	Employer	Contractor
14.8	Delayed payment	√	
15.4	Payment after Termination		√
17.1	Indemnities	√	√
17.2	Care of the Works prior to the Taking Over Certificate		√

10

RISK ALLOCATION

Cl's	Risk	Employer	C
17.4	Consequences of Employer's risks	√	
19.4	Consequences of force majeure	√	
20.1	Contractor's claims	√	

11

CONTRACT MANAGEMENT

EXTENSION OF TIME (EOT)

12

EOT

DELAYS:

- Contracts have completion dates and liquidated damages are tied to these;
- Breaches by Employer can frustrate LD clause;
- Also leads on to financial matters

PURPOSE OF EOT:

- Purpose is to keep alive rights of parties to recover damages or bonus as the case be

13

EOT

- For delays caused by Contractor – he gets no EOT and/or money
- For delays caused by neutral events – Contractor gets EOT but no extra money;
- For delays caused by the Employer or by his agent – Contractor gets extra money, and also gets EOT which relieves him from paying LDs

14

EOT

PROGRAM OF WORKS - RELATIONSHIP WITH TIME:

- If program forms part of contract, it would be **CONTRACTUAL**, otherwise not;
- Where program is part of contract, parties are obliged to follow the timing, manner and sequence of activities shown
- Otherwise, contractor is only obliged to complete the work by the stated completion date but not necessary follow timing, manner and sequence

15

EOT

- **Basic principle** – defaulting party takes full responsibility and consequences
- Contractor's program baseline for calculating changes
- **Estimate or Model Methods** (investigate the *EVENT* and its potential impact)
- **Actual Methods** (identify the *DELAY period* and investigate what caused it)

16

EOT

EXTENSION OF TIME (EOT) -CONSIDERATION

- Contract provisions define the basis of entitlement to EOT
- Contract is not precise on how to prove delay
- Delay Analysis Methodology (Estimate and Actual) have been developed
- Delay to be on the critical path
- 'Ownership' of Float
- Effect of Concurrency

17

EOT

FLOAT DEFINITION (BS 4335):

- Float is the time available for an activity or path in addition to its duration
- Total Float: "time by which an activity can be delayed or extended without affecting the total project duration"
- Free Float: is "the time by which an activity can be delayed or extended without delaying the start of any succeeding activity"

18

EOT

- Independent Float: is "the time by which an activity may be delayed or extended without affecting the preceding and succeeding activity"
- Float belongs to whom?
 - Contractor
 - Employer or
 - the Project – activity – first come first served

19

EOT

Information required:

- Which activity each delay effect?
- What caused each delay?
- Who was responsible for the delay?
- When did each delay occurred
- How long each delay last?
- What notice was given formal or informal?

20

EOT

Time Impact Analysis:

- Examine status prior to occurrence of delay
- Identify specific location in the critical path
- Modify original as planned schedule from the point of delay
- Find out whether on the time impact changes completion date
- Next delay evaluation to be w.r.t. the above revised schedule.

21

CONTRACT MANAGEMENT- VARIATION

VARIATION

22

VARIATION

Variation is
Something different from the contractual agreement.

Affecting scope &/or schedule &/or conditions

Remember; the difference can be from the subcontractor's and / or contractor's and / or owner's perspective.

23

VARIATION

Causes:

- Inadequate design
- Lack of firm plans and specifications
- Unforeseeable conditions
- Natural calamities
- Anticipated government action or inaction

24

VARIATION

Foreseen within the contract documents provisions:

- **Scope of work (specifications, drawings)**
- **Schedule (programme, timing, sequencing)**
- **Conditions (location, physical, interaction with other contractors)**

Beyond the expectation of the contract:

- **New conditions**
- **New circumstances**

25

VARIATION

- **Variation is a contractual right for the execution of the work for the purpose intended**
- **Variation related Clauses Nos. 13 and 12.3**
- **It does not limit the type or timing of changes that can be made. (Exception?)**
- **Has the correct procedure been followed**
- **Authority to make changes lies with the Engineer with restrictions placed by the Employer delegated his rights of change to someone else?**

26

VARIATION

Three rules on valuation of variation:

1. **Use contract unit rates for valuing work of similar character undertaken under similar conditions**
2. **Use contract unit rates as a basis for valuing work of a dissimilar character or undertaken under dissimilar conditions**
3. **Don't use contract unit rates for quite different work. Consider cost plus reasonable profit.**

27

VARIATION

To value under 3 above use:

- **Direct labour – wages, taxes, insurance, paid absence, overtime and travel**
- **Direct materials – finished or raw, handling plus wastage**
- **Direct plant/equipment –**

28

VARIATION

Owned plant / equipment

- **Direct – purchase price, maintenance, servicing, tax, storage, transportation**
- **Indirect – insurance, maintenance facilities, depreciation, replacement allowances**
- **Operating costs – fuel, consumables**

29

VARIATION

Hired plant / equipment

- **- Operator, fuel etc. included?**
- **- Standby rates**
- **- Normal wear and tear included?**

Profit

30

CONTRACT MANAGEMENT

- **Adoption of good practices by the committed teams of the contracting parties, adequate planning and control system, understanding of the contract, close coordination, cooperation and compromises between the teams and the key individuals are necessary elements of efficient contract management**

31

CONTRACT MANAGEMENT

MODULE 3

Claims Dispute Resolution

1

CLAIM

A Claim is a request for reimbursement of cost and / or time from one Party to another.

This may be for a progress payment or a variation, or something else

Under the Contract either party may have a claim

2

CLAIM

Contract provides for procedures making contractual claims by the contractor arising out of including:

- A response to events which the contractor was not required to anticipate
- For additional payment or additional time
- The legal/contractual consequence of events

3

CLAIM

Contractual Claims include:

- Additional work claims – cost & profit
- Damages claims – cost only
- Neutral risk claims – time only

Common Legal (outside the Contract) Claims:

- Claims in tort
- Ex- Gratia

4

CLAIM

Claims may be arising out of several factor including:

- Manner in which contract was secured (Low bidding)
- The Engineer and roles in designing
- The level of definition of the scope of works
- Political aspects
- Legal / contractual

5

CLAIM

Avoiding of Claims

- Drawings, information and ‘Holds’
- Approvals
- Ground conditions
- Relationships
- Consultants’ performance
- Access to works
- Public authority / government bodies
- Payment
- The manner in which early problems are dealt with
- Performance of nominated sub-contractors

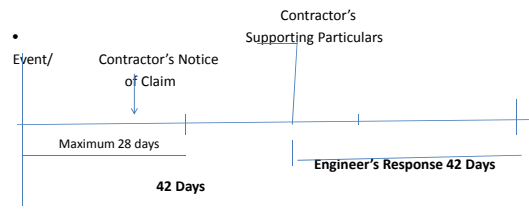
6

CLAIM

- If the Contractor considers himself to be entitled to an EOT or addition payment or both, he must give notice to the Engineer as soon as practicable and “not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance” giving rise to the claim. If he fails to make claim on time he is not entitled to it.

7

The Claims Timeline:



Only the Contractor's Claim is Time Barred

8

CLAIM

Employer's Claim:

- **Entitlement:** under any Clause of the contract or otherwise in connection with the Contract.
- **No time bar for the notice** (should be given as early practicable- can be given by the Employer or by the Engineer
- **Engineer to refer to engineer for determination!**

9

CLAIM

Employer is denied to set off against or make any deduction from a certified amount or otherwise claim against the Contractor unless done in accordance with the contract provisions under Clause

10

CLAIM

Handling Claims:

- **Keep good record systems and agree on facts**
- **Respond to challenges / issues promptly**
- **Monitor progress**
- **Establish claims systems and procedure**
- **Review resourcing**
- **Do not assume everything will come good at the end of the day**
-

11

CONTRACT MANAGEMENT

DISPUTE RESOLUTION

12

DISPUTE RESOLUTION

Definition of dispute:

An assertion of a right, claim or demand on one side, met by contrary claim or allegation or repudiation on the other

- Managing disputes would involve efficient Contract Management and Good Working Environment

13

DISPUTE RESOLUTION

- Amicable settlement/direct negotiations between the parties at an early stage

If no resolution is found:

establish in a letter the facts which constitute the basis of the dispute
resort to dispute resolution, adjudication, failing which final resort is to arbitration or litigation

14

DISPUTE RESOLUTION

MANAGEMENT OF DISPUTES

- DB is constituted – 3 members or a single member called adjudicator
- Permanent or Ad hoc
- Parties to constitute as per contract; failing which appointing authority comes into play

15

DISPUTE RESOLUTION

MANAGEMENT OF DISPUTES

- DB agreement is a tripartite
- Includes duties, impartiality and remuneration
- Procedure Methods and rules of DB operation
- In addition to the DB, parties shall respect these rules

16

DISPUTE RESOLUTION

General Obligations of the DB members:

- No conflict of interest
- Disclosure of past relationship with either party
- Become conversant with the contract
- Be available to give advice on any matter relevant to the contract when requested by both parties subject to the unanimity of all members

17

DISPUTE RESOLUTION

DB Procedures are:

- Open and Transparent
- Limited amount of Time – 84 days from the date of referral of dispute
- Site visit and hearings
- SEQUENCE:
- Referral of dispute → Response → Site hearing → Further submissions (and hearings) → DB decision

18

DISPUTE RESOLUTION

Parties empower the DB to:

- Establish the procedure
- Take initiative in ascertaining the facts and matters required to deliver a decision
- Decide upon interim relief such as an interim conservatory measures
- Open up , review and revise any certificate decision, determination, instructions opinion or valuation of the Engineer , relevant to the dispute.

19

ARBITRATION

ARBITRATION

20

CONTRACT MANAGEMENT

MODULE 4

CHECK LIST

1

CONTRACT MANAGEMENT - CHECK LIST

1. Is the Contractor regularly providing you with the following:

- i. Detailed monthly applications for payment.
- ii. Updated variations schedule.
- iii. Labor employment/allocation sheets.
- iv. Plant and equipment records.
- v. Short term programs.
- vi. Up-to-date contract program.
- Vii. Notices of delay and other problems.
- Viii Schedule of any other required information

2

CONTRACT MANAGEMENT - CHECK LIST

2. Do you keep records relating to each of the items in stated under 1 above?

3. Are you keeping regular, digital photographic records, suitably annotated?

4. Have you introduced a standard site diary system for each supervisor and engineer

3

CONTRACT MANAGEMENT - CHECK LIST

5. With respect to Program:

- i. Do you have electronic copies from the Contractor?
- ii. Do you have and retain monthly updates?
- iii. Do you have resource data in support of the program?
- iv. Do you check the progress status and have you notified the Contractor of your findings?
- v. The Contract Program should have between 100-200 activities but a detailed operational program should be in much more detail.
- vi. Has the Contractor issued a method statement?

4

CONTRACT MANAGEMENT - CHECK LIST**6. With respect to Extensions of Time:**

- i. Was the issue/event notified in time, in accordance with the conditions of contract?
- ii. Has the Contractor provided sufficient particulars of what he is claiming?
- iii. Does the issue/event expressly fall within the definition of the contract as giving rise to an extension of time?
- iv. Has the Contractor provided you with information showing how the works were actually delayed?
- v. Have you been able to check that the works were actually delayed and this has an effect on the completion date?
- vi. Have you checked if there were other causes of delay and was the Contractor responsible for any of these?

5

CONTRACT MANAGEMENT - CHECK LIST**6. With respect to Extensions of Time contd:**

- vii. For Employer-risk events, the Contractor should receive an extension of time with financial compensation.
- viii. If delay is caused concurrently by a Employer-risk event and a Contractor-risk event, then the Contractor usually gets an extension of time but there is no financial compensation.
- ix. If delay is caused by a neutral-risk event (usually a Force Majeure), the Contractor would receive an extension of time but no compensation. Force Majeure normally covers exceptional climatic conditions, strikes and other events that are not caused by either the Employer or the Contractor.

6

CONTRACT MANAGEMENT - CHECK LIST**7. With respect to compensation for delay/disruption:**

- i. The Contractor has the burden of proof and the Employer should insist of high evidential standards.
- ii. Supporting documents should show what actually occurred and what were the actual resources and costs incurred.
- iii. Do not adopt estimate methods too quickly. Demand the Contractor provides records of actual labor used and records of cost, actual plant used and proof of cost, etc.

7

CONTRACT MANAGEMENT - CHECK LIST**8. With respect to Variations:**

- i. Have you confirmed that the variation is indeed a change to the contract?
- ii. Was this requested by the Employer or Engineer?
- iii. If not, is it a type of change that was necessary and should have been instructed by the Engineer?
- iv. Was it a change promulgated by the Contractor without reference to the Engineer?
- v. Was it necessary to make the change? (Just because it is a cheaper alternative to the contract requirements does not mean it is necessary).

8

CONTRACT MANAGEMENT - CHECK LIST

- 8. With respect to Variations:**
- vi. Did the Contractor provide the proper contractual notices?
 - vii. Has a valuation been prepared?
 - viii. Does the valuation follow the rules of the contract?
 - ix. Has the Project Manager been provided with appropriate back-up papers?
 - x. Remember that verbal instructions from the Project Manager do not constitute valid instructions?
 - xi. As the Project Manager, do you have authority to instruct the change?

9

CONTRACT MANAGEMENT - CHECK LIST

- 9. With respect to disputes, adjudication and arbitration:**
- i. Follow the contractual steps rigidly.
 - ii. Insist on the Contractor following the contractual steps.
 - iii. Do not agree new arrangements with the Contractor.
 - iv. Do not negotiate without having gone through all the proper contractual procedures.
 - v. Refer to DoR Management if the Contractor threatens adjudication or arbitration.
 - vi. Maintain very detailed records relating to the issues in dispute.

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OFFICE OF THE ENGINEER-IN-CHIEF (CIVIL), ODISHA,
NIRMAN SOUDHA, KESHARI NAGAR, UNIT-V, BHUBANESWAR-751001

Tuesday, January 31, 2012
Conference Hall, 2nd Floor,
O/o the E.I.C. (Civil), Odisha,
Nirman Soudha, Bhubaneswar-751001

Subject: Training on Procurement and Contracts Management (World Bank Projects)

List of Participants

Sl.No.	Name	Designation	Signature
1	En. S.K. Ray	E-I.C. (Civil) Secy Works Dept. Odisha	
2	En. N.K. Pradhan	CE, World Bank Project	
3	Mr. Yash Gupta	The World Bank	
4	Gopabandhu Pradhan	Asst Secy Works Dept	
5	En. Ranj K. Mahanti	Dy. Secy. Works Dept	
6	P.K. Rout	F.A. cum Asst. Secy Works Dept.	
7	Mahendras Nayak	O.S to Govt Works Dept	
8	Manasi Dash	ATA-cum-UC IO D	
9	Diganta Biswal	EE, RE-I. NED.	
10	Dilipraj Nayak	O.S to Govt. Works Dept	
11	Sukanta Kumar Behera	SpL LAs cum Zone off World Bank PMU	
12	Jayashree Tripathy	Under Secy Finance Dept.	
13	Narayan S. Sharma	Consultant / WB	
14	R. N. Bohra	Engr, P.MU	
15	Saroj Kumar Mishra	E.E P.MU	
16	R. C. Nayak	E.E - PMU	
17	Ganesh Parigrahi	E.E. PMU	
18	Faker Mohan Parigrahi	E.E. P.M.U	
19	Mandranjan Mishra	EE, PMU	
20	Bibhu Ch. Moha	A.E (PMU)	
21	Subhransu Sekhar Swain	Assistant Engineer (PMU)	
22	Sandeep Hota	Asst. Engineer PMU	
23	Gan Narayan Ananta	Jr. Engineer PMU	
24	Amya Ranjan Nayak	Asst Engineer AMC	
25	Pradip Kumar Mishra	J.S. PMU	
26	Bhuti Prakash Mahanta	J.S. PMU	

OFFICE OF THE ENGINEER-IN-CHIEF (CIVIL), ODISHA,
NIRMAN SOUDHA, KESHARI NAGAR, UNIT-V, BHUBANESWAR-751001

Wednesday, February 1, 2012

Conference Hall, 2nd Floor,

O/o the E.I.C. (Civil), Odisha,

Nirman Soudha, Bhubaneswar-751001

Subject: Training on Procurement and Contracts Management (World Bank Projects)

List of Participants

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20.	Pradip Ch. Mishra	A.E. PMU	
21.	Pradeep Kumar	J.E., PMU	
22.	Sri Narayan Behera	J.E. PMU	
23.	Bhuti Prasad Mohapatra	J.E. PMU	
24.	Babula Behera	J.E., PMU	
25.	Bainabhanmohar	J.E. (C) PMU	
26.	Nancy Pattnaik	J.E., PMU	

