

Advanced Contracts, Tendering and Public Procurement
Ms. Lianne D'Souza
Research Fellow, CEERA
National Law School of India University
Government Contracts and the Law - 04

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Modes of Tendering

MODES OF TENDERING

Open Tender Enquiry
Default mode of tendering. E-procurement or traditional method.
To attract the widest possible competition by publishing the notice inviting tender on the designated websites and in the press (newspapers and trade journals).

Global Tender Enquiry
Usually involves contracts with foreign entities and payment in Foreign Currencies through Letter of Credit, it is aimed at inviting the participation of inter-alia foreign firms.
Typically in high value contracts - 100 crores or more works contracts or where insufficient number of competent domestic bidder - **GFR Rule 161**

Limited Tender Enquiry
LTE is a restricted competition procurement, where a preselected list of bidders is directly approached for bidding; bids from uninvited bidders are treated as unsolicited and are normally not entertained, except in special circumstances.
- **GFR Rule, 162**

Single Tender Enquiry
The selection by direct negotiation/nomination is called a single tender. In case of emergency, urgent need for work, work represents natural continuation of previous works, national defence, national security
- **GFR Rule, 166**

Award through Quotation
Use of quotations up to Rs Five lakh in each instance shall be adopted for procurement of readily available goods that are not specially produced to the particular specifications and for which there is an established market.

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As we have looked into the different kinds of bidding systems in our previous slide, in this segment of our discourse, we will be looking into the different modes of tendering that are permitted under the CVC manuals, as well as the General Financial Rules. There are 5 primary modes of tendering which are permissible under the law. The first and the most resorted to method is the Open Tender Enquiry Method.

This is a default mode of tendering, which can be done either through E-procurement on a specific procuring entities website, through the procurement portal, through traditional methods of auctioning, or tendering, through newspapers, journals, or any other such print media. Now, to attract the widest possible competition by eligible candidates the notice in writing tender is generally published on the websites of the procuring entity or in any press or print media.

The second kind of or second mode of tendering is a global tender inquiry. Now, as the name suggests, it is usually followed in those kinds of contracts, where one of the contracting parties is

a foreign entity. This is usually in cases where the payment is made in foreign currencies through letters of credit, and it is aimed at inviting participation from foreign firms or global participants who are not Indians.

Typically, in high-value contracts, which are generally rupees 100 crores or more, especially in terms of works contracts or where there is an insufficient number of domestic bidders, Global Tender Enquiry is the preferred mode of tendering. Under the GFR rules rule 161 pertains to global tender inquiry, and it provides court procedures in this regard.

The third mode of tendering is a Limited Tender Enquiry or LTE for short. As the name suggests, it is a restricted or limited competition procurement, where a certain pre-selected list of bidders are directly approached for bidding, and these bids are usually taken up for evaluation or scrutiny. Bids from uninvited bidders are generally treated as unsolicited and are not entertained except in certain special cases.

The other mode of tendering is a Single Tender Enquiry or what may be called direct procurement. In this kind of this mode of entering the selection is done through direct tendering or direct negotiation or nomination and is called a single tender. In case of emergency or urgent need for work. Work represents a natural continuation of previous works. In cases of strategic national security or national defense, the single tender inquiry is generally the preferred mode.

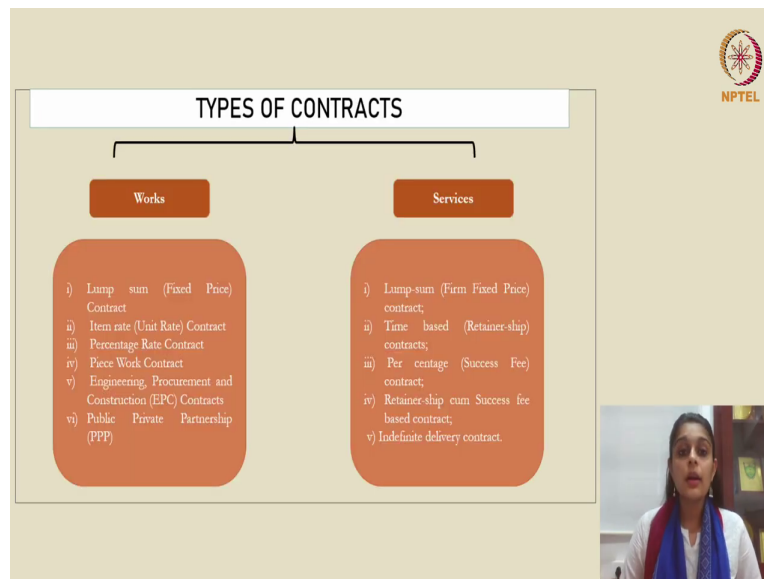
The last mode of tendering is an Award through Quotation. Now, the award through quotation is generally used for goods contracts, and these quotations are generally a preferred mode of tendering, where the value of the contract or where the value of the subject matter being procured is up to rupees 5 lakh.

So, as you can see, the value of the tender or the value of the contract is quite small or quite limited. In such instances, they are usually made available for readily available goods that are not specially produced and are usually made available for certain particular specifications of the contract. The award for quotation is also generally given out by procuring entities for certain goods, where there is already an established market.

Furthermore, award through quotation as a mode of tendering is usually adopted where the procurement of readily available goods is not specially produced or where there is no established market for such kind of goods that is being availed by the procuring entity.

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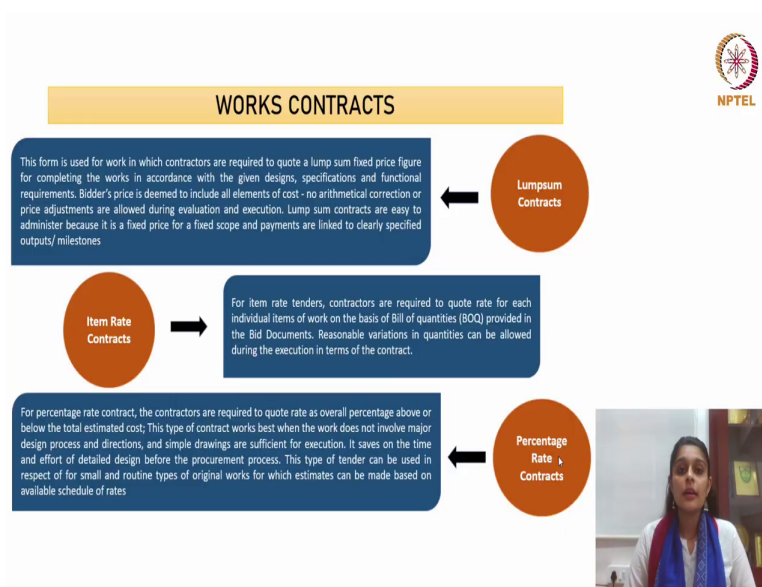
Types of Contracts



Moving on, let us look into the type of contracts that are generally permitted, or are generally followed or entered into by procuring entities and are also recognized by the Central Vigilance Commission. As you can see on the screen, the types of contracts vary in terms of the subject matter of a given contract. It can depend on whether the contract is for a works contract, a services contract or a contract for goods.

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1. Work Contracts



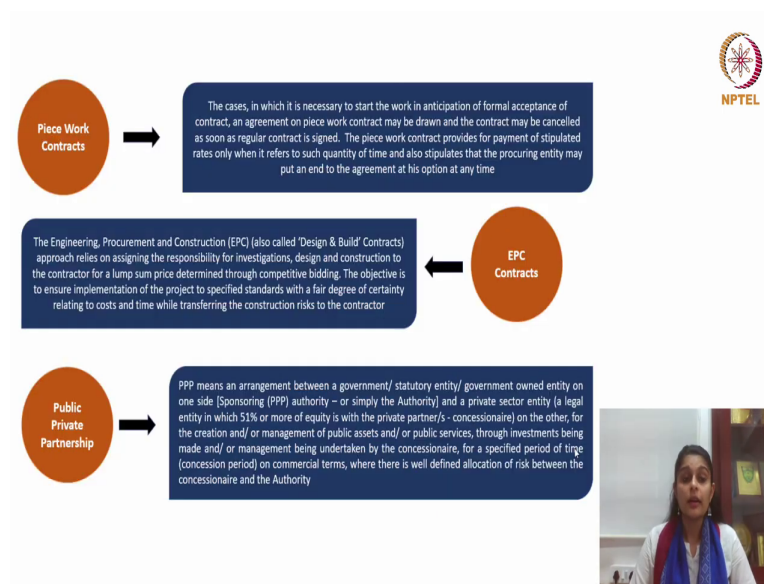
In the context of works contracts, there are preliminary 6 contracts which are typically entered into by procuring entities in the government. The first kind of contract is Lumpsum contract. Now, as the name suggests, this form of contract is typically used for work in which the contractors are required to quote a lump sum fixed price figure for completing the work in accordance with the given descriptions in a tender document. So, this can include the designs, specifications, and technical and functional requirements of a given contract. The bidder's price is deemed to include all elements of the cost and there is no arithmetical correction or any price adjustment that is allowed during the course of evaluation, or even execution of the contract. Now, lumpsum contracts are generally easy to administer, because there is a fixed price that is quoted for a given scope and the scope also is a fixed scope of a contract. And when it comes to making payments, the payments are clearly linked to specified outputs or specified milestones. So, therefore, lumpsum contracts are usually the preferred mode of contract for any works that are being allotted by government entities.

The second kind of contract or in works contract is an Item Rate contract. Again, as the name itself suggests, for item rate contracts or item rate tenders, the contractors are required to quote a rate for each and every individual item of work on the basis of the bill of quantities provided in a given bid document. So, there might be possible variations at some point in time, based on price

escalation. However, this will be decided at the time of executing the terms and conditions of the contract. Item rate contracts are usually preferred in those instances, where the inputs or where the variables are generally subject to certain changes or price escalations.

The third type of contract in works contracts is Percentage Rate complex. Now, percentage rate contracts are usually employed or usually utilized, where the contractors are required to quote rates as an overall percentage over and above or below the total estimated cost. Now, this type of contract usually works best when the contract or the work does not involve any major design processes or directions from the contracting agency and just simple directions in the form of drawings are sufficient to execute the contract. The benefits of such kind of contract are usually that it is always time-saving, and it does not involve or does not require too much effort in terms of detailed designs. So, usually, in the case of construction contracts, this type of tender is preferred. Now, this type of tender can also be used in respect of small and routine types of original works, where the estimates can be based on certain schedules of rates which are pre-estimated.

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The next kind of contract is Piecework contract. These are usually used in those cases, where it is necessary to start work in anticipation of any formal acceptance of a contract or in any agreement on a piece of piece work contracts that may be drawn up and then later on the contract may be cancelled as soon as a regular contract is signed. So, piecework contracts are usually considered

to be temporary contracts and they provide for payment of stipulated rates only when it refers to such quantity of time and also stipulates that the procuring entity may put an end to the agreement at his option at any time. So, piecework contracts are technically short-term contracts, which are usually entered into when there is any intermediate work involved.

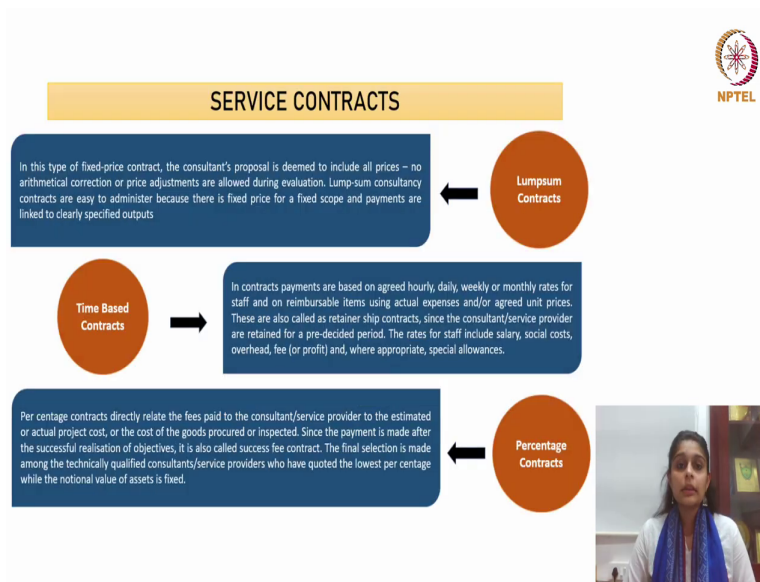
The next and most important kind of contract is EPC or Engineering, Procurement and Construction contracts, which are also called Design and Build contracts. Now, these types of contracts generally rely on assigning the responsibility of right from investigation designing and constructing a given work to the contractor for a lump sum price, which is determined through competitive bidding processes. The objective of these kinds of contracts is to ensure complete implementation of the project or the work so assigned to ensure specified standards of a fair degree of certainty relating to the costs and times at the time of transferring the construction risks to the contractor. So, EPC contracts are generally considered to be holistic kinds of contracts where the contractor is generally vested with higher responsibility under the terms and conditions of the contract.

The last kind, and which is most prevalent in a long-term and large construction contracts are Public Private Partnerships. Now, PPP generally means an arrangement between a government or statutory entity or a government-owned entity on one side, which is generally called a sponsoring authority and on the other side, there will be a private sector entity. Usually, a legal entity in which 51 per cent or more of the equity is with private partners or private concessionaires.

Now, these types of contracts are generally for the creation or management of public assets or public services through investments which are being made or managed or undertaken by the concessionaire or in this case, a private entity for a specific period of time. And here there is a well-defined allocation of risks between the government entity or the authority and the concessionaire or the private entity.

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2. Service Contracts

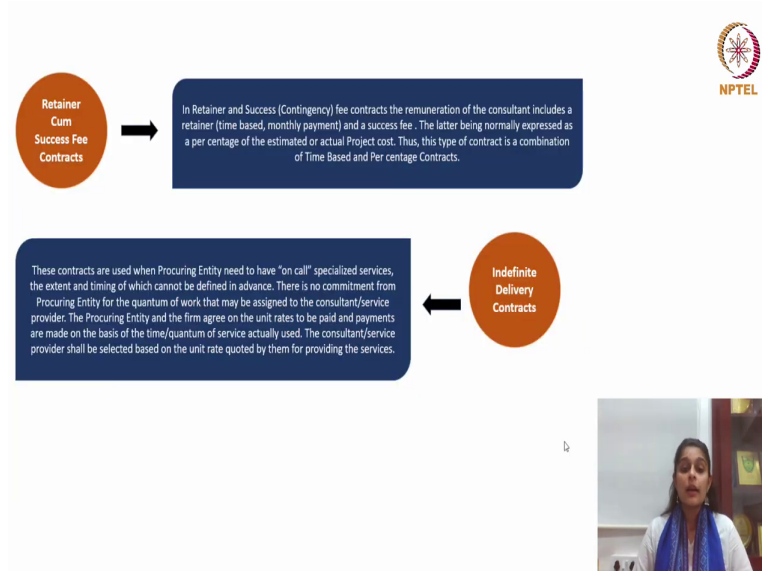


Now, let us look at the kinds of contracts within the context or category of service contracts. The first category of service contracts is Lumpsum contracts. In this type of fixed price contract, the consultant's proposal is usually deemed to include all prices of the contracts and there is no correction of any sort either arithmetical or price corrections that are allowed during the scope of evaluation or even scrutiny of the tenders. Now, lump sum consultancy contracts are usually easy to administer because there is a fixed price for a given fixed scope and the payments are also clearly linked to specific outputs predetermined in the contract.

The second category of service contracts is Time-Based contracts. As the name suggests, in these kinds of contracts, the payments are usually paid on an agreed hourly, daily, weekly or monthly rate. And this clearly shows that the payments are linked to a time-based pre-agreement. And these payments are usually made for staff and reimbursable items using actual expenses or unit prices. They are also called retainership contracts as a consultant or the service provider is retained for a pre-agreed or pre-decided period. The rates for staff usually include their salary, their wages, their social costs, any overhead costs, any fees or profits and in case of any special exemptions or special allowances carved they might also be entitled to certain kinds of emoluments.

A percentage contract, which is the third category, third category of contracts directly relates to the fees that are paid to the consultant or the service provider to the estimated or actual project cost. And this can also be in relation to the estimated cost of the goods procured or the goods inspected. In these kinds of contracts, since the payment is made after the successful completion or realization of all the objectives, it is also called a success fee contract, because it is directly linked to the success of the execution of the contract. So, the final selection in this kind of contract is typically made among very technically qualified consultants, or technically skilled service providers who have quoted the least percentage while the notional value of the assets has been fixed.

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The next type of service contract is Retainer cum Success Fee contracts. Now, in these kinds of contracts, the remuneration of the service provider or the consultant generally includes a retainer fee, which is either based on a time period or monthly payment of a fee and this is accompanied by a success fee. So, the success fee is usually expressed as a percentage of the pre-estimated project cost. Therefore, this type of contract is a combination of both your time-based contracts as well as your percentage-raised rate contracts.

The last category of service contracts is the Indefinite Delivery contracts. Now, these contracts are used when procuring entities I need to have “on call” specialized services. So, it is for

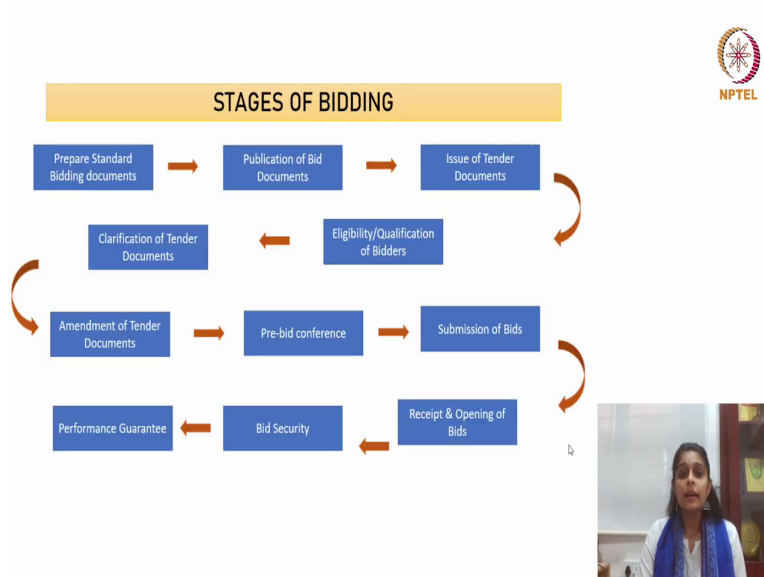
technical or special talents required, and the extent and timing of such contracts usually cannot be determined or defined in advance.

So, there is no commitment per se from the procuring entity for the quantum of work that they would require from the consultant or I would say contracting agency or contracting entity, and there is no commitment in terms of the work that may be assigned to the consultant or the service provider.

So, the procuring entity and the firm both agree on unit rates to be paid and these payments are usually paid on a time basis or on the basis of the amount of service that is rendered by the service provider. In these kinds of contracts, because they are indefinite delivery, the consultant or service provider is usually selected on the basis of the unit rate quoted by them for providing the services. So, service rate contracts, or indefinite delivery rate contracts are usually on a continuous basis, and they are judged on the basis of certain unit rates quoted by the service provider.

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Stages of Bidding



In this segment of our discourse, we will be looking into the stages of bidding before a contract has been executed with a contracting party. We will be dealing with each of these stages in detail in the coming slides. But just to give you an overview, the typical stages in the bidding of the

government procurement process generally start with the preparation of standard bidding documents.

This is followed by the publication of bid documents on given websites on Central Public Procurement Portals or the State Public Procurement portals or through print media and the press. Following this, the tender documents are issued to eligible candidates. This is followed by gathering information on the eligibility or qualification requirements of bidders.

Once the documents have been submitted by the bidders, clarifications of tender documents are sought. This is followed by any amendment of tender documents, after which a pre-bid conference is typically held and then the final bids are submitted to the procuring entity. After the bids have been submitted, the procuring entity will have to follow the required procedures of receiving and opening the bids in a given format. This is accompanied by a bid security. Lastly, in order to secure the entire bid process, a performance guarantee is typically required to be provided by the procuring entity.

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a. Standard Bid Documents

Standard Bid Documents - What should be available?

- Volume 1**
 - i) Notice Inviting Tenders (NIT)
 - ii) Section I Instructions to Bidders (ITB) and Appendix to ITB (AITB)
 - iii) Section II General Conditions of Contract (GCC)
 - iv) Section III Special Conditions of Contract (SCC)
- Volume 2**
 - i) Section IV Technical Specifications
- Volume 3**
 - i) Section V Forms of Bid
 - ii) Section VI Bill of Quantities
 - iii) Section VII Standard Formats: Bid Security, Performance Security, Advance Payment Security, Form of Agreement
 - iv) Section VIII Schedules for Supplementary Information
 - v) Section IX Sample Forms for updating qualification information
- Volume 4**
 - i) Section X Drawings
- Volume 5**
 - i) Section XI Documents to be furnished by the bidder

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Let us look at the first stage of the bidding process. The first stage generally involves issuing standard bid documents, which typically contain every possible comprehensive information to the bidders that pertains to the contract at hand. The standard bid documents may be devised

according to the discretion of the procuring entity however, typically, standard bid documents generally involve the following information. It is pertinent to note that, in order to ensure transparency, the procuring entity must provide all information necessary for the bidder to provide their technical and financial qualifications.

Therefore, as per the CVC manual, the standard bid documents generally involve the following information. In Volume 1, the standard bid document necessarily involves the notice inviting tenders, which gives information pertaining to the scope and objective of the given contract. This is followed by specific instructions to the bidders accompanied by general conditions of the contract and special conditions of the contract.

Now, special conditions of a contract generally refer to those conditions which are over and above the general conditions, special conditions generally override the general conditions in the context of certain technical requirements. Following this Volume 2 specifically provides for technical specifications, if the contract relates to certain complex techno-commercial matters, technical specifications, either in terms of design, in terms of technical requirements, must be necessarily provided to the bidders in the bidding documents.

Following the technical specifications, certain information that the bidders might find necessary in providing their technical bids or financial bids must be given in the form of certain standard documents. These generally include forms of bids, bills of quantities, and certain standard formats required to be adhered to, in terms of either the bid security or performance security or any advance payment.

And when there is certain additional information such as supplementary information relating to highly technical matters schedules for supplementary information can also be included and sometimes, sample forms for updating certain additional qualifications may also be provided. Where the contract or where the tender document requires certain especially works contracts where they require certain specific information relating to certain outlines or designs or drawings may also be required.

In the case of especially construction of works contracts, drawings of a given contract or drawings of a given scope of work are also provided. Lastly, documents to be furnished by the

bidder such as their income certificate, incorporation certificate, certificate of insolvency, declaring that they are not insolvent as such other documents are required to be furnished by the bidder.

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b. Publication of Bid Documents



Publication of Bid Documents

- Notice Inviting Tenders can be published through newspaper advertisements or through E-procurement portals or through the concerned Ministry/Department's website.
- In case of newspaper advertisements advertisement should also consist of the link of website from where the detailed advertisement and bidding document can be seen and downloaded.
- Individual cases where confidentiality is required, for reasons of national security, would be exempted from the mandatory e-publishing requirement.
- In case of bid documents - for Central Government Departments - It is mandatory for all Ministries/ Departments of the Central Government, their attached and Subordinate Offices and Autonomous /Statutory Bodies to publish their tender enquiries, corrigenda thereon and details of bid awards on the **Central Public Procurement Portal - GFR Rule 159**.

(Department of Expenditure Notification - 2011)

- If the department has its own website/ e-Procurement Portal, it should also publish all its advertised tender enquiries on such website/ Portal also





The second stage relates to the publication of bid documents. Typically, the notice inviting tenders is required to be published through certain print media such as newspaper advertisements, E-procurement portals of the government, or the concerned procuring entity's websites such as the ministry or department's website.

Now, in the case of newspaper advertisements, the advertisement should consist of a link to the website from where the details of the advertisement or the bidding documents can be secured or can be seen and downloaded. Furthermore, individual cases where confidentiality is required, for various reasons such as national security or any strategic purposes of the state, such cases would be exempted from mandatory E-publishing requirements.

Now, in the case of bid documents and their publication for central government departments and ministries of the central government, it is mandatory for all such ministries and departments and their attached subordinate offices including autonomous and statutory bodies to publish their tender inquiries including bid documents or the corrigenda to the same in specified formats on

the central public procurement portal, such a mandate has been specifically and explicitly enshrined within the General Financial Rules under Rule 159.

As per the notifications issued by the Department of Expenditure, if a department has its own website or E-procurement portal, for instance, the Government of Karnataka may have its own state E-procurement portal, then in such cases, bid documents have to be necessarily published or advertised on such websites or portals as well.

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c. Eligibility of Bidders

The slide is titled "Eligibility of Bidders" and features the NPTEL logo in the top right corner. The main content is a diagram titled "BASIC RULES OF SETTING ELIGIBILITY CRITERIA - GFR Rule 172". This diagram shows four blue hexagonal boxes: "Transparency", "Non-Arbitrariness", "Competition", and "Fairness", all connected by lines to a central orange box. To the left of the diagram, there are three bullet points: the first states that eligibility criteria can include general requirements like experience and technical capability; the second specifies that for services, criteria should include core business, experience, and qualifications; the third notes that for goods, criteria should not require specific trade marks or brands, referencing GFR Rule 144. A small video inset in the bottom right shows a woman speaking.


When we look at providing eligibility criteria for bidders, it is crucial for the procuring entity to provide specific information or specific requirements, which meet the eligibility criteria. Now, the criteria for eligibility are typically provided in the notice inviting tender, and the criteria or qualifications to be met by the bidders generally include requirements such as minimum level of experience, past performance, technical capacity or capability, their manufacturing facilities, financial position, and the like.

For procurement of services eligibility criteria typically include their core business strategies, their core business functions, years of business and experience qualifications in the field of assignment, and any technical or managerial experience. In the context of procuring goods, the eligibility criteria should not indicate a requirement for particular brand names, trademarks, trade

names, or any such indication that hints at a particular organization, institution, supplier, or provider.

Now, this has been specifically enshrined under the general financial rules under Rule 144. This means that when procuring entities call for bidders or issue notice inviting tenders, there should be no discrimination by providing specific information requiring a particular brand name, trademark or trade name. Under the general financial rules, there are specific rules for setting eligibility criteria and this includes the fact that the eligibility criteria must ensure transparency, competition amongst (())(24:50) fairness in the bidding process, and non-arbitrariness.

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EXAMPLE OF ARBITRARY ELIGIBILITY CRITERIA

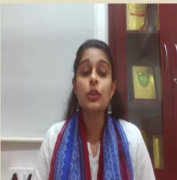
◦ **Resource Telecom and Anr v. Navodaya Vidyalaya Samithi (2021)**

Facts: NVS issued invitation to tender for supply of 68,940 tablets on the online trading portal. The essential eligibility condition was that is that the bidder should have the stipulated past experience of dealing in "same or similar category products". Other conditions included supply least 60% of the required tendered quantity/ units in one financial year, in the preceding three years from the date of tender, to any Government or Public Sector Undertakings (PSUs) of "same or similar category products" as that of tablets. It was also required that 35 % of the tender quantity units must have been executed as a single order in one financial year.

The petitioner claimed its past experience on the basis of the supplies made by it of mobile phones and laptops to various Governments and Public Sector Undertakings. The bid of the petitioner was rejected for 'technical mismatch' on the reason that the does not qualify the past performance criteria, as the work orders for smart phones, laptops, aadhar kits, power banks, etc. are not considered as same or similar category products of tablets

Issue: Whether Resource Telecom fulfilled the eligibility criteria?

Ruling: The exclusion of tablets from 'same or similar category of products' is unreasonable against the principles of fair play. NVS cannot exclude from consideration, the past performance of the petitioner in respect of "same or similar category Products" as Tablets, and mobile smart phones fall in the similar category products, of the category to which Tablets belong



To give you an example of what constitutes an arbitrary eligibility criterion let us look into a case law. In the case of Resource Telecom and another v. Navodaya Vidyalaya Samithi, the court looked into the importance of defining eligibility criteria in a very comprehensive manner. The factual matrix of this case is such that Navodaya Vidyalaya Samithi, NVS for short, had issued an invitation for tender for the supply of about 68,940 tablets on the online trading portal.

The essential eligibility criteria were that the bidder should necessarily have the stipulated past experience in providing or dealing with the same or similar category products. Other conditions also included the supply of at least 60 per cent of the required tendered quantity or units in a given financial year in the preceding 3 years from the date on which the tender has been issued

and this tender should have been given to any government or public sector undertaking, specifically in the context of same or similar category products as that of your electronic tablets.

Furthermore, the tender document also stipulated that 35 per cent of the tender quantity units must necessarily have been executed as a single order in 1 financial year. Now, the petitioner had claimed that its past experience also included supplies made by it in the context of mobile phones, laptops and other such gadgets to various governments and public sector units.


So, by its interpretation of the term same or similar category products, the petitioner had believed that it had come within the eligibility criteria provided by NVS. However, in this case, the bid of the petitioner was rejected for a certain technical mismatch on the grounds that it did not qualify past performance criteria as the work orders of smartphones, laptops, power banks, and other such products were not deemed to be considered as same or similar category products as that of electronic tablets.

Now, this decision made by NVS was challenged by the petitioner. And when this matter had come before the court of law, the issue was whether the resource telecom had fulfilled the eligibility criteria in terms of past experience. So, what did the court hold in this particular case, the court held that the exclusion of tablets from the category of same or similar category of products is unreasonable against the principles of fair play.

Now, applying a beneficial interpretation, the court held that NVS cannot exclude from its consideration the past performance of the petitioner in respect of same or similar category products, such as tablets, and mobile smartphones or laptops and the court held that smartphones, laptops and such avail electronic gadgets would also fall within the category of same or similar category products as that of tablets and therefore, the court held that the bid by Resource Telecom must necessarily qualify and fulfill the tender invited by NVS.


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d. Clarification and Amendment to Bid Documents



Clarifications and Amendments to Bid Documents

- All clarifications with respect to the Bid Documents must be sent by the bidders before the date specified in the tender document
- Responses must be sent in writing regarding the clarifications sought prior to the date of opening of the tenders.
- Copies of the query of any bidder and clarification issued must be sent to all prospective bidders who have received the tender documents – No information asymmetry
- The Procuring Entity may, whether at its own initiative or in response to a clarification sought by a prospective bidder, amend bid documents by issuing a **corrigendum**. The corrigendum shall be notified in writing by registered post/ speed post/ courier/ email to all known prospective bidders and shall be published on portal or the issuing entity's website.
- When can corrigenda be issued?
Any changes, modifications, amendments to the tender documents can be made **after the issue of the tender documents but before the opening of the tender.**



Once the bid documents have been published on the portal or through printed media, the next question that probably arises is whether the bidders are allowed to see any information in the form of clarifications or queries pertaining to the bid documents. Now, the General Financial Rules, as well as the CVC manuals clearly provide for a procedure whereby bidders can seek clarifications or queries pertaining to the bid documents.


Now, all clarifications with respect to the bid documents or the tender documents must be sent by the bidders before the date specified in the tender document. So, typically, the procuring entity generally provides an expressive date before which all bidders are required to submit their queries in the form of clarifications or seeking information.

Now, responses must be sent in writing regarding the clarifications sought, and they should be sent prior to the date of opening the tenders. Copies of the query of any bidder and clarifications issued must necessarily be sent to all prospective bidders who have received the tender documents and this is to ensure that there is parity of information and no information asymmetry. As government documents or government contracts unnecessarily tested on the touchstone of equality, every prospective bidder must necessarily be provided with all information including clarifications relating to bidding documents.

Now, procuring entities may either on your own initiative or in response to any clarifications sought by prospective bidders amend the bid documents by issue a document called as a corrigendum. Now, the corrigendum must be notified in writing and must be sent either by registered post, speed post, courier, or email, or it can be uploaded on the portal or the respective website of the procuring entity or the respective department or ministry of the government. The next question that arises is with respect to the time at which the corrigenda can be published or issued.

Now, any changes modifications, amendments or additions made to tender documents or bid documents in the form of a corrigendum or through multiple documents such as corrigenda can be made only after the issue of the tender documents, but before the opening date of the tender. Now, this is to ensure that all prospective bidders are given adequate time to make certain submissions or seek clarifications before the bids are submitted and the bids are open.

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When can corrigenda be issued?

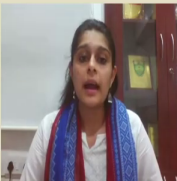
◦ *M/s Pratham Granite v. Mysore Minerals Ltd. (2015)*

Facts: MM issued a tender notification on 02.06.2014 in respect of raising of granite quarry from Mudgal through e-tender process. MM issued Letter of Intent on 06.09.2014 while accepting the bid of PG. On 18.02.2015, MM issued a corrigendum to modify the conditions in the Letter of Intent, stipulation that if these new conditions were not adhered to, the Letter of Intent would be cancelled. This was challenged by PG.

Issue: Whether MM was right in issuing the corrigendum modifying the tender conditions?

Ruling: The Court relied on the words used in the tender document which stipulated that *"Amendments / corrigendum in the tender documents, schedule, forms etc. may be done at any time by MML during the period between publication of notice and submission of bids of the tender on website"*

In this case, the aforesaid clause would operate prior to issuance of Letter of Intent and its acceptance. In other words, respondent can modify or alter any tender conditions before submission of bids of tender in between publication of notice and submission of bids of the tender on website. As the Letter of Intent was issued in favour of PG after accepting his bid and further, PG has submitted his acceptance of Letter of Intent. MM has no power to modify/alter the tender conditions through the corrigendum..



As we have seen in the previous slide, a corrigendum can be issued after the notification of the tender documents but before opening the bid documents, a question may arise as to whether the procuring entity can specify a stipulated time period for the issue of corrigenda. At this juncture, the case of *M/s Pratham Granite v. Mysore Minerals Ltd.* may bear relevance. The factual matrix of this case is such that Mysore minerals limited had issued a tender notification in June 2014, in respect of raising a granite quarry from Mudgal through an e-tender process.

Mysore Minerals issued a letter of intent on 6th September 2014, while accepting the bid of Pratham Granite in this respect, however, on 18th February 2015 Mysore Minerals issued a corrigendum to modify the conditions in the letter of intent, stipulating that if these new conditions were not adhered to, then the letter of intent could be cancelled, and the submissions made by Pratham Granite would not be considered. This was naturally challenged by Pratham Granite.

So, the issue that came before the court was whether Mysore minerals was right in issuing this corrigendum at that particular stage by modifying the tender conditions. By looking into the factual matrix of this case, the court relied on the words used in a tender document itself, which clearly stipulated that any amendments or corrigendum in the tender documents or its annexure, schedules, forms or such other attachments, shall be done at any time by Mysore Minerals limited during the period between publication of notice and submission of bids of the tender on website.

So, here, it is very important to note that as for the stipulations themselves, corrigenda were to be issued between the time period from publication of notice and submission of bids of the tender on the website. So, in this particular case, the court said that the clause would operate prior to the issue of the letter of intent and its acceptance. So, in other words, the respondent was able to modify or alter any tender conditions before the submission of bids by the bidders in between the publication of the notice and submission of bids by the bidders on the website.

In this particular case, as the letter of intent was issued in favor of Pratham Granite after accepting his bid, and further as Pratham Granite had submitted his acceptance of the letter of intent, Mysore Minerals did not have the power to modify or alter the tender conditions through the corrigendum. Therefore, in this particular case, it can be seen that it is very crucial that when it comes to issuing corrigenda in respect of the tender notifications or tender documents, it is very important for the procuring entity to ensure that such corrigenda are issued before accepting any tender documents or before the bids have been opened.