



Department of Electronics & Information Technology
Ministry of communications Information Technology
Government of India



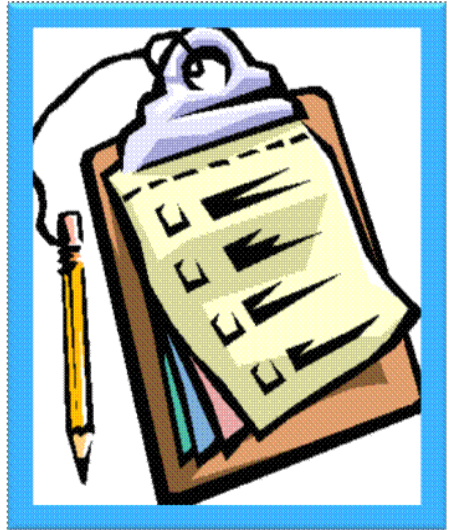
Bid Process Management

Contract Management



Agenda

- ❖ Key legal terms
- ❖ Pre-bid responses
- ❖ Evaluation of responses



Contract – General Conditions of Contract (GCC)

- ❖ Definitions of Terms used in the Contract
- ❖ Conditions precedent to contract signing
- ❖ Applicable Law governing the Contract
- ❖ Currency of the contract
- ❖ Language of the contract and administration
- ❖ Authorised representatives of the department and vendor
- ❖ Conditions on Taxes and Duties applicable for the contract, change in tax and duties and impact to project cost

Contract – General Conditions of a Contract

- ❖ Approach for modifications or variations to the contract
- ❖ Force majeure
- ❖ Conditions for suspension and/or termination of contract
- ❖ Liabilities of parties
- ❖ Dispute resolution approach
- ❖ Exit management
- ❖ Arbitration and courts for dispute resolution

Contract – Special Conditions of Contract (SCC)

- Do I have ownership & IPR on source code?
- Am I assured of post implementation support?
- How do I manage scope change?

- Is my warranty & insurance taken care of?
- Am I getting latest technology?
- Licensing Policies and upgrades
- Acceptance Testing

Software
Development

IT Infrastructure

Service Delivery

Public Private
Partnership

- Transfer and usage of govt facilities by vendor
- Addition / deletion of services
- Liability of government
- Working hours

- Does govt retain strategic control of critical infrastructure
- Exit Management
- Revenue sharing and safeguarding govt against excess payout

Contract: Key Legal Terms

❖ Limitation of Liability

- ❑ Typically capped at the contract value, except for death and IPR infringement

❖ Intellectual Property Rights (IPR)

- ❑ It should clearly specify who will be the owner of intellectual property created during the contract term
- ❑ Typically, intellectual property created before start of the engagement continues to be vested with the concerned stakeholders

❖ Payment Terms

- ❑ Number of days by which payment will be made by procurement entity
- ❑ Conditions precedent for payment of invoice
- ❑ Payment in case of termination and Force majeure conditions

Contract: Key Legal Terms

❖ Termination of Contract

- ❑ Defines the conditions under which a contract can be terminated by
 - Procurement entity
 - Vendor
- ❑ Specifies the minimum notice period to be served by either of the two parties
- ❑ Refers to payment terms section or specifies the extent to which payment will be made for the work completed at the time of issuance of termination notice

❖ Dispute Resolution

- ❑ The procedure of selection of arbitrator is specified
- ❑ The legal jurisdiction in which the disputes will be resolved is specified

Contract: Key Legal Terms

❖ Exit Management and Transition Management

- ❑ Specifies what all assets and documentation about the project will be transferred by vendor to procurement entity at end of the project
- ❑ Has a reference to whether procurement entity is authorized to hire in its pay-roll employees of the vendor who worked on the project
- ❑ Knowledge Transfer support to be provided by the vendor to a newly selected vendor, so as to ensure smooth transition

❖ Risk Purchase

- ❑ Addresses what if the vendor is unable to deliver the work / good / service as per the RFP
- ❑ Make a provision to allow Government to hire a new vendor to address the RFP requirement and specifies the amount to be paid by the vendor who could not deliver

Contract: Key Legal Terms

❖ Risk Purchase (cont'd)

- Additional costs quoted by the new supplier if any shall be borne by the initially selected supplier
- What about components already delivered?
- Will the increase in costs be capped at certain value
- What happens to components already accepted by purchaser?

Contract: Key Legal Terms

❖ Indemnification

- ❑ Defines the circumstances under which the vendor shall indemnify (defend) the procurement entity for litigations brought on by 3rd party on account of wrongful acts (such as infringement of Intellectual Property Rights) by the vendor
- ❑ Specify the person authorized to negotiate and finalize indemnification claims with 3rd party (i.e.) whether vendor or procurement entity is authorized
 - Regardless of who negotiates, settlement of the claims will be done by the vendor

Contract: Key Legal Terms

❖ Force Majeure

- ❑ An event which is beyond the reasonable control of a Party, and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances
- ❑ Issues addressed related to Force Majeure are:
 - Payment for work completed when Force Majeure condition is in place
 - Termination of contract
 - Service delivery obligations of the vendor
 - Informing about the Force Majeure condition

Referencing to Scope of Work

- ❖ Safest approach is to Annex the following documents to the contract:
 - ❑ Request for Proposal
 - ❑ Technical Proposal submitted by the bidder
 - ❑ Clarifications to Technical Proposal submitted by the bidder
 - ❑ Financial proposal submitted by the bidder
- ❖ Disclaimer to include: In case of any discrepancies between the RFP and the Technical Proposal, RFP will prevail over Technical Proposal submitted by the second party.

Pre-bid Response

- ❖ Do not respond queries bidder-wise
- ❖ Remove bidder name wherever specified in your response
- ❖ Classify questions and respond to the questions in sequence
- ❖ Do not be defensive and argue for why things are done the way they are done
 - ❑ Simply state the facts
- ❖ Addendum and Corrigendum shall over-rule the original RFP
 - ❑ There should be such a clause specified in the RFP

Evaluation of Proposals

- ❖ Pre-Qualification Proposals
- ❖ Every document required in RFP shall be provided by all the bidders
- ❖ Do not be lenient
- ❖ Strictly verify whether a bidder qualifies in all the criteria specified
- ❖ Pre-qualification is strictly “Yes” or “No”
- ❖ Even one “No” typically disqualifies the bidder

Evaluation of Proposals

- ❖ Pre-Qualification Proposals
- ❖ Clarifications can be sought from the bidders
- ❖ Establish with certainty whether a bidder actually qualifies or not
- ❖ Read the forms submitted by bidders and ascertain whether each form submitted is as per RFP requirements

Evaluation of Proposals

- ❖ Technical Proposal
- ❖ Make sure to read every detail specified in technical proposal
- ❖ Many times, bidders specify some deviations to RFP
 - ❑ Such deviations, when go unnoticed, and the bidder gets technically qualified, will imply that customer has accepted such deviations
- ❖ Identify all such deviations and ask bidders to withdraw the deviations
- ❖ Obtain all necessary documentation to evaluate objective criteria

Evaluation of Proposals

- ❖ Technical Proposal
- ❖ Read in detail the work plan and methodology submitted by bidders
 - ❑ Based on that provide grades for the same
- ❖ Get an impression on whether the bidder will actually be able to deliver the project as required
- ❖ Ask clarifications as required and obtain documentary evidence
- ❖ Ensure to keep a copy of the clarifications provided by the bidders
 - ❑ Especially withdrawal of technical deviations specified by the bidder

Evaluation of Proposals

- ❖ Commercial Proposal
- ❖ Re-do the mathematical calculations
- ❖ Look for deviations
 - ❑ If deviations are submitted, bidder shall give a letter withdrawing all the deviations

General Observations

- ❖ Don't be biased
- ❖ Don't appear biased
- ❖ Don't be Careless
- ❖ Internal discussions remain internal
- ❖ Enable closure
- ❖ The Red Dot Strategy
- ❖ Present facts such that decision making is simplified