

# Law – Contracts for Works

The ideas below that I have outlined are just based on my rudimentary observations of what is happening.

Please use my feedback form and I will include your suggestions also.

I am sure that if enough thought was put into it by experts, we could figure out a proper way for contracts for works that was fair and just to the contractors, but more importantly fair and just to the public taxpayers to whom the contractors must be held accountable.

**The below conditions apply to all contracts for large works either civil and infrastructure, electrical, telecom, information technology, healthcare, education and any other works.**

For all works, especially large works, the first thing these governments should do is get rid of lowest price based selection, or rather selecting vendors solely on price.

Price based selection makes the vendors cut corners.

Either they under quote and cut corners later, or they bribe and don't do the work at all.

There should be a base price below which nobody should be considered if they quote below that base price.

Qualifications, credentials, past experience and financial stability of the contractor should be considered and given higher weightage than price.

**In all contracts, at least 45% weightage must be given for qualifications, credentials, and past and experience, 20% for financial stability, 5% for warranty and defect liability period assurance, 10% for small business partnerships and only**

## **20% for price.**

Financial stability is not mentioned in terms of revenues, profits and book value, but in terms of positive networth certified by an accredited chartered accountant.

**There should also be a warranty and defect liability period given by the contractor for maintenance and defect rectification and also for minimum guaranteed life of the project.**

If a contractor is willing to give a higher warranty and defect liability period, there should be additional weightage.

If a contractor is willing to donate at least 50% of their profits to the True Temples in the state, they should get extra preference as a condition for higher quoted price but no relaxation for qualifications and financial stability and small business participation.

Even if a contractor has no significant past experience, but if they present a team of individuals or firms with requisite qualifications, the qualifications of the individuals or team should be given at least 50% weightage in the 45% allocated for the qualifications and credentials part of the contract.

Startups with equity funding less than Rs 15 crores can be given 100% weightage in the 45% allocated for the qualifications and credentials part of the contract.

Startups with equity funding less than Rs 15 crores can be given can be waived from the 20% weightage for financial stability if they can prove they will get assured funding to complete the job upon award of the contract.

But there should be no relaxation in the rest of the weightage for financial stability, small business participation and warranty and defect liability for other experienced vendors.

In fact if the contractor has a stable credit history and no

default history of at least 8 years to banks, employees, vendors and subcontractors, then loans should also be extended to them or they should be allowed to raise money from the stake holders or the public to finance the project.

All government projects must invite a minimum of 3 bids.

Bids can also be received on an unsolicited sole source basis from Startups and Small businesses and then put to Swiss Challenge to award the contract.

Qualified Startups are those with equity market value less than Rs 15 crores.

Qualified small business are those with turnover less than Rs 15 crores or net profits less than Rs 5 crores.

**In no event can a government give a sole source contract, even to government owned contractors and consultants.**

Government contractors and consultants should be evaluated on the same platform as private contractors and consultants while participating in government project bids.

All private consultants and contractors who bid for government projects should not have any hidden business or family relationships to the government client and even to the ministers in that government department.

If these private firms do have any business or family or other personal connections to the government client, then they should fully disclose this in advance, and no associated and interested government official of that department should be involved in the project evaluation or award or execution.

All evaluations for bids must be completely transparent and posted on the public RTI website.

After the bid is awarded all written, email and phone and personal communication of the bidders with the government

clients should also be posted on the government RTI website.

All meeting minutes for any sort of meeting (verbal, personal, teleconference, email, messaging, whatsapp etc) between the bidder and the client must be documented and posted on the government RTI website.

In the event it is found that some communication is hidden and not disclosed, then the defaulting bidder must be blacklisted for 1 year and the defaulting government employee must be suspended for 1 year with no salary.

In the event it was found that the communication was hidden because it influenced or manipulated the evaluation, award or execution of the work, then the defaulting bidder must be blacklisted for 2 years and the defaulting government employee must be suspended for 3 years with no salary, and their pension should be cancelled.

Any bribe offered by the bidder to a government official or elected representative or other government or even non-government company official must have a penalty of 10 times the amount of bribe paid applied to the bidder.

The contract should be cancelled and the bidder should be blacklisted for 5 years.

Any bribe accepted by the government or non-government official must have a penalty of 10 times the amount of bribe recovered from the corrupt government official.

They should be subject to the law for corruption.

In the event it is found that some senior level administrator, minister or other persons pressured the government department and influenced the bid, then an amount of 50% of the contract value must be recovered from this influencing person.

They should be subject to the law for corruption.

In the event the corrupt bidders or officials or influencers are unable to pay the penalty, their assets should be auctioned to recover the amount.

If the firms cannot pay, the assets of the firms should be taken over by the state for the portion of the amount due.

This can also be in the form of a share holding – the state will get a share in the firm and be entitled to its profits and assets.

No awarded bidder can prevent other bidders to go to court and challenge the award of the contract if the other bidders feel there is malpractice in the award.

If any contractor has been blacklisted in the past they should not be considered for contracts for at least 4 years even if they quote the lowest price.

Contractors should be supervised by independent consultants especially for large works.

These independent consultants should not have any financial investment, loan or other financial associations with the firms they are supervising.

These independent consultant firms should also not have any family connections to the firms they are supervising.

In no event can an independent consulting firm hire a director, management partner or senior level technical leader from the contractor firms they are supervising.

In the same manner no contractor firm can hire a director, management partner or senior level technical leader from the independent consultant firms supervising them.

If there is any collusion between these independent consultants and the contractors, then they both should be blacklisted from any future contracts for 7 years and twice

the amount that they have billed to the contract should be recovered from them.

If they cannot pay, the assets of both the companies should be taken over by the state for the portion of the amount due.

This can also be in the form of a share holding – the state will get a share in the company and be entitled to its profits and assets.

Sometimes a consultant may not have control over all its staff, the collusion may not be systemic, but individual based, as a contractor can bribe an individual.

If this occurs, then the contractor should be disqualified from the contract, made to pay twice the contract amount paid to them, and the employee of the consultant who took the bribe should be disqualified, and their entire salary for twice the amount of time they spent on the contract and 10 times the amount they accepted as bribe should be recovered from them.

If that means that they have to seize their assets and auction it, then that too should be done.

For small firms run by bright experienced individuals but with little no capital, we should have a small business quota for such types of people and it should be made mandatory for all large businesses to include small businesses in their bids for projects.

A small business should be based solely on the number of people employed, ideally less than 15 people or whatever is applicable based on the sizing of numbers as suited for the profession.

A law firm with even 10 or more lawyers is considered a large sized firm.

A garment factory with 20 workers is considered a small firm.

In engineering consulting any thing less than 20 people is a small business, but in construction contracting anything less than 20 people is a small business so this number will vary according to the type of business.

Even if small businesses are selected, in no event should the small business have any financial investments, loans or personal family associations with the large businesses that they are partnering with.