

**AR. BISWARANJAN NAYAK**  
**PRESIDENT**

Ref. No. CA/28/2016/Manual(MOF)  
December 23, 2016

**Hon'ble Shri Arun Jaitely Ji**  
**Union Cabinet Minister of Finance**  
Government of India  
North Block, New Delhi – 110 001

**Subject : Revision of Manual on Policies and Procedures for Procurement of Consultancy and Other Services – reg.**

Respected Sir,

I would humbly like to invite your kind attention in the subject matter and to state that Department of Expenditure, Ministry of Finance, Govt. of India is revising the Manual for Procurement of Consultancy and Other Services.

The existing rules/ procedure prescribed insists Architects/ Professionals to submit lowest bids, submit earnest money and performance guarantee on the lines of Contractors/ Suppliers/ Manufacturers, to provide their professional services.

The Council of Architecture has sent its views/ comments on the Draft Manual for Procurement of Consultancy and Other Services. A copy of the same is attached herewith for favourable consideration and for prescribing specific Rules/ procedures for appointment/ selection of Architects / professionals in line with the Regulations framed by the Council in public interest.

I would request your goodself to kindly grant us an appointment to apprise you, in person, of the several issues that are affecting construction of public buildings and the profession of architects.

The Council of Architecture as a whole and Architectural fraternity shall remain grateful to you for this kind action.

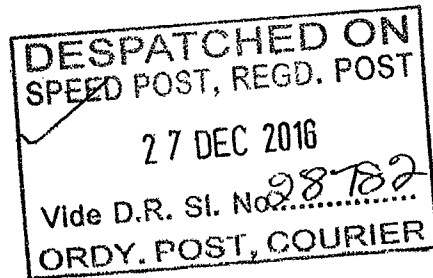
Thanking you,

Yours faithfully,

  
Biswaranjan Nayak  
President

Encl : As above





## **VIEWS / SUGGESTIONS OF THE COUNCIL OF ARCHITECTURE ON DRAFT MANUAL FOR PROCUREMENT OF CONSULTANCY AND OTHER SERVICES.**

### **PRELIMINARY:**

The Council of Architecture is established under the Architects Act, 1972 by the Indian Parliament and entrusted with the responsibility of regulating Architectural Education and profession in the country. A copy of the Architects Act, 1972 is attached herewith as **Appendix-A**.

The Architects Act, 1972 under the Sections 22 and 30 read with Section 45 of the Act, empowers the Council to prescribe by Regulations a code of professional conduct, etiquette and ethics for Architects. Such regulations shall have overriding effect over any law for time being in force in the country. Accordingly, the Council with prior approval of Central Government has prescribed Architects (Professional Conduct) Regulations, 1989, as amended from time to time.

The Regulation 2(1) (xiv) of the said Regulations provides that an architect shall not prepare designs in competition with other Architects for a Client without payment or for a reduced fee (except in a competition conducted in accordance with the Architectural Competition Guidelines approved by the Council).

Further, Regulation 2(1) (xii) provides that an architect shall observe and uphold the Council's conditions of engagement and scale of charges. Accordingly, the Council has prescribed Scale of Charges based on Type of Project/ Services and Scope of Work & Services.

A copy of the Architects (Professional Conduct) Regulations, 1989 is enclosed herewith as **Appendix-B**.

**Further, appointment/ selection of Architects being purely technical and professional in nature the standard procedure set out i.e. invitation of bids, insisting of earnest money/ security deposit and appointment of lowest bidder be not prescribed for Architects.**

The Council has prescribed Architectural Competition Guidelines for appointment of Architects in fair, transparent and in competitive manner. A copy of the same is attached herewith as **Appendix-C**.

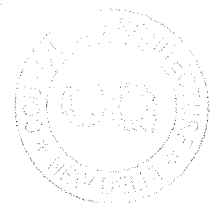
The above stipulations enable the Architects to stand upright and uphold the tenets of Good design by constantly upgrading their skills for the Society's benefits. Since Architecture is a skill based profession and cannot be linked with labour and machinery, where costs can be curtailed by mass use of machinery, etc, it was felt important by the Council to prescribe a minimum fee and define a Code of Professional Conduct.

### **VIEWS/ SUGGESTIONS:**

At the outset, it is submitted that this document covers in its ambit all services including professional, intellectual, consultancy and advisory services and all can be availed by different methods prescribed in the guidelines but no specific procedures have been laid down by selection/ appointment of professionals who are statutorily regulated i.e. Architects, Advocates, Chartered Accountants, Doctors.

The procedures for selection of a Contractor, Financial or Management Consultant or an IT Consultant have to be different than the procedures for appointment of Doctors, Advocates, Architects and Chartered Accountants.

While an ordinary consultant or supplier of service may be held financially or legally liable for negligence or deficiency of services, the statutorily regulated professionals like architects, doctors, advocates, Chartered Accountants are personally and professionally liable for the services provided by them and may lose their right to carry on the profession in case of a professional misconduct.



Further, in the bidding process Architectural Services are bundled as a part of the package while the bidders are usually not Architects, as per the eligibility criterion laid down in the Bid documents. However, the selection process is based on evaluation of Architecture bids (Cost of these services constitute very small component of the total project value), overlaid with the financial bids.

It is further stated that the Architectural Services are not being evaluated properly as no Architects are on the Review Panel and only Services are being evaluated, nor the best Designs are getting selected, since the financial component of the bids are also added in evaluation criteria for selection of the Successful bidders.

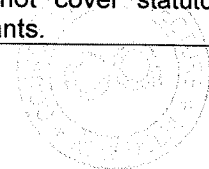
Thus, procedure of inviting bids and awarding works to lowest bidder be not prescribed for Architects and a separate procedure be laid down by procurement of Architecture and allied services.

The specific views/ suggestions of the Council of Architecture on the ***Draft Manual of Policies and Procedures for Procurement of Consultancy and other Services*** are as under:

Para No. and page number	Provisions in Manual on Policies & Procedures for Procurement of Consultancy and other Services	Proposed changes	Justification and reasons for suggestions/ comments
<p><u>Procurement Glossary</u></p> <p>v)</p>	<p>"Bid Security" (including the term 'Earnest Money Deposit' (EMD) in certain contexts) means a security from a bidder securing obligations resulting from a prospective contract award with the intention to avoid : the withdrawal or modification or an offer within the validity of the bid, after the deadline for submission of such documents; failure to sign the contract or failure to provide the required security for the performance of the contract after an offer has been accepted; or failure to comply with any other condition precedent to signing contract specified in the solicitation.</p>	<p>"Bid Security" (including the term 'Earnest Money Deposit' (EMD) in certain contexts) means a security from a bidder securing obligations resulting from a prospective contract award with the intention to avoid : the withdrawal or modification or an offer within the validity of the bid, after the deadline for submission of such documents; failure to sign the contract or failure to provide the required security for the performance of the contract after an offer has been accepted; or failure to comply with any other condition precedent to signing contract specified in the solicitation.  <b>No Bid Security be asked for Architectural and allied services.</b></p>	<p>The Architectural services are rendered by the Architects purely on the basis of their intellectual capacity, talent and sensitivity towards human needs and environmental concerns. The Architects are selected by a Technical Committee which before their selection ensures that the concerned architect has competence and capacity to execute and provide the desired services. Further, Architects are selected upon submission of best Concept Design / Drawings/ Models for the concerned project and their planning for execution of the same. Therefore, there can never be a case that the architects offering their services would the execution of contract.</p> <p>Further, architectural services are directly linked with the cost of project i.e. the concerned building; therefore because of EMD amount young and talented</p>



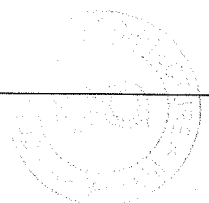
			<p>architects are discouraged to offer their services. Further, Architects of less experience &amp; competence may avail the privilege of quoting low fees and provide sub-standard designs causing huge loss to cost of project.</p> <p>Therefore, clauses (v), (xiii), (xiv), (xv), (xviii), (xix), (xxiii) be not made applicable to professionals like architects.</p>
Add new clause after Clause (ix)		(x) Expression of Interest (EOI)	EOI means inviting offers for supply of Consultancy services in accordance with the terms and conditions set out in the EOI document.
viii)	"Consultancy Services"	The Consultancy Services be divided into two categories i.e. services rendered by <b>statutory Consultants</b> such as Architects, Doctors, Chartered Accountants, etc. and services rendered by <b>non-statutory Consultants</b> such as Financial Consultants, Management Consultants, Civil, Electrical and other Engineering consultants, etc.	As services rendered by statutory consultants like Architects, Doctors, Chartered Accounts, Advocates, are regulated by a statute these be not clubbed with non-statutory consultants.
Page 18 clause 2.2.6	Punitive provisions	The punitive provisions laid down in Clause 2.2.6 are directly linked with bids of contractors, suppliers and other technology / labour based service providers.	Separate provisions have to be made for professionals like Architects, Doctors, Chartered Accountants, etc. in the form of liquidated damages, making complaint to concerned statutory body including debarring for provision of services in future.
Page 22 clause 2.4.	Grades of Debarment of suppliers/ contractors/ consultants/ services providers	This clause be not made applicable for statutory consultants.	Statutory consultants are accountable and liable for their professional conduct to the concerned regulatory body. Therefore, this clause should not cover statutory consultants.



<p>Page 30 Clause 3.4</p>	<p>Percentage (Success/ Contingency Fee) Contract</p> <p>3.4.1 Percentage (success/ contingency fee) contracts directly relate the fees paid to the consultant/ service provider to the estimated or actual project cost, or the cost of the goods procure or inspected. Since the payment is made after the successful realisation of objectives, it is also called success (or contingency) fee contract. The final selection is made among the technically qualified consultants/ service providers who have quoted lowest percentage while the notional value of assets is fixed.</p> <p>Due to risks and mitigations discussed below, these contracts are commonly used for appropriate architectural services; procurement and inspection agents.</p>	<p>This clause needs to be amended as it mandates selection of Consultants including Statutory Consultants based on lowest percentage of fee quoted.</p>	<p>When lowest bids are called for availing Consultancy services from architects, good architects may not participate to provide their services at rates other than prescribed by the Council of Architecture.</p> <p>Thus, this process most likely to result only in selection of poor standard designs that in turn, instead of saving in lakhs for the Government / Public Sector, might end up in creating losses in Crores. This in turn is also a lost opportunity for the Society to have the Best in Public Building Design.</p> <p>Therefore, Architects be appointed based on the fee structure prescribed by the Council of Architecture and as per Architectural Competition Guidelines of COA. The guidelines prescribed by the Council provide for selection of Architects purely on merit and based on quality of concept/ design/ proposal prepared by the architects.</p> <p>Thus, the four methods of selection i.e. LCS, QCBS, FBS and SSS be not applied to Architects and instead Architectural Competition Guidelines be adopted for appointment of architects.</p>
<p>Page 48 Clause 5.2</p>	<p>Shortlist of Consultants</p> <p>Table 1. Qualification criteria and their weightages</p>	<p>Past experience of the firm has been given 60% weightage, which results in monopolization of work and barring of new talents.</p> <p>Architecture is related to intellectual creativity,</p>	<p>In Architectural Services basically is not selection of Architect but selection of best design/proposal among the other designs submitted. The selection has to be done by persons who understand the design and</p>



		<p>innovation, cost effectiveness and originality. Every project is new and has its own features and complexities. Therefore, past experience should not be given 60% weightage.</p> <p>The Competition Guidelines of COA provide that in case an Architect, whose design is selected, is not having requisite experience and organizational capacity, he may be asked to associate with a senior architect.</p>	<p>its features and implications. Thus selection of Architect has to be done by a Committee/ jury comprising of Architects more than 50% of total number of jury members.</p>
Page 51 Chapter 6	Selection of Consultants by Competitive Process	<p>This entire process needs to be substituted with the Architectural Competition Guidelines laid down by the Council with suitable changes wherever required, for appointment of Architects for providing Architecture and allied services. Thus Table 2 at page 60 is not relevant for appointment of architects.</p>	<p>The selection of Architects should not be done by inviting technical and financial proposals.</p> <p>In fact in the selection of Architect, the fee should be adopted as per COA norms and design entries are invited from Architects based on inputs/ requirements of the client.</p>
Page 63 Clause 6.8	Selection of the winning consultant	<p>The various methods of selection prescribed hereunder i.e. LCS, QCBS and SSS should not be applied for selection/ appointment of Architects</p>	<p>The LCS, QCBS and SSS procedures are fit for availing services from non-statutory consultants. But statutory consultants need to be appointed on some basic standards and purely on merit and qualitative competition.</p>
Page 92 Para 4	Filling up the Financial Bid by the Bidders	<p>No financial bids be invited from Architects</p>	<p>Invitation of lowest bids would result in selection of poor standards of design and poor standard of building thus resulting in financial &amp; other tangible loss to the government and the nation as a whole.</p>



	Annexures	The various annexures prescribed accordingly needs to be amended / modified for selection/ appointment of Architects.	The annexures have been prepared on the assumption that Bids would be invited and those offering charging lowest fee would be appointed. Whereas the fees should be reasonably fixed as COA norms and those Architects whose design is best, cost effective and meeting other construction norms be shortlisted for selection of winning design.
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**CONCLUSION :**

Thus, the ***Draft Manual of Policies and Procedures for Procurement of Consultancy and other Services*** be suitably modified to provide a fair, transparent and competitive procedure for selection of architects rather than selection architects on the basis of lowest fees to ensure that Public Buildings get the best designs and Public Projects get implemented at the right price/ cost, thereby protecting the national interest. The Architectural Competition Guidelines prescribed by the Council are highly apt to be adopted for selection/ appointment of architects.

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