

Asia Pacific Electronic Procurement Network Project

Gap Analysis in the Bidding Documents as per requirements of RTPP Act, 2012 and RTPP Rules, 2013

(Selected Procuring Entities: ULBs, PWD, RUIDP, JMRC)

Desk Review

**Conducted By
Consumer Unity & Trust Society**

**Done by
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1. The Project

To carry out Gap Analysis in the bidding documents as per requirements of Rajasthan Transparency in Public Procurement Act, 2012 and Rajasthan Transparency in Public Procurement Rules, 2013 through desk review.

2. Scope of Work

2.1 The Scope of Work includes selecting active or recent bids for procurement of goods, works and services of the target procuring entities, viz. Urban Local Bodies (ULBs), Public Works Department (PWD), Rajasthan Urban Infrastructure Development Project (RUIDP) and Jaipur Metro Rail Corporation (JMRC) and analyse them through desk review for pointing out gaps in complying with the requirements of the Rajasthan Transparency in Public Procurement Act, 2012 (RTPP Act) and the Rajasthan Transparency in Public Procurement Rules, 2013 (RTPP Rules).

2.2 To give recommendations for bridging the gap.

3. Methodology

All the procuring entities of the State are required to upload their bids for procurement of goods, works and services valuing Rupees one lakh and above on the State Public Procurement Portal (SPPP) as per provisions of Section 17 of RTPP Act. This includes uploading of Notice Inviting Bids (NIB), Bidding Documents, corrigendum etc. Therefore, out of the active or recent bids of the target procuring entities on SPPP, some were selected for the subject project and desk analysis was done for finding out the gaps in complying with the requirements of RTPP Act and RTPP Rules.

4. Essential Requirements of RTPP Act and RTPP Rules to be complied with in bidding process

4.1 The RTPP Act essentially deals with the procurement process which as per section 2(xv) of the Act means the process of procurement extending from the issue of invitation

to pre-qualify or to register or to bid till the award of the procurement contract or cancellation of the procurement process, as the case may be.

4.2 The RTPP Act also empowers the State Government under section 16(2) and section 20(3) to prescribe standard terms and conditions of contract including its form. These sections read as follows:-

Section 16(2):- *The State Government may prescribe standard terms and conditions of contract which shall be incorporated in the procurement contracts entered into by procuring entities as applicable.*

Section 20(3):- *The State Government may prescribe standard conditions to be included in bidding documents including its form.*

The State Government in Finance (G&T) Department has issued a circular (circular No.3/ 2013 dated 04/02/2013) that till the standard bidding documents for procurement of goods, works and services are not notified (under above provisions of the Act) by the State Government for use, the existing bidding documents being used by the procuring entities may continue to be used subject to provisions of RTPP Act and RTPP Rules and inclusions of four essential annexures as follows:-

Annexure A: Compliance with the Code of Integrity and No Conflict of Interest

Annexure B: Declaration by Bidders regarding Qualifications

Annexure C: Grievance Redressal during Procurement Process - Appeals

Annexure D: Additional Conditions of Contract

4.3 Thus, the requirements of the RTPP Act and RTPP Rules regarding procurement of goods, works and services by procuring entities of the State may be grouped in three categories, i.e.,

I. Compliance with the general principles of procurement and appeals which have been spelt out in Chapter IIA and III of RTPP Act and relevant RTPP Rules;

II. Compliance with the bid process management as prescribed in Chapter V of RTPP

Rules; and

III. Using a bidding document which ensures compliance of all the requirements of RTPP Act and RTPP Rules.

4.4 General principles of procurement

The essential general principles of procurement have been spelt out in Chapter IIA of RTPP Act and relevant RTPP Rules are:-

Section 5. Determination of need for procurement

Section 7. Qualifications of bidders

Section 10. Documentary record of procurement proceedings and of communications

Section 11. Code of integrity for procuring entity and bidders

Section 12. Description of the subject matter of procurement

Section 14. Criteria for evaluation

Section 17. State Public Procurement Portal

Section 20. Contents of bidding documents

Section 22. Pre-bid clarifications

Section 23. Changes to bidding documents

The provision of appeals is contained in Chapter III of RTPP Act and rules 83 to 85 of RTPP Rules.

The compliance of section 5 on determination of need for procurement and section 10 on documentary record of procurement proceedings and of communications can not be checked in desk review. This requires local post audit of records.

4.5 Bid process management

The entire process of open competitive bidding has been prescribed in chapter V of RTPP Rules. It contains procedural details of the relevant sections of chapter IIA of RTPP Act on bid process management. Important aspects of the bid process management which are to be checked in the current review are described below:-

Rule 34. Description of subject matter of procurement

Rule 35. Criteria for evaluation of bids

Rule 36. Preparation of bidding documents

Rule 38. Qualification of bidders

Rule 39. Eligibility of bidders

Rule 40. Time frame for procurement process (only period of published could be checked. Further steps of procurement process can not be checked in desk review)

Rule 43. Notice Inviting Bids

Rule 46. Pre-bid clarifications

Rule 47. Changes in the bidding documents

Rule 48. Period of validity of bids

Rule 54. Withdrawal, substitution and modification of bids

Rule 60. Clarification of bids

Rule 64. Correction of arithmetic errors in financial bids

Rule 67. Price / purchase preference in evaluation

Rule 71. Information and publication of award

4.6 Format of Bidding Document (BD)

The contents of bidding document should be as required by rule 36 of RTTP Rules which reads as follows:-

Rule 36. Preparation of bidding documents. - (1) *Before issuing a notice inviting bids the procuring entity shall ensure that the bidding documents are ready for sale.*

(2) *The bidding documents shall have the following sections, namely:-*

- (a) *Notice Inviting Bids (NIB);*
- (b) *Instruction to Bidders (ITB);*
- (c) *Bid Data Sheet (BDS);*
- (d) *Qualification and Evaluation criteria;*
- (e) *Bidding Forms; and*
- (f) *Conditions of Contract and Contract Forms:*
 - (i) *General Conditions of Contract;*
 - (ii) *Special Conditions of Contract; and*
 - (iii) *Contract Forms.*
- (g) *Any other documents, as may be necessary.*

(3) *The bidding documents shall include the following, namely:-*

- (a) *instructions for preparing bids;*
- (b) *the criteria and procedures that shall be applied in the ascertainment of the qualifications of bidders;*
- (c) *the requirements as to documentary evidence or other information that must be submitted by bidder in proof of its qualifications;*
- (d) *a detailed description of the subject matter of the procurement, including but not limited to, technical specifications, plans, drawings and designs if relevant, the quantity of the goods, any incidental services to be performed, the location where the goods are to be delivered, the work is to be executed or the services are to be provided and the required time, if any;*
- (e) *the detailed procedure for presentation, opening, examination and evaluation of bids, minimum requirement, if any, with respect to technical, quality and performance characteristics that bids must meet in order to be considered responsive, and the criteria to be used by the procuring entity in evaluation of bids and determining the successful bid, including any provision for preference and any criteria other than price to be used and the relative weight of such criteria;*
- (f) *the terms and conditions of the procurement contract or the rate contract, to the extent they are already known to the procuring entity, and the contract or agreement form, if any, to be signed by the parties;*
- (g) *if alternatives to the characteristics of the goods, works or services, contractual terms and conditions or other requirements set forth in the bidding documents are permitted, a statement to that effect, and a description of the manner in which alternative bids are to be evaluated and compared;*
- (h) *if bidders are permitted to submit bids for only a portion of the goods, works or services to be procured, a description of the portion or portions for which bids may be submitted;*
- (i) *the manner in which the bid price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the goods, works or services themselves, such as any applicable transportation and insurance charges, customs duties and taxes etc.;*
- (j) *any requirements of the procuring entity with respect to the issuer and the nature, form, amount and other terms and conditions of any bid security to be provided by bidder submitting bid, and any such requirements for any security for the performance of the procurement contract or the rate contract to be provided by the bidder that enters into the procurement contract, including securities such as labour and materials bonds;*
- (k) *the manner, place and deadline for the submission of bids;*
- (l) *the means by which, bidders may seek clarifications of the bidding documents and a statement as to whether the procuring entity intends to convene a*

- meeting of bidders;*
- (m) the period of time during which bids shall remain valid;*
 - (n) the place, time and date for the opening of bids;*
 - (o) references to the Act, these rules and other laws and regulations directly pertinent to the procurement proceedings, provided, however, that the omission of any such reference shall not constitute grounds for appeal or liability on the part of the procuring entity;*
 - (p) the name, designation, address and e-mail address, if any, of one or more officers or employees of the procuring entity, who are authorised to communicate directly with and to receive communications directly from bidders in connection with the procurement proceedings, without the intervention of an intermediary;*
 - (q) any commitments to be made by the bidder outside of the procurement contract, such as commitments relating to the transfer of technology;*
 - (r) reference to the right provided to seek appeal of an unlawful act or decision of, or procedure followed by the procuring entity in relation to the procurement proceedings;*
 - (s) if the procuring entity reserves the right to cancel bid proceedings and reject all bids, a statement to that effect;*
 - (t) any formalities that shall be required once a bid has been accepted for a procurement contract or rate contract to enter into force, including, where applicable, the execution of a written procurement contract and approval by a higher authority or the State Government; and*
 - (u) any other requirements laid down by the procuring entity like detail project report, concession agreement, design, plans, etc. in conformity with the Act and these rules relating to the preparation and submission of bids and to other aspects of the procurement proceedings.*

(4) The procuring entity shall provide the bidding documents to each bidder that responds to the invitation to bids in accordance with the procedures and requirements specified therein. If pre-qualification, empanelment or registration proceedings have been engaged in, the procuring entity shall provide a set of bidding documents to each bidder that has been pre-qualified and that pays the price, if any, charged for that document.

4.7 Notice inviting bids (NIB)

The NIB for procurement of a subject matter of procurement should contain details as prescribed in rule 43 of RTPP Rules which reads as follows:-

Rule 43. Notice Inviting Bids.- (1) A procuring entity shall solicit bids in open competitive bidding and two stage bidding, or, where applicable, applications for pre-qualification by causing an invitation to bid or pre-qualify, as the case may be, to be published on the State Public Procurement Portal and on its own official website, if available. An abridged notice shall also be published in newspapers of adequate circulation, as prescribed in sub-rule (6) and (7) of this rule.

(2) An invitation to bid to be published on the State Public Procurement Portal shall contain, at least, the following information, namely:-

- (a) the name and address of the procuring entity including e-mail address, if any;
- (b) a summary of the principal required terms and conditions of the procurement contract or rate contract to be entered into as a result of the procurement proceedings, including the nature, quantity, time and place of delivery of the goods to be supplied, the works to be executed, or the services to be provided;
- (c) whether the bid procedure shall be conducted in a single stage or two stages and whether it is to be presented simultaneously in two envelopes (one envelope containing the technical, quality and performance characteristics of the bid and the other envelope containing the financial aspects of the bid);
- (d) the criteria and procedures to be used for evaluating the qualifications of bidders;
- (e) the procedure of obtaining the solicitation documents and the place from which they may be obtained;
- (f) the price, if any, charged by the procuring entity and the mode of payment for the solicitation documents and the amount of bid security and its form;
- (g) the manner, place and deadline for the submission of bids;
- (h) right of the procuring entity to cancel the bid process and reject any or all of the bids;
- (i) the time, date and place of opening of bids;
- (j) whether any of the items of procurement are reserved for a specific category of bidders; and
- (k) any other important information.

(3) An invitation to prequalify to be published on the State Public Procurement Portal shall contain, at least, the following information, namely:-

- (a) the name and address of the procuring entity including e-mail address, if any;
- (b) a summary of the required principal terms and conditions, to the extent known at the time of invitation to pre-qualify, of the procurement contract or rate contract to be entered into as a result of the procurement proceedings, including the nature, quantity and place of delivery of the goods to be supplied, the nature and location of the works to be effected, or the nature of the services and the location where they are to be provided, as well as, the

- required time for the supply of the goods or for the completion of the works, or the timetable for the provision of the services, if already known;
- (c) the criteria and procedures to be followed for evaluating the qualifications of bidders;
- (d) the procedure of obtaining the pre-qualification documents and the place from which they may be obtained;
- (e) the price, if any, charged by the procuring entity and the mode of payment for the pre-qualification documents and subsequent to pre-qualification, for the bidding documents;
- (f) the manner, place and deadline for presenting applications to pre-qualify; and
- (g) the time, date and place of opening of proposals for pre-qualification.

(4) The Notice Inviting Bids for goods, works or services estimated to cost above Rs.200.00 lakh shall also be sent to the Director General, Intelligence and Statistics, Kolkata for publication in Indian Trade Journal.

(5) The Notice Inviting Bids to be published in the newspapers must be in brief. The bids for more than one subject matter of procurement shall be published in one Notice, as far as possible.

(6) Time for submission of bids for supply of goods or providing services in response to publication of Notice Inviting Bids in newspapers and notice boards shall be as under:-

Table
Time for submission of bids and modes of publicity for procurement of Goods and Services

S. No.	Estimated Value of procurement	Period for submission of bid from the date of first publication of Notice Inviting Bid	Mode of publication	
1	2	3	4	
1.	Up to rupees five lakh	Ten days	(i) (ii)	Notice Board of the procuring entity and all subordinate Regional and Divisional Head Quarters, as the case may be. One Regional daily newspaper.

2.	Above rupees five lakh and upto Rs fifty lakh	Fifteen days	(i) (ii) (iii)	Notice Board of the procuring entity and all subordinate Regional and Divisional Head Quarters, as the case may be. One Regional daily newspaper. One leading daily State Level newspaper having circulation of fifty thousand copies and above.
3.	Above rupees fifty lakh	Thirty days	(i) (ii) (iii)	Notice Board of the procuring entity and of all subordinate Regional and Divisional Head Quarters, as the case may be. One State level leading daily newspaper having circulation of fifty thousand copies and above. One all India level English daily newspaper with wide circulation.

(7) Time for submission of bids for execution of works in response to publication of Notice Inviting Bids in newspapers and notice boards shall be as under:-

Table
Time for submission of bids and modes of publicity for procurement of works

S. No.	Estimated Value of work to be procured	Period for submission of bid from the date of first publication of Notice Inviting Bid	Mode of Publication
1	2	3	4
1.	Up to rupees one lakh	Seven days	Notice Board of the procuring entity and its subordinate offices.
2.	Above rupees one lakh and upto rupees ten lakh	Fifteen days	(i) Notice Board of the procuring entity and its subordinate offices. (ii) One leading Regional daily Newspaper.
3.	Above rupees ten lakh and upto rupees one crore	Twenty one days	(i) Notice Board of the procuring entity and its subordinate offices. (ii) One leading Regional daily newspaper, one state level leading daily newspaper having circulation of 50,000 copies or more.
4.	Above rupees one crore	Thirty days	(i) Notice Board of the procuring entity and its subordinate offices. (ii) One leading Regional daily newspaper, one State level leading daily newspapers having circulation

			<p>of 50,000 copies or more.</p> <p>(iii) One all India level daily English newspaper with wide circulation.</p>
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(8) In case of International Competitive Bidding in which the bid notice is to be addressed to international bidders, the Notice Inviting Bids shall additionally be published by using suitable mediums that attract international responses. This may include circulation of Notice Inviting Bids to the Indian embassies abroad, foreign embassies in India, international trade journals, etc. Period for submission of bid from the date of first publication of Notice Inviting Bid shall be forty five days.

(9) The Notice Inviting Bids shall be published, by the Government Departments in newspapers through Information and Public Relations Department, Rajasthan with a request in which category of newspapers such notice is to be published.

(10) In emergent conditions, the procuring entity after recording reasons may reduce, the period for submission of bids from the date of first publication of Notice Inviting Bids, to half of the period specified in sub-rule (6) or (7) above, as the case may be.

(11) The procuring entity shall have right to cancel the bid process and reject any or all of the bids.

5. Notice inviting bids and bidding documents taken up for review

Following recent notices inviting bids (NIBs) and bidding documents (BDs) issued by target procuring entities for procurement of goods, works and services have been randomly selected for the subject review:-

I. Urban Local Bodies

1. Notice Inviting Bids No.01 dated 11/07/2016 by Nagar Palika Ramgarh Shekhawati (Sikar) for purchase of single phase mono bloc mud pump (estimated cost Rs.1.60 lakh). (*procurement of goods*)
2. Notice Inviting Bids No. (*number not given*) dated (*date not given*) by Nagar Parishad Bhilwara for rate contract for purchase of white and coloured powder for lining during F.Y. 2016-17 (estimated cost not given). (*procurement of goods*)
3. Notice Inviting Bids No.10 dated 24/08/2016 by Nagar Palika Chaksu for construction of BT Road from Phagi road to Sanskrit School side Ward No.1 (estimated cost Rs.24.80 lakh). (*procurement of works*)
4. Notice Inviting Bids No.51 dated 26/08/2016 by Nagar Nigam Jaipur for rate

contract for hiring of pick up dumpers (estimated cost Rs.180 lakh). (*procurement of services*)

II. Public Works Department

1. Notice Inviting Bids No.03/ 2016-17 dated 16/05/2016 by P.W.D. Division Sirohi for material supply at Noon to Sangeshwar Mahadev Mandir cement concrete road in MNREGA Scheme and boundary wall construction (estimated cost Rs.26.44 lakh). (*procurement of goods*)
2. Notice Inviting Bids No.19/ Roads/ 2016-17 dated (*date not given*) by P.W.D. Division Deedwana for construction of road (*name not given in NIB*) (estimated cost Rs.65 lakh). (*procurement of works*)
3. Notice Inviting Expression of Interest No. (*number not given*) dated (*date not given*) by P.W.D. City Circle, Jaipur for procurement of architectural consultancy services for design and upgradation including conservation, urban design, landscaping, interior design etc. at Bikaner House premises, New Delhi. (*procurement of services*)
4. Notice Inviting Expression of Interest No. 09/ 2016-17 dated 01/09/2016 by Additional Chief Engineer (PPP) Jaipur for empanelment of individual consultants for preparation of social safety and management plan. (*procurement of services*)

III. Rajasthan Urban Infrastructure Development Project

1. Invitation of Quotations No. (*number not given*) dated 22/09/2016 by IPE Global as Community Awareness and Participation Consultants (CAPC) for RUIDP Phase III on behalf of RUIDP for purchase of HP Laptops, Desktops, Printers and Photocopiers (estimated cost *not given*). (*procurement of goods*)
2. Notice Inviting Bids No.RUSDP/ Program/ Loan/ 01 dated 28/03/2016 by Project Director, RUIDP for construction of sewerage network and allied works and operation and maintenance of the entire system for 10 years at Gangashehar Zone, Bikaner (estimated cost *not given*) (*procurement of works*)
3. Notice Inviting Bids No.PMDSC-RUIDP-JPR/ SOR-2016/01 dated 15/09/2016 by PMDSC, RUIDP for revising Schedule of Rates for 2016. (*procurement of*

services)

4. Notice Inviting Bids No.F.1(14) RUIDP/ PMU/ Estt./ Photocopy/ 16 dated 15/06/2016 by Deputy Project Director (Admin.) for photocopy work of RUIDP office for one year. (*procurement of services*)

IV. Jaipur Metro Rail Corporation

1. Notice Inviting Bids No.F.7(C-150) JMRC/ Professional/ 2015/ 1146 dated 4/10/2016 by Director (Project) for appointment of professional for facilitating and coordinating various activities related to Jaipur Metro Rail Project Phase 1&2. (*procurement of services*)
2. RFP No.F.1(53)JMRC/ Rev./ Advt./ Train/ 2016-17/ 07 dated 03/10/2016 by JGM (Revenue), JMRC for licensing of exclusive advertisement right inside Jaipur Metro trains of Phase-I for 3 years(estimated amount Rs.12.96 lakh per year) (*procurement of services*)

6. Findings of the Review

The RTPP Act and RTPP Rules apply equally to all procuring entities and all classes of procurement, whether it is procurement of goods or works or services. The distinction in procedure of procurement of a particular subject matter of procurement or a particular procuring entity can be included in Guidelines of Procurement (Procurement Manual) which a procuring entity (a department or an organisation) may frame for itself within overall frame work of RTPP Act and RTPP Rules exercising powers bestowed upon it by section 56 of RTPP Act. These Guidelines are yet to be notified by the State Government or by a procuring entity, though Standard Guidelines are available on the website of Finance Department of Govt. of Rajasthan for view.

Therefore, most of the findings of this review are common in all the four procuring entities selected for the review, though there is variation in degree of non compliance of provisions of RTPP Act and RTPP Rules. Hence, first common non compliances are being pointed out and then specific non compliances will be discussed.

6.1 Common findings in procurement by Local Bodies, PWD, RUIDP and JMRC

- a) RTPP Rule 43 (1), (2) and (3) prescribe the contents to be included in Notice Inviting Bids (NIB) to be published in newspapers and on State Public Procurement Portal (para 4.7 above). In absence of a standard format of NIB some essential contents like (i) price of bidding documents, bid security, processing fee and mode of their payment, (ii) the criteria and procedure to be used for evaluating the qualifications of bidders, (iii) the procedure of obtaining the solicitation documents, etc, have been left from inclusion in NIB.
- b) The Notice Inviting Bids for subject matter of procurement estimated to cost more than Rupees 200 lakh should also be sent to the Director General of Intelligence and Statistics, Kolkata for publication in Indian Trade Journal as required by Rule 43(4) of RTPP Rules (para 4.7 above). In none of the cases under review this appears to have been done as the endorsements of NIBs do not verify this fact.
- c) The publicity period for Notice Inviting Bids should be as prescribed in Rule 43(6) for procurement of goods and services and Rule 43(7) of RTPP Rules (para 4.7 above) for procurement of works. In some of the cases under review, the prescribed period has not been complied with.
- d) The bidding documents should contain sections and contents as prescribed in Rule 36 of RTPP Rules (para 4.6 above). In most of the cases under review the bidding documents uploaded on State Public Procurement Portal do not conform to the requirements of Rule 36.
- e) As per Rule 36(3) of RTPP Rules (para 4.6 above) the bidding documents should contain, among others, (i) criteria for evaluation of technical bids and financial bids, (ii) procedure of preparing, presenting and opening of technical and financial bids, (iii) terms and conditions of procurement contract to be entered with successful bidder, (iv) form of agreement to be signed, (v) form in which bid security and performance securities may be furnished and amount of performance security, (vi) how and from whom clarifications on bidding documents may be obtained, (vii) required validity period of bids, (viii)

instruction to bidders that RTPP Act and RTPP Rules are applicable on the procurement in question which may be referred to, etc. It has been found in the review that these requirements of Rule 36(3) of RTPP Rules were found missing in most of the cases.

- f) The Finance Department of the State Government vide its circular No.3/2013 dated 04/02/2013 had issued instructions that to comply with bare minimum requirements of RTPP Act and RTPP Rules, four annexures: A, B, C and D attached with the said circular must be incorporated in the existing bidding documents (para 4.2 above) but in many of the cases under review these annexures were not found enclosed with the bidding documents.
- g) If any bidder wants to withdraw, modify or substitute its bid before deadline of submission of bids, its procedure has not been included in the bidding documents as required by Rule 54 of RTPP Rules.
- h) Will any price and/ or purchase preference be applicable in evaluation of financial bids. A narration to this effect should be included in bidding documents as required by Rule 67 of RTPP Rules. It was not found in the bidding documents of procurements under review.
- i) The procedure as to how the procuring entity or the bid evaluation committee may seek clarifications or solicit missing documents from a bidder on its technical bid or financial bid, if required, should be included in the bidding documents as required by Rule 60 of RTPP Rules. This was found missing in the bidding documents of procurements under review.
- j) The procedure as to how the procuring entity or the bid evaluation committee shall correct the arithmetic errors in evaluation of financial bids should be included in the bidding documents as required by Rule 64 of RTPP Rules. This was not found in the bidding documents of procurements under review.
- k) How the responsiveness of a bid shall be determined, its procedure should be included in the bidding documents as required by Rule 59 of RTPP Rules. This was found missing in the bidding documents of procurements under review.
- l) How the Non-material Non-conformities shall be treated in evaluation of

financial bids, its procedure should have been included in the bidding documents as required by Rule 61 of RTPP Rules.

- m) If the procuring entity considers it necessary to conduct negotiations on financial bids, then in which conditions and by which procedure negotiations will be conducted should be included in the bidding documents as required by Rule 69 of RTPP Rules. This was found missing in the bidding documents of procurements under review.
- n) If the quantity of the subject matter of procurement is required to be divided among more than one bidders due to lesser capacity of the lowest bidder or the subject matter of procurement being of critical and vital nature, then what will be its procedure, should be included in the bidding documents as required by Rule 74 of RTPP Rules. This was not found in the bidding documents of procurements under review.
- o) The description of subject matter of procurement should have been as per provisions of section 12 of RTPP Act which reads as under:-

12. Description of the subject matter of procurement.- (1) *The description of the subject matter of procurement shall be set out in the pre-qualification documents, bidder registration documents and the bidding documents and shall -*

- (a) *be such as to meet the essential needs of the procuring entity;*
- (b) *to the extent practicable-*
 - (i) *be objective, functional, generic and measurable;*
 - (ii) *set out the relevant technical, quality and performance characteristics;*
 - (iii) *not indicate a requirement for a particular trade mark, trade name or brand;*

(c) be drawn up in accordance with guidelines as may be prescribed.

(2) *Where applicable, the technical specifications shall, to the extent practicable, be based on national technical regulations or recognised national standards or building codes, wherever such standards exist or in their absence, relevant International Standards may be used.*

It has been seen in the cases under review that in the description of subject matter of procurement reference of recognised national standards like BIS, IRC etc. has not been given, instead in some cases articles with particular

trade mark like HP for computers, laptops, printers were required to be supplied which is against the intent of section 12 of RTPP Act.

- p) The State Public Procurement Portal (SPPP) is beacon of transparency in public procurement and therefore all the information related to a procurement as required by section 17 of RTPP Act must be uploaded on this portal for accessibility to all the bidders and public in general also. It has been observed in the review that only Notice Inviting Bids and in some cases detailed bidding documents have been uploaded on the State Public Procurement Portal whereas information related to further stages of procurement are not uploaded on the SPPP. Section 17 requires many more information to be posted on SPPP. Section 17 of RTPP Act reads as follows:-

17. State Public Procurement Portal. - (1) *The State Government shall set up and maintain a State Public Procurement Portal accessible to the public for posting matters relating to public procurement.*

(2) *Each procuring entity shall cause the procurement related information to be published as required under this Act or the rules and guidelines made thereunder on the Portal referred to in sub-section (1).*

(3) *Without prejudice to the generality of sub-section (2), the State Public Procurement Portal shall provide access to the following information in relation to procurement governed by the provisions of this Act, namely:-*

- (a) *pre-qualification documents, bidder registration documents, bidding documents and any amendments, clarifications including those pursuant to pre-bid conference, and corrigenda thereto;*
- (b) *list of bidders that presented bids including during pre-qualification or bidder registration, as the case may be;*
- (c) *list of pre-qualified and registered bidders, as the case may be;*
- (d) *list of bidders excluded under section 25, with reasons;*
- (e) *decisions under sections 38 and 39;*
- (f) *details of successful bids, their prices and bidders;*
- (g) *particulars of bidders who have been debarred by the State Government or a procuring entity together with the name of the procuring entity, cause for the debarment action and the period of debarment;*
- (h) *any other information as may be prescribed.*

6.2 Findings in review of bids by Local Bodies

1. Notice Inviting Bids No.01dated 11/07/2016 by Nagar Palika Ramgarh

Shekhawati (Sikar) for purchase of single phase mono bloc mud pump (estimated cost Rs.1.60 lakh). (procurement of goods)

- (a) The procuring entity has developed its own form of Notice Inviting Bids and bidding documents.
- (b) Description of goods to be procured should have contained a reference to the relevant item of Bureau of Indian Standards as required by section 12 of RTPP Act.
- (c) It is not mentioned as to it is an open competitive bidding or limited bidding.
- (d) Nothing has been mentioned about bid security, its amount and form.
- (e) The date of Notice Inviting Bids and receipt of bids is same which is 11/07/2016. Even if it is limited bidding, the period of publicity should have been 7 days.
- (f) Appendices A,B,C and D for Code of Integrity, Appeals etc. as required by Finance (G&T) Department, Govt. of Rajasthan's circular No. 3/ 2013 dated 04/02/2013 have not been appended.

2. Notice Inviting Bids No. (number not given) dated (date not given) by Nagar Parishad Bhilwara for rate contract for purchase of white and coloured powder for lining during F.Y. 2016-17 (estimated cost not given). (procurement of goods)

- (a) The procuring entity has developed its own form of Notice Inviting Bids and bidding documents.
- (b) Notice Inviting Bids number and date has not been given which is a serious lapse.
- (c) Estimated quantity and value of purchase has not been given.
- (d) Amount of bid security has not been given.
- (e) Description of goods to be procured should have contained a reference to the relevant item of Bureau of Indian Standards as required by section 12 of RTPP Act.
- (f) Samples have been demanded alongwith financial bid. This instils subjectiveness in decision making which hampers transparency in

procurement process.

(g) Publicity period of 10 days (18/07/2016 to 28/07/2016) is alright.

(h) Appendices A, B, C and D for Code of Integrity, Appeals etc. have not been appended.

3. Notice Inviting Bids No.10 dated 24/08/2016 by Nagar Palika Chaksu for construction of BT Road from Phagi road to Sanskrit School side Ward No.1 (estimated cost Rs.24.80 lakh). (*procurement of works*)

(a) The bidding documents contain only Bill of Quantities (BOQ) which is a Price Bid form for quoting percentage rate above or below the total amount of BOQ. Other sections of bidding documents like Instructions to Bidders, Evaluation and Qualification Criteria, Procuring Entity's requirements, Terms and Conditions of Contract, Contract Forms are missing.

(b) Deadline for submission of bids is 06/10/2016 whereas date of opening of bids is 13/10/2016 i.e. after 7 days of deadline for submission bids. The opening of bids should take place on the same day or next day of the last date of submission of bids.

(c) Appendices A, B, C and D for Code of Integrity, Appeals etc. have not been appended.

(d) One corrigendum issued has appeared on State Public Procurement Portal.

(e) Period given for submission of bids is alright (01/09/2016 to 06/10/2016).

4. Notice Inviting Bids No.51 dated 26/08/2016 by Nagar Nigam Jaipur for rate contract for hiring of pick up dumpers (estimated cost Rs.180 lakh). (*procurement of services*)

(a) The procuring entity has developed its own form of Notice Inviting Bids and bidding documents.

(b) The bidding documents have been prepared by the procuring entity in its own way without taking into consideration the requirements of Rule 36 of RTPP Rules. They do not contain sections like Instructions to Bidders, Contract Forms etc.

- (c) The evaluation criterion is ambiguous. Average of various rates is to be considered for determining lowest bid.
- (d) The date of publication of Notice Inviting Bids on State Public Procurement is 05/09/2016 and downloading of bidding documents was to start from 07/09/2016 and pre-bid conference was kept on 09/09/2016 i.e. just after 2 days which was too early.
- (e) It is a contract for procurement of services but the terms and conditions of contract which have been appended are those of Appendix XI of PWF&AR which are used for procurement of works. Some special conditions of contract have also been appended as Annexure E which contains some common conditions which already exist in Appendix XI like contractor to engage technical staff, near relatives barred from tendering etc.
- (f) Appendix XII of PWF&AR has also been appended in terms and conditions of contract which pertains to works divisions of PWD for transfers of goods/ services within divisions, hence irrelevant here.
- (g) Appendices A,B,C and D for Code of Integrity, Appeals etc. have been enclosed but names and addresses of first and second appellate authorities have not been given.

6.3 Findings in review of bids by Public Works Department

1. Notice Inviting Bids No.03/ 2016-17 dated 16/05/2016 by P.W.D. Division Sirohi for material supply at Noon to Sangeshwar Mahadev Mandir cement concrete road in MNREGA Scheme and boundary wall construction (estimated cost Rs.26.44 lakh). (*procurement of goods*)

- (a) The estimated cost of supply shown in the Notice Inviting Bids is Rupees 26.44 lakh whereas the total amount of Bill of Quantities (BOQ) is Rupees 21.21 lakh. It suggests that the BOQ was prepared after uploading the Notice Inviting Bids on State Public Procurement Portal (SPPP) and the BOQ was uploaded on SPPP at a later date which is against the legal requirement of Rule 45 of RTPP Rules: Sale of bidding documents.
- (b) The bidding documents contain only Bill of Quantities which is a Price Bid

form for quoting percentage rate above or below the total amount of BOQ. Other sections of bidding documents like Instructions to Bidders, Evaluation and Qualification Criteria, Procuring Entity's requirements, Terms and Conditions of Contract, Contract Forms have not been given.

(c) Appendices A, B, C and D for Code of Integrity, Appeals etc. have not been appended.

(d) The date of start uploading the bids on State Public Procurement Portal is given as 14/06/2016 i.e. after about one month of the date of issue of Notice Inviting Bids (NIB). It should have been allowed from the date of publication of NIB on the SPPP.

(e) Item rate tender could have been better choice for purchase of goods instead of percentage rate tender.

2. Notice Inviting Bids No.19/ Roads/ 2016-17 dated (date not given) by P.W.D. Division Deedwana for construction of road (name not given in NIB) (estimated cost Rs.65 lakh). (procurement of works)

(a) In the Notice Inviting Bids date of NIB and name of work has not been given.

(b) The Notice Inviting Bids and bidding documents for the subject procurement are same whereas the bidding documents should have been in the sections and with details as required by Rule 36 of RTPP Rules.

(c) Deadline for submission of bids is 05/10/2016 whereas date of opening of bids is 10/10/2016 i.e. after 5 days of deadline for submission bids. The opening of bids should take place on the same day or next day of the last date of submission of bids.

(d) Appendices A, B, C and D for Code of Integrity, Appeals etc. have not been appended.

3. Notice Inviting Expression of Interest No. (number not given) dated (date not given) by P.W.D. City Circle, Jaipur for procurement of architectural consultancy services for design and upgradation including conservation, urban design, land scaping, interior design etc. at Bikaner House

premises, New Delhi. (procurement of services)

- (a) The bidding documents by and large have been prepared as per requirements of Rule 36 of RTPP Rules but reference of RTPP Act and RTPP Rules has not been given which are applicable on the subject procurement.
- (b) Appendices A, B, C and D for Code of Integrity, Appeals etc. have not been appended.
- (c) Type of consultancy contract, i.e. whether it is a lump sum contract or a time based contract should be indicated in the Notice Inviting Bids.

4. Notice Inviting Expression of Interest No. 09/ 2016-17 dated 01/09/2016 by Additional Chief Engineer (PPP) Jaipur for empanelment of individual consultants for preparation of social safety and management plan. (procurement of services)

- (a) In contrast to good detailed bidding documents used for inviting Expression of Interest (EOI) for consultancy services in PWD at serial number 3 above, there are no details in this procurement.
- (b) There are no clear evaluation and qualification criteria spelt out in the EOI.
- (c) Appendices A, B, C and D for Code of Integrity, Appeals etc. have not been appended.

6.4 Findings in review of bids by Rajasthan Urban Infrastructure Development Project

1. Invitation of Quotations No. (number not given) dated 22/09/2016 by IPE Global as Community Awareness and Participation Consultants (CAPC) for RUIDP Phase III on behalf of RUIDP for purchase of HP Laptops, Desktops, Printers and Photocopiers (estimated cost not given). (procurement of goods)

- (a) The bids have been invited by CAPC, a consultant on behalf of RUIDP. A consultant can not be considered as a procuring entity because as per section 3(2)(a) of RTPP Act a procuring entity should be a department of the State Government or its subordinate or attached office.

- (b) The consultant CAPC is perhaps not aware of the provisions of RTPP Act and RTPP Rules due to which there are several lapses in the procurement process.
- (c) In the bidding documents the price of bidding documents and amount of bid security have not been mentioned.
- (d) The estimated cost of procurement is also not mentioned in the procurement process.
- (e) The period of submission of financial bids has been mentioned as 26/09/2016 to 03/10/2016 which is 8 days. Though the estimated cost of procurement is not mentioned yet the minimum period allowed should not be less than 10 days as required by Rule 43(6) of RTPP Rules.
- (f) It is mentioned in the bidding documents that queries with regard to the subject procurement should be addressed to CAPC and their replies shall be published on the website of RUIDP while It is compulsory for a procuring entity to publish the queries and their replies on the State Public Procurement Portal in compliance of section 17(3)(a) of RTPP Act.
- (g) Appendices A,B,C and D for Code of Integrity, Appeals etc. have not been appended.

2. Notice Inviting Bids No.RUSDP/ Program/ Loan/ 01 dated 28/03/2016 by Project Director, RUIDP for construction of sewerage network and allied works and operation and maintenance of the entire system for 10 years at Gangashehar Zone, Bikaner (estimated cost *not given*) (procurement of works)

- (a) The subject work is being procured under credit provided by Asian Development Bank (ADB) and the procurement process required by ADB is by and large as envisaged in chapter V of RTPP Rules. Therefore, the bidding documents uploaded on State Public Procurement Portal more or less conforms to the requirements of Rule 36 of RTPP Rules.
- (b) However, appendices A,B,C and D for Code of Integrity, Appeals etc. have not been appended.

- (c) Reference of e procurement portal has been given for various purposes but reference of State Public Procurement Portal has not been given which was legally required.
- (d) Reference of concerned officer for contact for seeking clarifications etc. has been given.
- (e) Pre bid conference has been fixed for providing replies to queries.
- (f) A calendar of important dates relating to the subject procurement has been given.

3. Notice Inviting Bids No. PMDSC-RUIDP-JPR/ SOR-2016/01 dated 15/09/2016 by PMDSC, RUIDP for revising Schedule of Rates for 2016. (procurement of services)

- (a) Reference of State Public Procurement Portal for seeing details of procurement has not been given.
- (b) In the bidding documents the price of bidding documents, amount of bid security, amount of performance security etc. have not been mentioned.
- (c) The period of publicity for the Notice Inviting Bids was 12 days (from 15/09/2016 to 27/09/2016. In absence of the estimated cost of procurement it can not be ascertained as to whether it was sufficient.
- (d) Appendices A,B,C and D for Code of Integrity, Appeals etc. have not been appended.
- (e) Still old terms like NIT, tender etc. are being used.

4. Notice Inviting Bids No.F.1(14) RUIDP/ PMU/ Estt./ Photocopy/ 16 dated 15/06/2016 by Deputy Project Director (Admin.) for photocopy work of RUIDP office for one year. (procurement of services)

- (a) Estimated cost of procurement has not been given.
- (b) Appendices related to Code of Integrity, Declaration regarding Qualification of Bidders have not been appended.

6.5 Findings in review of bids by Jaipur Metro Rail Corporation

1. Notice Inviting Bids No.F.7(C-150) JMRC/ Professional/ 2015/ 1146 dated 4/10/2016 by Director (Project) for appointment of professional for facilitating and coordinating various activities related to Jaipur Metro Rail Project Phase 1&2. (procurement of services)

(a) In the subject procurement the services of a professional are being hired but the quantifiable tasks assigned to him are not specified; only nature of works to be performed by the consultant/ professional has been mentioned in the output of the contract. In fact it is an appointment on a post for which job profile has been given, the quantum of work is not known. The term 'services' has been defined in section 2(xx) of RTPP Act as under:-

2(xx) "services" means any subject matter of procurement other than goods or works and includes physical, maintenance, professional, intellectual, consultancy and advisory services or any service classified or declared as such by a procuring entity and does not include appointment of any person made by any procuring entity;

Therefore such procurement should not be classified as 'services'.

(b) It is a single source procurement. Therefore, the outcome of the search of name of consultant/ professional as the single source should have been mentioned in the letter addressed to the consultant/ professional.

(c) Appendices related to Code of Integrity and Declaration regarding Qualification of Bidder has not been appended.

2. RFP No.F.1(53)JMRC/ Rev./ Advt./ Train/ 2016-17/ 07 dated 03/10/2016 by JGM (Revenue), JMRC for licensing of exclusive advertisement right inside Jaipur Metro trains of Phase-I for 3 years(estimated amount Rs.12.96 lakh per year) (procurement of services)

(a) The bidding documents are well constructed and by and large are in conformity with the requirements of Rule 36 of RTPP Rules.

(b) Appendices A,B,C and D for Code of Integrity, Appeals etc. have not been appended.

7. Conclusion

This is a desk review, therefore the material available for analysis was that which has been uploaded on the State Public Procurement Portal by the concerned procuring entities. As the RTPP Act and RTPP Rules apply equally to all the procuring entities irrespective of the fact as to whether the subject matter of procurement is in category of goods, works or services, most of the findings are common in procurement process of all the procuring entities taken for review, i.e. Urban Local Bodies, Public Works Department, Rajasthan Urban Infrastructure Development Project and Jaipur Metro Rail Corporation which have been given in para 6.1 of the review. The specific findings with respect to selected procurements of goods, works and services of particular procuring entity are given at para 6.2 to 6.5.

One bidding document of procurement of procurement of works by Rajasthan Urban Infrastructure Development Project and one bidding document of procurement of services by Jaipur Metro Rail Corporation were, by and large, found conforming to the requirements of rule 36 of RTPP Rules.
