


वास्तुकला परिषद्
Council of Architecture

वास्तुविद अधिनियम, 1972 के अंतर्गत भारत सरकार का एक स्वायत्त सांविधिक निकाय
(An Autonomous Statutory Body of Govt. of India, under the Architects Act, 1972)

Ref. No.CA/28/2016/AOA(NBCC)
June 24, 2016

The Managing Director
National Buildings Construction
Corporation Ltd.,
NBCC Bhawan, Lodhi Road
New Delhi – 110 003

Subject : Notice inviting E-tender NIT No. NBCC/CPG/ITPO/2016/44 dated 20.06.2016 for providing Comprehensive Architectural Service for Re-development of Pragati Maidan Complex into Integrated Exhibition-cum-Convention Centre on behalf of ITPO –reg.

Dear Sir,

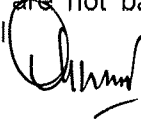
The attention of the Council is drawn in the subject matter on the following issues that have been forcing Architects registered with the Council of Architecture to violate their Code of Professional Conduct –

- i) Architects are asked to submit Tender / Bids in order to be eligible to provide Architectural services;
- ii) Architects are insisted to pay EMD, Cost of Tender / Bid documents and a Tender processing fee.
- iii) Engineering Consultants have also been made eligible to act as Architects to provide Comprehensive Architectural Services.
- iv) Companies have also been made eligible to act as Architects.

Pertinent to the matter, I am directed to state that the bidding process prescribed by NBCC is having Architectural Services 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 only about 1-2% 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 the added in evaluation criteria for selection of the Successful bidders.

The process of selection of the successful bidder is based on adding up the associated financial statement submitted by bidders. This is leading to an unfair evaluation, since different design proposals cannot be compared as they are not based on the same parameters and hence would be portraying a different cost model.



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Thus, the whole selection process appears to be skewed and resulting in a colossal waste of public funds while keeping the Society deprived of Good Design solutions.

Further, I have to apprise you as under :-

- a. The Council of Architecture is established under Architects Act, 1972 (No.20 of 1972) by the Indian Parliament and vested with the responsibility to prescribe Standards of Architectural Education and Profession including professional conduct of Architects throughout the territory of India and to provide for registration of architects on all India basis.
- b. Profession of Architects is regulated, controlled and maintained under the provisions of the Architects Act, 1972 and Regulations framed thereunder.
- c. The Council is empowered under Section 22 of the Act to lay down standards of professional conduct and etiquette and a code of ethics for Architects by Regulations. These Regulations shall have overriding effect over any other law for the time being in force in India.
- d. Accordingly, the Council has framed the Architects (Professional Conduct) Regulations, 1989 (as amended in 2003). 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).
- e. 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.
- f. 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.
- g. It may also be noted that when Tender/ 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. Thereby, tenders/ bids are 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.

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- h. It is important to note that Architects are not Suppliers / Contractors of goods or services who can be asked to pay Bid Security or cost of bid documents. They shall largely fall under the category of MSME. Thus, asking of Bid Security and Cost of documents is improper. It is the Client's responsibility to provide the Architects fair and reasonable opportunities / conditions to provide their professional services.

Your attention is further invited towards the order dated 23.03.2012 issued by the Ministry of Micro, Small and Medium Enterprises, Govt. of India, advising all the Ministries/ Department of Government of India to avail services of MSMEs mandatorily and the Clause 10 of the said order reads as under :

10. Reduction in transaction cost : Further to reduce transaction cost of doing business, Micro and Small Enterprises shall be facilitated by providing them Tender sets free of cost, exempting Micro and Small Enterprises from payment of earnest money, adopting e-procurement to bring in Transparency in tendering process and setting up a Grievance Cell in the Ministry of MSME.

A copy of the above order is enclosed herewith for your kind perusal.

Architects are professionals like Doctors, Advocates and Chartered Accountants, whose conduct and ethics are regulated and governed under the Act and hence should not be insisted to pay processing fee, deposit earnest money/ Performance Bank Guarantee/ bid security money or quote lowest fee, etc. on the lines of contractors, etc., for rendering their professional services. Accordingly no such fee should be asked from Architects.

Therefore, professional services of Architects in competition against each other can be availed only by conducting Architectural Design Competition (Two Stage/ Single Stage/ Limited - as per the requirements and complexity of the project), as per the Architectural Competition Guidelines prescribed by the Council of Architecture which is a very fair and transparent procedure for selection of a best design and Architect and not by competitive commercial bidding.

The Architects Act, 1972, allow only an individual architect or a firm of architects (partnership firm) to represent as an architect and use the title and style of "Architect" for practicing the profession of an Architect in India. Companies/ LLPs etc. are not permitted. Further, as per the Act, an individual foreign architect can become consultant to an Indian Architect upon specific permission of Central Government under Section 37 for a specific project. Violation of these provisions is a punishable offence.

Any Terms and conditions prescribed in the bids/ tender/ contract/ agreement/ offer or any Manual / Guidelines of any Public Body/ Authority for appointment of Architects shall have to be consistent with the above provisions of the Architects Act, 1972 and Regulations & other professional documents prescribed pursuant thereto.

In view of the above, NBCC is requested to safeguard public interest by adopting the following methodology-

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- i) Bid may be invited where Architectural Services are not bundled and allow only individual architects or partnership firms of architects to be eligible to render their services for your projects and conduct the Architectural Design Competition as per the Guidelines prescribed by the Council;
- ii) Appoint architect(s) or firm of architects upon conducting Architectural Competition (Open Competition/ Limited Competition/ Two Stage competition/ Single Stage Competition, as may be suited) as per scale of charges and Scope of work and services prescribed by the Council duly incorporating the conditions of engagement prescribed for Comprehensive Architectural Services, Urban Design, Landscape Architecture and Interior Architecture;
- iii) Not to insist Earnest Money/ Cost of Tender/ Bid Documents from Architects.
- iv) The financial offers should be invited by the intended parties on approval of the Design for getting the best prices for the Project in a transparent manner.
- v) For bids for Construction with "inbuilt or packaged services", a note should be specifically added that the Appointment of Architects for the Project by the selected bidder shall be based on the Guidelines prescribed by the Council on conduct of Architectural Design Competition for seeking the best Design. Any violation of the same shall result in the bid being cancelled.

A copy of the Handbook of Professional Document which contains Act, Rules Regulations, Conditions of Engagement & Scale of Charges, Architectural Competition Guidelines, etc. is enclosed herewith for your kind perusal.

It is requested that the matter may be studied in the above statutory provisions and observations and necessary corrections may please be made in the Bidding system by NBCC to exempt Architects from participating in the bidding Process. The payment of professional fees of Architects for providing Comprehensive Architectural services as per Scale of Charges prescribed by Council would result in good design, planning and execution of the project and the Client / Government can save in Crores, while providing the user/ general public/ Citizens with the best Designs in public buildings.

This letter is being written in public interest to uphold the provisions of the Architects Act and Regulations framed thereunder relating to Architects and also ensure that Public Buildings get the best designs and Public Projects get implemented at the right price/ cost, thereby protecting the national interest.

It is requested that the action taken in the matter be informed to the Council.

Thanking you,

Yours faithfully,

R. K. Oberoi
Registrar
Encl : As above

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Copy for information and appropriate action to:

Shri Shashi Kant Sharma
Comptroller and Auditor
General of India
9, Deen Dayal Upadhyay
Marg, New Delhi – 110 002

The Central Vigilance
Commissioner
Central Vigilance Commission
Plot A, GPO Complex INA,
INA Colony,
New Delhi 110023

The Secretary
Department of Higher
Education, Ministry of Human
Resource Development, Govt.
of India, Shastri Bhawan
New Delhi – 110 115

The Secretary
Department of Commerce
Ministry of Commerce &
Industry, Govt. of India
Udyog Bhawan
New Delhi – 110 011

The Secretary
Ministry of Urban
Development
Govt. of India, Nirman
Bhawan, New Delhi - 110011

The Director General
Central Public Works
Department, Ministry of UD,
Govt. of India, Nirman
Bhawan, New Delhi - 110011

Shri J. Guna Sekaran
General Manager
India Trade Promotion
Organisation
Pragati Maidan,
New Delhi - 110001

The General Manager (CPG)
National Buildings
Construction
Corporation Ltd., CPG
Division, NBCC Bhawan,
Lodhi Road
New Delhi – 110 003

All Architects Registered
with Council of Architecture