

FUNDAMENTALS  
OF  
TENDERS & CONTRACT

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# WHY CONTRACTS ?

- To ensure the fulfillment of commitments by parties involved in business.
- Absence of legally enforceable agreement will lead to chaotic situation in business.
- So need of Contract when two or more parties involved.
- In Railways if business is done with outside agencies, contract is necessary.

# Agreement, contract and proposal

- An **agreement** enforceable by Law is a **Contract**.
- **Agreement** is defined as “ every promise and every set of promises forming the consideration for each other”
- A **proposal** once accepted becomes **promise**

Or

- An **accepted proposal** is a **promise**.

# TYPE OF CONTRACTS

- Type of Contracts on basis of type of work
  - Works contracts
  - Stores contracts
  - Consultancy contracts
  - Revenue/ service contracts

# Two Critical Things of Entering into Contract

- With whom to enter into Contract.
  - Cost
  - Quality of Work
- Conditions of agreement
  - General Conditions
  - Special Conditions

# Guideline for framing the Contract documents

- The fundamental principles for the guidance of authorities who have to enter into contract, or to sign the agreements
  - (i) The terms of contract must be **precise and definite**. There must be no room for ambiguity or misconstruction therein.
  - (ii) As far as possible, **legal and financial advice** should be taken in the drafting of contracts before they are finally entered into.
  - (iii) **Standard forms** of contracts should be adopted wherever possible, the terms to be subject to adequate prior scrutiny.
  - (iv) The **terms** of contract once entered into should **not materially varied** except in consultation with the competent financial authority.
  - (v) **No contract involving an uncertain or indefinite liability** or any condition **of an unusual character** should be entered into without the previous consent of the competent financial authority.

# PROCESS OF SELECTING AGENCY

- Once the conditions for a work to be carried out by the outside agency have been fixed the next step is to find out the most appropriate agency with whom we will enter into contract for this work.
- In Railways the agency is chosen by calling for Tenders (offers) ( in exceptional situation by quotations) and by selecting the most appropriate offer.

# CALLING OF QUOTATIONS

Under **Special Circumstances** with **financial concurrence** work agency can be selected by calling of quotations from at **least three well experienced** contractors/agencies.



# CALLING OF QUOTATIONS

- For Work Contracts the power to dispense with calling of tenders and acceptance of quotations shall be exercised by SS/JA and SA Grade officers only and with Finance concurrence as per following schedule:

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<b>Rank of officers</b>	<b>Financial limit</b>	<b>Total financial limit within a financial year.</b>
Sr. Scale (holding independent charge)	1,00,000/-	5,00,000/-
JA Grade	2,00,000/-	20,00,000/-
SAG/DRM	4,00,000/-	40,00,000/-

# Procedure of work done by quotations

- Quotations should be for works, which are urgent in nature.
- Quotations are from genuine firms (and not from fictitious firms)
- A register showing full particulars of works authorised will be maintained by each officer and this should be open to verification by Accounts while passing the bills.
- Accepting authority should also ensure:
  - (i) The rate/s accepted is/are reasonable.
  - (ii) Adequate funds are available.
  - (iii) Calling of tender was not justified.
- The work should not be split up for the purpose of bringing it within ambit of this dispensation.

– Contd

# Procedure of work done by quotations (contd.)

- **Sealed quotations** for the work should normally be invited with a **minimum notice of 7 days**. For lesser period reasons should be recorded in writing.
  - The quotations so obtained should be deposited in a **sealed cover** and kept for the purpose in the office of the officer calling for quotations.
  - The **box should be opened at the appointed time and date** and quotations read out before parties who have quoted and are present.
  - The **quotations should be numbered and initialled by the officer** opening them after which they should be properly evaluated and tabulated.
  - **An accounts representative or Divisional Accountant** also be associated in the above process.
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# CALLING OF TENDERS

- Before calling tenders, the following conditions should be fulfilled :
  - The Railway is in a position to fulfil its commitments like hand over the site of work etc.
  - The Railway should be ready with full knowledge of character and scope of work.
  - Tender documents for sale is ready from the date of notification of tender notice.
  - Sanction of detailed estimate necessary before calling for tenders : dispensation only in “extremely urgent” cases.

# CLASSES OF TENDER

- OPEN TENDER
- LIMITED TENDER
- SPECIAL LIMITED TENDER
- SINGLE TENDER

# OPEN TENDER

- The system of invitation of tenders by public advertisements in the most open public manner possible should be used as a general rule and must be adopted with certain exceptions
- Wide publicity may be given to the call of tenders by:
  - (a) Notices in Railway offices,
  - (b) Notices in other Govt. Offices,
  - (c) Advertisement in vernacular/local news papers,
  - (d) Advertisement in National/International news papers, if work is very important.

# LIMITED TENDER

- Where for reasons, which should be in the public interest, it is considered not practicable or advantageous to call for open tenders, limited tenders may be invited with approval of the competent authority. The reasons for inviting Limited tenders from firm/contractors should be kept on record while approaching finance for concurrence.
- Tenders are invited from the parties in **approved list**.
- The minimum number of contractors to be borne on the approved list should not be less than 10 .
- Limited tenders may be invited from all the contractors borne on the approved list and not restricted to 10 numbers of contractors.
- The tender notices should be sent by registered post or under certificate of posting or handed over to the parties concerned and their clear acknowledgement obtained.

# Special Limited Tenders :

- Can be adopted in following situations under consultation with FA&CAO
  - Work of specialised nature (to be approved by PHOD personally)
  - Work of urgent nature (to be approved by GM personally)
  - Consultancy Works (to be approved by GM personally)
- Tenders called from contractors who need not be in approved list.
- Preferably tenders should be invited from six Tenderers but not from less than four.



# SINGLE TENDER

- Calling of single tender should be resorted to only in exceptional circumstances after recording necessary certificates that:
  1. It is not in the public interest to call for tenders.
  2. The demand is urgent.
  3. No other suitable contractor is available to execute the work.
  4. It should also be recorded as to why single tender is being resorted to in preference to limited tenders.
- It should be ensured that prior financial concurrence is invariably obtained before obtaining single tender, which should not be below the level of SAG Officers. The offer should as usual be considered by the Tender committee before acceptance by the competent authority viz. GM.

# **SINGLE TENDER (contd.)**

- **As per the guidelines of Railway Board (para 1214A added to Indian Railway Code for the Engineering Department 1993 vide letter no. 97/CE.I/CT/32 dated 19.01.2000) Single tender can be awarded in following situation such as:-**

**(1) EMERGENT SITUATION.**

**(a) Accidents, breaches involving dislocation of traffic.**

**(b) Works of specialised nature to be personally approved by the GM/CAO(C) with prior concurrence of FA&CAO. This powers can not be delegated to any other authority.**

**(c) Any other situation where General Manager personally considers it inescapable to call for single tenders subject to this powers can be exercised by GM only with prior concurrence of Finance**

**(2) Annual Maintenance Contract for equipment can be placed on single tender basis on authorised dealers with the approval of Additional General Manager of Railways.**

- **NOTE: This power may be delegated by the General Managers in consultation with FA&CAO to PHODs/DRMs upto a maximum of Rs. 5 lakhs per item per annum. On redelegation, these powers would be exercised by PHODs/DRMs in consultation with associate finance.**

# Opening & Scrutiny of Tenders (contd.)

- **DELAYED/LATE TENDERS:**

- Tenders received before the time of opening but after due date and time of receipt of tenders are delayed tenders.
- Tenders received after the specified time of opening of the tenders are late tenders.
- **Late/Delayed/Post tender offers are to be treated as invalid. Exceptional cases, Board's approval.**

# Tender Committee

## CONSTITUTION OF TENDER COMMITTEE

- Tender Committee should be generally **constituted by the authority competent to accept the tenders**. When the G. M. is authority competent to accept the tender, the HOD concerned should arrange/constitute the Tender Committee.
- The Tender Committee should consist of a **minimum 3 members** of whom one should be from the Accounts department and one from the concerned executive department. The third member should be from another department, which also deals with such contract matters.
- **On basis of value of tender** following authorities are decided Tender inviting authority, Tender Opening Committee, Members of Tender Committee, Tender accepting authority, Contract Signing authority
- The tender Committee should be so constituted that an **officer recommending acceptance of a tender in his capacity as a member of Tender Committee shall not be also the accepting authority of the same tender**.
- In such cases, the officer concerned should put up the T. C's proceedings to the next higher authority for acceptance, not with under standing the fact that the Tender Committee's recommendations are within his own powers of acceptance.
- **It is general practice that the constitution of Tender Committee should be determined by the value of lowest tender. However, if the tender Committee, so constituted recommends to by passing the lowest tender for certain reasons, and the next offer is beyond its competence than a higher-level committee should be constituted to deal with the case further.**
- The proceedings of the Tender Committee will be **put up by convenor member of tender Committee direct to the accepting authority**.

# CONSIDERATION OF TENDERS

- **RESPONSIBILITY OF TENDER COMMITTEE:**
- **Tender should be considered without delay.**
- **Tenders should be finalised within the period of validity of offers.**
- **Clarification should not be sought in piece meal from the tenderers. All the information necessary for consideration of offers should be called for at one time, leaving no occasion for seeking further extension of time.**
- **In case of 'Open' tenders, if the lowest tenderer is not on approved contractor, he should be asked to produce evidence of his capacity of execution and financial position. If he fails to produce such credentials this fact should be kept place on record while considering the next higher tender.**
- **Undue emphasis should not, however, be placed on previous experience of contractors, as it would cut across the very principle of inviting open tenders and by shutting of all new comers, it would tend to create monopolistic tendencies .**

# CONSIDERATION OF TENDERS (contd.)

- **In all cases where the lowest or lower tenders are rejected, full reasons for the rejection should be recorded, so that reasons for such rejection would be available on files.**
- **The capacity, credentials and financial status of the tenderer should be investigated and only if these are found satisfactory the contract should be awarded .**
- **Tender committee should examine, while making their recommendation all relevant factors such as the existing work load on the lowest two or three tenderers, their capacities to execute further work and also whether the rates quoted are reasonable and workable.**
- **Tender committee, while examining the credentials and partnership deed etc. of the tenders, should see whether a group of persons or firms having different names but controlled by same management have submitted separate tenders and should ensure that real and fair competition exist in response to the tender notice before they recommend acceptance of one of the tenders.**
- **Tender committee while accepting condition stipulated by the tenderers particularly conditions involving extra payment should make a realistic and practical assessment of the full utilisation of the benefit which should be adhered to.**

# CONSIDERATION OF TENDERS(contd.)

- After submission of the proper tender documents in the tender box by the tenderers, subsequent **modified offers on slip/letter dropped in the tender box will not be considered valid**
- Tender committee and accepting authority are competent to consider tender from contractor with adverse report & judge his suitability/unsuitability for a particular work.
- Particular care should be taken by the Tender Committee to ensure that the **rates quoted for individual items are a realistic** and are not abnormal and unworkable in respect of any item of work.
- **Every Tender Committee constituted must go through the tenders, comparative statement and briefing notes and consider the tenders and frame their recommendations.** It should be ensured that there is **no delay** in finalising the minutes of tender committee and as far as possible the draft of minutes should be finalised by the Tender Committee at the meeting itself. Under **no circumstances** any of the members of the Tender Committee should **refer the tender case to any officers/staff under him** or to any one else **for scrutiny and/or comments.** The proceeding of the Tender Committee should be signed by the members of the Tender Committee on each and every page. The recommendations of Tender Committee are to be put up direct to the accepting authority, without further recommendations or comments from any one.

# CONSIDERATION OF TENDERS (contd.)

- In addition to the generally known responsibility of the Tender Committee, they have a **special responsibility to scrutinise carefully the rates.**
- When **single offer is received in response to the 'Open' or a 'Limited' tender,** this should not be treated as 'Single' tender, but as 'Open' or 'Limited' tender only, as the case may be and processed accordingly.
- When in response to a call of 'Limited tender' (as distinct from single or open tenders under the rules in force) only one tender is received fresh tenders should be invited, except in very urgent cases. The discretion to class a work 'very urgent' for this purpose should rest in an officer not lower in status than a Divisional Railway Manager and full reasons should be recorded justifying such a course of action. Even in case of open tender when only one tender is received, the Tender Committee should examine interalia, whether the rate quoted is reasonable as the only tender received need not necessary be accepted straightway merely, because it is in response to a call of open tenders.



# CONSIDERATION OF TENDERS (contd.)

- In case where **specifications in a tender** have undergone any major change **before the tender is furnished**, fresh tenders should be called for, giving sufficient notice to the tenderers
- When the **work is spread over various places on the Rly.**, it should be advantageous if the Rly. Administration, while inviting tenders for such work, invites quotations for the work at **all places collectively** as well as for the work at each place or group of places fairly close to each other
- Notwithstanding the general ban, **late tenders received from established/reliable suppliers conferring a substantial advantage can be considered by the railway after obtaining Board's approval in each case.** Such cases should be recommended for consideration of the Board with the personal approval of the G.M. duly concurred in by the FA&CAOI. The Railways should not enter into any dialogue with the agency submitting a delayed tender without obtaining Board's prior clearance.

# CONSIDERATION OF TENDERS (contd.)

## NEGOTIATIONS:

- **The selection of contractors by negotiation is an exception rather than rule and may be resorted to: -**
  - **Where all the tenders are considered to be unreasonably high in value and it is felt that re-tendering would not secure better advantage to the Railway and/or**
- **The decision whether to invite fresh tenders or to negotiation should be taken by the competent authority after obtaining the recommendations of the Tender Committee.**
- **After the competent authority has decided to call specific tenderer for negotiation, the following procedure should be adopted: -**
  - (a) The lowest tenderer to be called in for negotiations should be addressed as laid down by Board, so that the rates originally quoted by them shall remain open for acceptance in the event of failure of negotiation .**
  - (b) While conducting negotiations with tenderer and obtaining revised rates and recommending the same for acceptance, the tender committee should ensure that the fundamental requirements of safeguarding Railway's financial interest have been fully observed.**

# CONSIDERATION OF TENDERS (contd.)

## NEGOTIATIONS:

- L-1 should be defined as the lowest, valid, eligible and technically acceptable tenderer who would have been otherwise considered for award of contract directly, if the rates were not unreasonably high.
- Negotiations should be held with L-1 only as defined above.
- In tenders, providing for “Purchase Preference” in favour of PSUs, if the quoted rates of L-1 are considered high and negotiations are resorted to, such negotiations may be held with the original L-1 as also the lowest PSU whose original offer is not higher by more than 10% of the original L-1. Further, if after such negotiations the revised offer of the PSU is higher by more than 10% of the negotiated offer of the original L-1, offer of PSU may not be considered for award of contract. If it is less than 10% the existing procedure for awarding the contract to the PSU may be followed.
- If negotiations are approved by the Tender accepting authority, the call letter for negotiations should be as per the instructions contained in Board’ letter No.61/W-II/CT/24 dated 31.10.65 and all guidelines as contained in Board’s letter no.73/W-II/CT/15 dated 15.03.74 and letter No. 84/W-I/CT/28(P) dated 099.07.85 with the modification that it will apply to L-1 only and not to all tenderers.

# CONSIDERATION OF TENDERS (contd.)

## **COUNTER OFFERS**

- In cases where the overall value of L-1 is not unreasonably high but the rate(s) for certain item(s) in a schedule or the total value for a schedule happen to be higher than those quoted by other tenderers in the same tender or higher than the last accepted rates, the method of counter offering the lower rate(s) obtained in the same tender or if all these are higher, any other rate(s) considered reasonable by Tender committee may be adopted while finalising the tender.

# What is the basis to ascertain the reasonableness of rates?

Is it –

- LAR?
- Market Rates?
- SOR?
- Estimates Rates?

# Bye passing of Lower Offers

- CVC has banned negotiations. Thus, no offer other than L-1 can be considered.
- Don't try to eliminate the L-1 on the basis of post eligibility criteria.
- Appropriate (but not too restrictive) eligibility criteria should be laid in advance before calling of tender and the same should be strictly adhered.

# ACCEPTANCE OF TENDERS

- **An unqualified acceptance of a tender constitutes a binding contract** until a formal agreement is constituted and in order to ensure this fact, the acceptance letter should be suitably worded. However, if the acceptance of the tender by the Railway is a conditional acceptance, it requires the consent of the tenderer before binding contract takes place .
- **In case the terms & conditions incorporated in the letter of acceptance/purchase orders are different** from those originally offered and modified by the tenderer subsequently during the course of negotiations, discussions or otherwise, the contractor should be asked to return one copy of the letter of acceptance/purchase order duly signed by the same person who signed the original offer against the tender in token of his acceptance of contract to revised conditions .
- **The letter of acceptance and the agreement should be signed for and on behalf of President of India by the competent authority of the Railway, as delegated in this respect.**
- **The recommendations of Tender Committee should be put up to the original accepting authority even though the value of the tender after negotiations comes in the competence of the lower accepting authority .**

# ACCEPTANCE OF TENDERS (contd.)

- **The acceptance or rejections of tenders is left entirely to the discretion of the authority empowered to do so.** The reasons for departing from the recommendations of the Tender Committee should be recorded by the accepting authority. If the Finance member finds some financial impropriety in the ward of contract, he can report the matter to FA&CAO. Though the final decision would rest with the accepting authority, he may obtain the opinion of Associate Finance at the appropriate level if necessary before making final decision.
- Where for any reasons the **accepting authority** does not consider justifiable to accept the recommendations of the Tender Committee he may, if so desires, refer the matter to the **Tender Committee for re-consideration setting out reasons for not accepting the recommendation of the Committee.**
- As the tender accepting authority has to take final decision on the Tender Committee's recommendations after considering the viewpoints of all members of the committee including the Finance Member, the **accepting authority** should invariably **record his reasons in writing for not accepting the recommendations** of any member.
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# VARIATIONS

Power to vary the terms of a contract lies only with actual parties thereto.

a) Variation of standard conditions of contract and specification sanction of G.M.

b) Variation of rates: Original accepting authority with concurrence of finance.

c) Variation of quantities:

i) Original accepting authority

ii) Execution of quantities beyond (+)50% of the overall agreemental value should not be permitted if necessary only through fresh tenders or by negotiating fresh rates, with existing contractor.

d) Variation of items: Original accepting authority

e) Extension of period: Powers the value of contract falls

f) If agreemental value goes beyond (+) 25%, the rates will have a reduction of 2% in the incremental value of agreement for the first 15% increase, for next 10% increase additional reduction of 2% in the further incremental value of the agreement.

# VARIATION IN CONTRACT QUANTITIES

- **VARIATION IN CONTRACT QUANTITIES**

- Tender schedules are to be prepared with utmost care, following all the existing provisions in the Code as also Administrative instructions without fail, after detailed site inspection and soil investigations, wherever necessary, eliminating as far as possible the need for bringing any new items during execution of works.
- These tender schedules may be approved by the JAG/SAG officers. Vetting of tender schedule should be necessary only in the rare urgent cases where tenders are called without sanction of detailed estimate. Pre-vetting will also not be necessary in case of zonal works and revenue works in Open-Line for which detailed estimates are not to be framed.
- System of indicating rates for individual items in the schedule(s) and asking the tenderers to quote a common percentage for all items in a schedule /all schedules may be preferred wherever possible.
- For controlling payment in case the agreemental value goes beyond +25%, a regulatory mechanism as part of the contract itself should be built in. For the first 15% increase in the value beyond 25% of agreemental value, the rates will have a reduction of 2% in the incremental value of the agreement and for the next 10% increase in the value, rates will have an additional reduction of 2% in the further incremental value of the agreement.
- Execution of quantities beyond (+)50% of the overall agreemental value should not be permitted and, if found necessary, should be only through fresh tenders or by negotiating fresh rates with existing contractor as per procedure laid down by Railway Board in their letter no. 94/CE/CT-i/37 dated 5/5/1995 for variation beyond 25%.
- To decide whether the agreemental value will go beyond 50%, as and when 75% of the agreemental has been executed, the contract should be subjected to a detailed review and administrative decision by an appropriate authority (agreement signing authority) should be recorded in writing and quantities monitored carefully and from this stage onwards, execution of further quantities will have to be monitored at least at the level of JAG Officers.
- For variation in value beyond -25% of the agreemental value, the present instructions for holding discussions with the contractor will be dispensed with.

# PRICE VARIATION CLAUSE

- **The price variation clause may be applicable to contract valuing Rs. 10 lakhs and above. The Chief Engineer, however, has the discretion not to provide this clause in contracts valuing between Rs. 10 lakhs and Rs. 25 lakhs on account of some special consideration if he deems fit.**
- **Price variation clause should be applicable only to contracts where the stipulated period of completion is more than one year.**

# Determination of Contract

- By completion of work
- Termination
  - No fault of Contractor
  - Fault of contractor
    - Risk and cost Clause
    - Recovery of security deposit
    - Invoking of performance guarantee

## DO's

- 1) Allow adequate and reasonable minimum time for opening of all tenders.
- 2) Tender abstract and briefing note prepared and duly signed by the concerned official on each page.
- 3) Only consider offer accompanied by requisite earnest money.
- 4) Consider reasonableness of rates in the tender committee minutes with reference to last accepted rates, market rates and analysis of rates.
- 5) Read the tender committee recommendations with dissenting notes carefully.
- 6) Record relevant reasons for overlooking the lowest offer if it is not acceptable.
- 7) Ensure that special conditions do not give scope for acceptance of high rates.
- 8) Record the acceptance or otherwise on the body of the tender committee minutes only.

## DO's

- 9) Reasonableness of rate is examined critically, logically and specifically both in respect of total cost and rates of important individual items.
- 10) Beware that low offers are in fact so in reality and price differential for similar but different items of schedule are reasonable.
- 11) Ensure that the tender committee is duly constituted of competent level of officers specified.
- 12) Ensure prior sanction of competent authority before executing additional quantities.
- 13) Call defaulting contractor also who has failed for same contracts when tender is invited at risk and cost.

## DONT's

- 1) Do not change the tender committee members once constituted without prior approval of CA.
- 2) Do not consider delayed/late tender.
- 3) Do not treat the tender committee's recommendations with dissenting notes from one or more members of the tender committee as a unanimous recommendations.
- 4) Do not order negotiation on the repeated advice of tender committee to invite fresh tender, particularly where response to the call for negotiation is poor.
- 5) Do not exercise the powers of the accepting authority in case you have been a member of the tender committee.
- 6) Do not accept open quotations from contractors during negotiations.
- 7) Do not entertain letters/representations of tenderers subsequent to the opening/negotiations/consideration of tenders.

## DONT's

- 8) Do not record the acceptance/otherwise of the tenders anywhere else than the body of the tender committee minutes.
- 9) Do not advise the tender committee prior to their deliberations on the suitability or otherwise of any particular offer.
- 10) Do not operate N.S. item without sanction of the CA.
- 11) Do not award works on quotations in a routine manner.
- 12) Do not accept a single tender received in response to a call of limited tender.
- 13) Do not allow execution of work without proper sanctioned work order except in special circumstances.
- 14) Do not permit use of substandard materials.
- 15) Do not allow execution of partly left over work by another agency before taking final measurements of earlier contract.
- 16) Do not allow the contractor to just execute only those items considered more profitable by him at his discretion.



# **PROBLEMS IN COMMERCIAL CONTRACTS**

1. Parking Contracts
2. Commercial Publicity Contracts
3. Parcel Leasing Contracts
4. Pay & Use Toilets Contracts
5. JTBS
6. STBS
7. Halt Contracts
8. Catering & Vending Contracts

THANK YOU