

FUNDAMENTALS

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Need of outsourcing/contracts

- Absence of in-house expertise
- Competitive pressure to reduce cost.
- Work/service being temporary (short duration) in nature.
- Organizational down sizing for competitive edge.
- Retain exit option

Need of outsourcing/contracts– contd.

- Need to hire consultants/external expertise for independent view point on important issues
- Partnerships for mutual benefits- Need of financial as well as managerial partnership – Public –Private Partnership (PPP)
- Exit form non-core activities to focus on core competencies

Objectives of Tendering as process of entering into contract

- **Most economic/competitive rates for following activities of prescribed quality standards**
 - Getting works done through external agency within target date.
 - Procurement of materials/machines/equipments of specified quality from manufacturers/traders.
 - Services or activities being outsourced.
- **Minimum viability gap funding under PPP models**

Objectives of Tendering- contd.

- **Highest rate for commercial activities being outsourced while maintaining reasonable standard of service to customers.**
- **Select competent agency**
- **Equity in selection process**
- **Promptness in execution**

Economic factors

- In-house activity being more costly than private agency due to bureaucratic work culture
- Private agency being more efficient due to flexible labor policies, well defined responsibilities and competitive pressures
- Possibility of lower offers due to compulsion of private sector to quote on marginal cost basis during recession just to survive/cut losses.

Contracting – Basic considerations

- Protect organizational interests, to enable it to deliver products/serves of required quality to its customers so as to retain them.
- Remove ambiguity in working relationships to
 - Enable fast fulfillment of contractual obligations
 - Reduce avoidable litigations
- Legal remedies in case of breach of contracts

Public Tendering -Distinguishing Features

- **Private Contracting** : Assessment of fair value is supreme-
 - procedural fairness is implicitly assessed.
- Open Tender in normal circumstances
- Equal & reasonable opportunity to all bidders.
- Public accountability and transparency regarding reasonableness of rates and other terms & conditions having financial implications.

Public Tendering -Distinguishing Features – contd.

- Total absence of favor to any one agency at the cost of others
- Selection of only the reasonable offer (least for expenditure/highest for earning contracts) of competent tenderer.

Public Tendering -Distinguishing Features – contd.

- Elaborate & transparent procedure prescribed for tendering & contracting.
- Need to have transparent pre-determined eligibility criteria's before calling of tender.
- Eligibility criteria not to be too restrictive considering the nature of work / service / supply so as not to restrict competition.

Public Tendering -Distinguishing Features – contd.

- Applicability of general/standard conditions of contract along with special conditions
- Post- checks by vigilance/audit and fixing of personal responsibility
- Involvement of Central Vigilance Commission (CVC) in cases against officers.
- Personal accountability of officers for lapses.

Public Tendering -Distinguishing Features – contd.

- Application of Principles of natural justice while taking action against defaulting contractors/suppliers/service providers.
- Need to behave like a model principal.
- Negotiation only with lowest eligible tenderer.
- Internal delegation of powers and prescribed procedures have to be observed
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Public Tendering -Distinguishing Features – contd.

- Disputes/litigations due to organizational failures as a result of inter-departmental conflicts leading to higher agency cost.
- Lack of accountability for delays due to internal bureaucracy.
- No incentive for early decisions/results to public servants leading to indifferent behavior.

Activities contracted out

- Construction of new assets.
- Maintenance (AMC) of
 - Civil assets, gardens etc.
 - Plant and machines. computer etc.
- Cleaning activities
- Handling work
- Consultancy

Activities contracted out-contd.

- Procurement of materials from traders/manufacturers
- Leasing of VPU/SLR/Trains
- Booking of tickets
- Catering Services
- Selling of advertising rights

Types of Commercial Contracts

- **Railway signages through Commercial Publicity**
- **Printing of Time Table/CDs**
- **Halts**
- **CBA/RTSA**
- **Mechanized Cleaning**
- **Training in customer care, marketing ,computer systems etc. in Commercial Department.**

Types of Commercial Contracts

- **Supply of raw-materials, semi-cooked items, branded products to base kitchens/refreshment rooms.**
- **Maintenance of equipment in pantry car/base kitchen**
- **Parcel handling and trans-shipment licenses.**

Types of Commercial Contracts

- **Provision of Bus for ticket checking/carrying cash**
- **Maintenance of SPTMs**
- **Free display Boards/touch screens on time/space sharing basis (Railway's information and time slot pre-fixed)**

Types of Commercial Contracts

- **Catering**
- **Pay & Use Toilets**
- **Commercial Publicity**
- **Leasing of SLR/VP/Full Parcel Train**
- **Automatic Teller Machine(ATM)**
- **Foreign Exchange Counter**
- **Tourist Bureaus**

Types of Commercial Contracts

- **Book Stalls**
- **Automatic Vending Machines**
- **Water Vending Machines**
- **Commercial Publicity**
- **Cycle/Scooter/Car Stand**
- **Construction of modular stalls through Commercial Publicity**

Emerging Problem Areas

- Pure supply & work contracts being traditional method in the past
- Rules/procedure framed for traditional types of tenders
- Service contracts being more prominent for all the deptts. due to increased outsourcing of activities being done in-house before.
- Several gray areas need discussions and policy formulations to offer transparent guidelines to field officers.

Precautions

- Pre-tender activities complete
- Clear tender notice
- Adequate notice period
- No discrimination
- Earnest money for keeping the offer open
- Security deposit /performance guarantee for due performance of contract

Precautions-contd.

- Correct comparative chart- evaluation of financial/ special conditions
- No change in eligibility conditions midway
- Reasonableness of rates as per market conditions/profit sharing clause if base assumptions change
- Record reasons for overlooking lowest/highest bidder

Precautions- contd.

- Dissent to be part of minutes
- No acceptance of recommendations by a member even if he is competent
- Acceptance only on the body of the minutes
- Decide within validity period
- Legal/financial vetting of the agreement
- Timely extension of BG

Precautions- contd.

- Frequent quality checks
- Variations only after sanction
- Arbitration- to prove that govt. has fulfilled its contractual obligations

PART B
EARNING CONTRACTS

Earning contracts

- To obtain maximum rate for the services being outsourced.
- Contractor to collect predetermined user charges
- Should be able to earn reasonable profit after meeting management expenses
- Should not charge indiscriminately

Earning Contracts-contd.

- Decide user charges carefully as per market potential
- Decide clear-cut quality parameters and other terms and conditions in advance.
- Has to quote rate in reference to user charges and other terms & conditions.
- Should be able to manage in least cost and able to pass higher margin to railway.

Earning Contracts-contd..

- Technical and managerial expertise essential
- Current standard of quality should not get diluted after outsourcing
- Minimum eligibility criteria to be prescribed in advance- two pocket system can be followed in important cases.

Earning Contracts-contd..

- First packet has technical and commercial expertise
- Second one has financial bid
- Adequate EMD/SD so that he does not discontinue the service in between
- Ownership pattern/family structure to be checked to ensure that failed contractor does not run by proxy.

Earning Contracts-contd..

- Proper competition is generated
- Reserve price as per reliable market survey of earning potential
- Condition of advance payment of lease rental and termination if next installment not paid on due date.
- Period of advance deposit to be sufficient for finalizing fresh tender within intervening period in case of failure.

Earning Contracts-contd..

- Go for sales tender to break the cartel if any.
- Determine scope and scale carefully after market survey.
- Use e-tendering
- Currency not to be too short or too long.
- All taxation and labor rules to be observed
- No permission to occupy additional land.

Earning Contracts-contd..

- Temporary structure if any constructed by the contractor to be the railway property.
- Reserve right of inspection.
- Indicate clearly that applicable taxes recoverable in case of failure to pay along-with penalty if any.
- Delay in payment of license fee in advance sufficient for termination of contract.

Earning Contracts-contd.

- Specify user charges including free services.
- Display of rates etc. at workplace.
- Should issue serially numbered and printed coupons bearing prescribed rates.
- Contractor to appoint honest, well behaved persons to manage the facility and will be answerable for their misconduct.

Earning Contracts-contd.

- Misconduct sufficient cause for termination.
- Responsible for good service.
- Has to take insurance cover where applicable.
- Has to pay fair wage and other benefits as per labor laws.
- Notice period to be minimum 3 months.

Earning Contracts-contd.

- Forfeiture of SD in case of failure to meet contractual obligation.
- Standard arbitration clause.

COMMON IRREGULARITIES IN TENDERS & CONTRACTS

- **Tender not widely publicised**
- **Adequate notice not given while inviting tenders.**
- **Reasons for short-notice tender not justified.**
- **Late availability of Tender form.**
- **Tender Box not available in advance.**
- **Issue of tender form denied on the pretext of non-fulfillment of eligibility criteria.**
- **All relevant documents not received with the tender, yet contract awarded.**

COMMON IRREGULARITIES IN TENDERS & CONTRACTS

- In case of limited tenders:
 1. Arbitrary selection of firms
 2. Firms with better experience ignored and those with dubious credentials selected.
 3. Tender notice not sent to all firms.
 4. Bogus firms selected to inflate the number.

COMMON IRREGULARITIES IN TENDERS & CONTRACTS

- In case of single tenders:
 1. Projecting undue/artificial urgency.
 2. Selecting unsuitable tenderer based on exaggerated credentials, ignoring his past failures.
 3. Accepting exorbitant rates on the ground of urgency.
- These tenders should be invited only in emergencies/exceptional cases, from a firm of proven capacity ,where other tender routes cannot be followed due to exigency of the situation.
- These tenders are also invited when the item is proprietary or only one firm is capable of doing the work.

COMMON IRREGULARITIES IN TENDERS & CONTRACTS

- **Documents accompanying tenders not cross-checked for genuineness.**
- **Tender considered even without earnest money.**
- **Negotiation not done only with L1, but with others, too.**
- **Estimate not drawn up before calling of tenders, but subsequent to receiving tenders.**

COMMON IRREGULARITIES IN TENDERS & CONTRACTS

- **Estimate amount not realistic. Not vetted by Finance and sanctioned by CA.**
- **Previous contract given extension intentionally & without authorization, to give the contractor undue favour.**
- **Processing delayed unduly for a fresh tender, to favour existing contractor.**

COMMON IRREGULARITIES IN TENDERS & CONTRACTS

- **Accepted rates not reasonable – with reference to LAR & the estimate.**
- **L1 overlooked arbitrarily, without proper justification.**
- **TC members changed without prior approval of CA.**

COMMON IRREGULARITIES IN TENDERS & CONTRACTS

- **Open quotations obtained during negotiations – should be in sealed cover, to be opened by TC members.**
- **Letters/representations of tenderers entertained subsequent to opening/ negotiation/consideration of tenders.**
- **TC recommendation (with dissent) treated as a unanimous recommendation.**
- **Negotiation ordered on the repeated advice of TC to invite fresh tender, particularly when response to call for negotiation is poor.**

COMMON IRREGULARITIES IN TENDERS & CONTRACTS

- Manipulation of facts by TC to:
 1. Depict better placed bidder as unsuitable or less suitable.
 2. Exaggerate track record of favourite bidder.
 3. Exaggerate past failures of his main rival.
 4. Ignore/suppress otherwise satisfactory credentials of main rival.
 5. Project the lowest rates of main rival as 'unworkable' on the basis of exaggerated estimated cost.

COMMON IRREGULARITIES IN TENDERS & CONTRACTS

- Considering tender on extraneous conditions not included in the tender.
- Exaggerating capacity/resources of favourite party and downplaying that of his rival (lower bidders)
- Ring/Cartel formation among the bidders leads to elimination of competition and award of contract at exorbitant rates.
- At times it is done with active collusion of officers concerned.
- The ring formation becomes more important in case of limited tenders; thus, an attempt should be made to identify sister concerns.
- In case of suspected ring formation with high rates, tender cancellation is advisable.

SOME GOOD VIGILANCE CHECKS

- A Railway Traveller's Service Agent (RTSA), whose license had been terminated by GM, was allowed to function by the lower level authorities ,thereby extending undue favour to it.

SOME GOOD VIGILANCE CHECKS

- ‘Two-packet’ system in a parking stand contract violated. Packet ‘A’ – one tenderer submitted invalid earnest money; the other didn’t submit earnest money, stating it had kept it in packet ‘B’ by mistake. Thus, both offers invalid. Yet, Packet ‘B’ opened by TC & TAA, & contract allotted to higher bid. Basics of tendering – if tender unaccompanied by valid earnest money, it has to be rejected.

SOME GOOD VIGILANCE CHECKS

SLR leasing contract – Policy at that time:

- CPS rate – if average SLR utilisation between 25-50%
- GPS+10% rate – if average SLR utilisation is above 50%
- Train begins at X, goes via Y, to Z.
- At X. utilisation >50% ; at Y, utilisation between 25-50%.
- Distance: XY=27 Km; YZ =908 Km.
- Stoppage at Y= 2 minutes.
- Two lease contracts awarded to same party – one for XY at GPS+10% (small distance, small amount); another for YZ at CPS (long distance, small amount).

SOME GOOD VIGILANCE CHECKS

- As per contract, consignment would have to be unloaded & then loaded at Y (all within 2 minutes).
- PC conducted on train – only book delivery at Y; one PWB surrendered there, a fresh PWB issued from Y, without any physical loading/unloading at Y.
- As per HQ guidelines, loading & unloading should not be permitted where stoppage <10 minutes.
- Thus, splitting the contract to favour the party.

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Thanks