CHAPTER XII

CONTRACTS FOR WORKS

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I. Awarding of Contracts

1201. Definition of Contract.--When two or more persons have a common intention communicated to each other to create some obligation between them there is said to be an agreement. "An agreement" which is enforceable by law is a "Contract" . According to Section 10 of the Indian Contract Act, 1872 only those agreements are enforceable by law which are made by the free consent of the parties (see para 1256), competent to contract (see para 1259), for a lawful consideration (see para 1224) and with a lawful object, and are not expressly declared to be void. This is subject to any special law according to which a contract should be in writing and attested by witnesses.

1202. Agency of Contractor.-The agency of contractors may, if economical or expedient be utilized for the proper execution of works of construction, repairs or maintenance on lines under construction and on open lines. Materials which are in short supply or materials requiring test certificates for quality control like cement, steel etc. may be supplied to the contractors by the Railway, the agency of the Stores or other departments of the Railway being utilized for the purpose vide paragraphs 701-S and 702-S. In exceptional or urgent circumstances, however, e.g., with a view to the expeditious execution of an urgent work, the Chief Engineer in the exercise of his personal discretion, after consultation with his Financial Adviser and for reasons to be recorded, may arrange for the supply or manufacture of materials required for the work, through a contractor.

1203. Works Contracts.-All works and supplies relating to the Engineering Department executed through the agency of contractors may be broadly classed as follows :

(i) **Zone Works.-**Such as works of ordinary repairs and maintenance and others of petty nature in a particular zone, or area;

(ii) **Special Works.-**Such as the construction of bridge, the formation of an embankment etc. other than zone works;

(iii) **Supplies of building materials.-**Such as bricks, tiles, lime, bamboos, ballies, matting, doors, windows, ballast, boulders, moorum, stone chips, fire bricks, shingle, pitching stone etc. which are not usually stocked or purchased by the Stores Department.

Contracts relating to these three classes will for the purpose of this Code be termed as `Work Contracts' as distinguished from `Stores Contracts' which pertain to the supply of stores arranged by the Stores Department.

1204. Forms of Works Contracts.-The following forms of contract are primarily intended for application to Works Contracts (c. f. para 408-S) :

- (i) Lumpsum contract :

- (ii) Schedule contract; and
- (iii) Piece work contracts.

1205. "Lumpsum" Contracts.-The Lumpsum Contract is a contract under which the contractor engages to carry out a work or effect supply as specified and within a given period for a fixed total sum; his receipt of this sum being dependent on his completing the work or supply to specification and time, irrespective of the actual quantities and kinds of work done of materials supplied in achieving his results (c. f. para 403-S).

1206. In the case of such contracts a scale of rates or prices may be agreed upon by which enhancement of or reduction from the lumpsum may be regulated in the event of any departures from the work or supply as specified being made subsequently under the order of competent authority; or by which reductions may be made, at the discretion of competent authority for failure on the contractor's part to conform to specification. (c. f. paras 1328 and 404-S).

1207. Schedule Contract.-The Schedule Contract is a contract under which the contractor engages to carry out a work or effect supply as specified and within a given period, at fixed unit rates or prices for each of the various items comprising such work or supply, the sum he is to receive depending on the actual quantities and kinds of work done or materials supplied in completing the work or supply to specification and time. It is not repugnant to the above definition to show in such contracts the approximate amount of the contract, based on approximate quantities and the fixed unit rates. (c.f. para 405-S).

1208. Piece Work Contract.-This means a contract under which only unit rates or prices for various kinds of work or materials are agreed upon, without reference either to the total quantity of work to be done or materials supplied; or to the quantity of work to be done or material supplied within a given period. The Zonal Contract adopted on the Railways (refer para 1209) fall under this category (c.f. para 406-S).

Note.- Agreeable to the above definition of a piece work contract.-(a) the Railway may indicate its intention as to the maximum value of the orders it is likely to place; but the contractor cannot claim to be given an order for more than one unit of work or supply; (b) after the contract is executed, specific orders for work or supply may be placed against it; and (c) rate of progress may not be specified; but if it is not satisfactory the contract can be terminated.

1209: Contracts for zone works and Engineering Materials- It is often advantageous to allot all minor works and all works of repairs and maintenance in a particular zone for a definite period to one contractor. It may be likewise advantageous to make this contractor who can be called It zonal contractor responsible for the conveyance or supply of engineering materials as and when required, in a particular zone during a specified period, The Executive Officers of the Engineering Department should therefore, take steps to select suitable contractors for zone contracts which will include:

i. New Works, additions and alterations to existing structures, special repair works and supply of building materials subject to the contract value of each such work not exceeding Rs 5 lakh,

ii. All ordinary repairs and maintenance works; and

iii. Conveyance of materials e.g, bricks, lime, sand etc, which are likely to be required in a Zone during the year.

The zonal contracts should be for the period from 1st of July to 30th of June, The contracts for these works or supplies should as a rule, be on a yearly basis, If, however, any special advantage, such as more favorable rate is likely to be secured giving out contracts for longer periods in the case of manufacture or supply of bricks) contracts for more than a year may, with the concurrence of the Accounts Officer, be entered into, it should be ensured that as far as practicable, no work orders are approved the old contract after the opening of the new tenders and all works of the old contract are completed by the end of June. Exceptional cases may, however, be dealt on their merits with the approval of the competent authority, taking into account all relevant facts including such information as is available regarding the trend in rates.

1210. Tender System.-It is the primary duty of the Executive to obtain the best value possible for the money spent and the tender system should be given a very careful and serious consideration in all cases as one of the most effective methods of securing competitive rates. The exceptions made to the general rule, that the tenders should be called for, in all cases are based only on practical considerations in order to avoid delay and unnecessary work in the cases of works of comparatively small value. (c.f. para 323-S and 602-F).

1211. Circumstances when tenders need not be called for.-Except where for reasons which should be in public interest the General Manager decides that it is not practicable or advantageous to call for tenders, all contracts over Rs.25,000/- in value should be placed after tenders have been called for in the most open and public manner possible and with adequate notice. For works contracts based on Schedule of Rates in force on the Railway, calling of tenders up to Rs. 50,000/- can be dispensed with by the General Manager without recording reasons for doing so. In all other cases where it is decided not to call for tenders, the reasons should be recorded and financial concurrence obtained.

Should the General Manager's powers of decision under the preceding sub-para be delegated to a lower authority (who will exercise it subject to the same proviso) and should the Account Officer consider the reasons adduced by such authority to be insufficient or other than in public interest, he should represent his views to the higher authority concerned and, if necessary, consult the General Manager."

Note :-General Manager may delegate powers to dispense with calling of tenders for works uptoRs.50,000/- each in value in consultation with the Associate Finance at the stage of acceptance of offer, subject to the following stipulations :-

- (i) Normally powers to despense with calling of tenders should be exercised sparingly. However, in special cases, where it is felt necessary to do so, reasons for taking such decision should be recorded by the competent authority in each case viz. JA Grade officer upto Rs. 40,000/- each and Senior Admn. Grade Officer upto Rs. 50,000/- each subject to an annual limit of Rs. 4,00,000/- per officer.

- (ii) The work should not be split up for the purpose of bringing it within the ambit of this dispensation.

- (iii) The reasonableness of rates should be gone into objectively by the accepting authority.

- (iv) Quotations should not be for items which can be executed through the existing contracts including zonal contracts;

- (v) Quotations should not be for fancy (expensive but of low utility) items;

- (vi) Quotations should only be for works which are urgent in nature.

- (vii) Quotations should normally be invited from at least 3 contractors working in that area. At least two of them should be from the approved list of the Division.

- (viii) Accepting Authority must take precautions to see that the quotations are from genuine firms (and not from fictitious firms); and

- (ix) 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. DRM/ADRM should have a monthly review as a matter of control.

1212. Classes of Tenders.-The following are amongst the different methods of obtaining tenders that may be adopted :-

- (i) By advertisement ("Open" tenders);

- (ii) By direct invitation to a limited number of firms/contractors ("Limited" tenders); and

- (iii) By invitation to one firm/contractor only ("Single" tenders). (c.f. para 323-S and 603-F).

1213. Open Tender System :-The system of invitation to tender by public advertisement in the most open public manner possible should be used as a general rule and must be adopted, subject to the exceptions noted in paragraphs 1211 and 1214.

1214. Limited Tender System :-

(i) Where for reasons which should be in the public interest, it is considered not practical or advantageous to call for open tenders, limited tenders may be invited with the concurrence of the Financial Adviser and Chief Accounts Officer and approval of the competent authority. The reasons for inviting limited tenders from firms/contractors should be kept on record while approaching finance for concurrence.

(ii) In open line railways, the systems of inviting tenders for works costing up to Rs. 40 lakhs (Rupees Forty lakhs) each from amongst the contractors borne on the approved list may also be adopted when it is considered advantageous to do so, provided the number of contractors borne on the approved list for the particular type of work is not less than 10.

(iii) Some percentage of the tenders which would normally be finalised by calling limited tenders, be finalised by calling open tenders so as to test the market rates periodically.

(iv) Notice for `Limited Tenders be sent to all eligible contractors borne on the approved list.

Note :-Notwithstanding the provision contained in para 1214 (ii) above, the Railways may invite open tenders in the following circumstances :-

- (a) In the event of insufficient response to the tender from the contractors borne on the approved list;

- (b) When the work is of special nature and contractors with requisite experience are not available on the approved list; and

- (c) When ring formation is suspected."

1214-A Single tender can be awarded under following situation such as :

(**1) EMERGENT SITUATION :**

- (a) Accidents, breaches involving dislocation to traffic.

- (b) Works of specialised nature to be personally approved by the GM/CAO (C) with prior/ concurrence of the FA & CAO. This power is not to 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 approval of Additional General Managers of Railways.

NOTE.--These powers may be delegated by the General Managers in consultation with FA & CAOs to PHODs/DRMs upto a maximum of Rs. 5 lakhs per item per annum. On re-delegation, these powers would be exercised by PHODs/DRMs in consultation with associate finance.

1215. List of Approved Contractors :-No work or supply should ordinarily be entrusted, for execution, to a contractor whose capability and financial status has not been investigated beforehand and found satisfactory. For this purpose, a list of approved contractors may be maintained in the headquarters and Divisional Offices of the Railway. Other contractors who have done satisfactory work on the Railways or outside the Railways may be added to the list, in consultation with the Financial Adviser and Chief Accounts Officer, or Divisional Accounts Officer.

1216. The list of approved contractors be prepared and maintained in Headquarter and Divisional offices of Railway, where the intending contractors would undertake to execute Railway works, by observing the under-noted procedure.

(i) Once a year, by giving wide publicity through advertisements etc., intending contractors may be invited to register themselves for different classes. Contractors already on the "Approved List" and those who have executed/done satisfactory work on the railways, thereby qualifying themselves to be relied upon for allotment of works/assignments in future, should also be invited to get themselves registered.

(ii) The basic requirements for registration as circulated vide Board's letter No. 85/W.I/CT/23- GCC dated 31-1 86 should be spelt out and made well known in order to reduce discretion and arbitrariness in the selection for registration.

(iii) Where required, capacity of the intending contractors to execute works satisfactorily as an independent and competent agency, their financial capability for satisfactory execution of railway works, field of specialisation, past experience, ability to supervise the works personally or through competent and qualified/authorised engineers/supervisors, be examined and investigated expeditiously prior to their enlistment.

(iv) An annual fee of Rs. 1,000/- should be charged from such registered contractors to cover the cost of sending notices to them and clerkage for tenders etc.

(v) The selection of Contractors for enlistment in the "Approved List" should be done by a Committee for different value slabs, and accepted by the Accepting authority. The composition of the Committee and the authority for acceptance shall be as prescribed by the Railway Board from time to time.

(vi) The "List of Approved Contractors" be treated as confidential office record and individual names of contractors on the list should not be made known to other contractors. It should be maintained upto date in a neat and unambiguous manner.

1217. Principles to be observed in framing contract agreements.-The basic principles to be kept in view by those who are authorized to enter into contracts or agreements are given below :-

(i) The terms of contract must be precise and definite, and there should be no room for ambiguity or misconstruction and matters to be agreed upon should include, in detail, the following :-

- (a) What the contractor is to do; when, where and to whose satisfaction it is to be done;

- (b) What the railway administration is to do; and on what terms;

- (c) What payment is to be made; what it is to cover, to whom it is to be made, and the method and basis of making it;

- (d) the responsibility of the contractor in respect of adequate supervision, care of Government property, and the protection of outside interest and those of the staff and workmen;

- (e) the terms on which variations and modifications, if any, are to be permitted; and authority competent to order and assess them, and the occasion and basis of such assessment;

- (f) the measures to be adopted in the event of a breach, of the contract by either party thereto; and the correct method of and the grounds for determination therof;

- (g) the method of settling disputes.

(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 froms of contract should be adopted wherever possible, the terms to be subject to adequate prior scrutiny.

(iv) The terms of contract once entered into should not be materially varied except in consultation with the competent legal and 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 legal and financial authority.

(vi) Provision must be made in contracts for safeguarding Government properties entrusted to a contractor.

(vii) In entering into long term agreements or contracts, consideration should be given to the desirability of providing for the railway administration unconditional power to cancel the agreement at any time after the expiry of six months notice to that effect.

(viii) The power to retain and "set off" all claims whether arising out of the particular contract or out of any other transaction or claim whatever against the contractor should be secured for the railway administration. (c.f. para 626 F and 402 S).

1218. Documents forming integral part of contracts.-The documents forming integral parts of a contract are the conditions of contract, standard or special; the specifications, standard or special (and any plans necessary) the schedule of items, quantities and rates; the agreement form; instructions to tenderers; and tender forms (if any). (c.f. paras 630 F and 416 S).

1219. Specification and drawings.-The execution of works and supply of materials on contract should be according to standard specifications and drawings, whenever possible rather than to sample. If no standard specifications exist for any item or work or supply, a complete specification of the item and of the materials to be used should be prepared and embodied to the contract documents. For special works, complete sets of drawings showing the general dimensions of the proposed work, and if need be, details of the various parts should be prepared and made available for reference by intending tenderers.

1220. Conditions of Contract-The conditions of contract may be either standard or special. The standard conditions of contract are prescribed by the Railway Board. In additional special conditions may be prescribed when considered necessary. (c.f. para 631 F and 417 S).

1221. Use of standard conditions.-Standard conditions are preferably embodied in all contracts to which they are applicable. In the event of such conditions proving defective in any way, it will be the duty of the General Manager to report the fact to the Railway Board, if such conditions were prescribed by them, and in all others cases to arrange, in consultation with his Legal and Financial Advisers, to amend or amplify them suitably. (c.f. para 631 F and 418 S).

1222. Unusual conditions-Any unusual conditions of contract should, before they are imposed, be approved by the General Manager, acting in consultation with his Legal and financial Advisers or if the contract to which they relate is beyond his powers to execute, by the Railway Board, (c.f. paras 632 F and 419 S).

1223. The interpretation to be placed on the word "unusual" is left to the General Manager who will use his discretion both in issuing instructions as to the cases to be submitted to him and also in deciding which cases should be referred to the Railway Board. (c.f. para 420 S).

1224. Lawful consideration.-For a contract to be legal, there must be a "Lawful consideration" for performance. Such "consideration" may take a positive form (i.e. an agreement to order a certain quantity of work or materials) or a negative form (i.e. an agreement not to order certain work or materials from any one but the contractor). The negative form of "consideration" may be advantageously employed in cases of the supply of materials of a perishable nature or which is not necessary to store, or for the requirement of which is not possible to estimate; or for where a contractor offers to carry out all works on a division at a fixed percentage below schedule of rates. (c.f. para 422 S).

1225. If time is to be "of the essence" of a contract it should be specifically so stated. It may in some cases be found advisable to avoid `Penalty Clauses' by lowering the basic rate and providing for an enhanced rate which would bring it up to standard, if the contract is completed by the time specified. A penalty clause of any nature is, in any case pre-eminently a matter on which legal advice should be obtained. (c.f. para 423 S).

1226. Issue of Railway materials.-Where Railway materials are to be utilized and, for valid reasons net (i.e. labour) rates are not employed, the rate at which the value of such material will be recovered together with the place or places at which they will be delivered should be detailed. It should be made clear that all lead and lift from that place to the site of work would be at the expense of the contractor.

1227. Issue of tools and plant to contractors.-Where tools, plants, patterns or other Railway property are lent to a contractor for the performance of his contract, the terms of such loan should clearly be specified. In order to safeguard Railway property adequately, it is desirable that in addition to providing that any damage or deterioration is made good, a provision should exist that the contractor is responsible for `loss or destruction'. Under the Law of Bailment the contractor, in the absence of any special contract is not responsible for loss, destruction or deterioration, if he has taken the amount of care that a man of ordinary prudence, would under similar circumstances take of his good'. (c.f. para 425 S).

1228. Special conditions should not be tacked on to standard conditions until the effect of doing so has been carefully examined and consequential changes carried out. (c.f. para 427 S).

1229. One of the conditions if the contract should be that any gift or offer of illegal gratification made by the contractors or others on his behalf renders the contract void. (c.f. para 428 S).

1230. Rates.-All rates should be entered in a contract, in words as well as in figures and what they are to cover, should be clearly stated in the contract. (c.f. para 432 S).

1231. Subject to any general or specific order at the time being force the authority empowered to execute a contract is competent to decide on the rates therefor; provided that where such rates are in excess of the market or standard rates

or the Railway, or rates quoted by railway workshops for the manufacture of the stores in question, the authority should record the reasons for adopting the higher rates. (c.f. para 433 S).

1232. Quantities.-All quantities should be entered in a contract in words as well as in figures. (c.f. para 434 S).

1233. Nomenclature.-As far as practicable standard forms of nomenclature or description should be employed, the terminology should be such in all cases as to show beyond all reasonable doubt what exactly is required. (c.f. para 435 S).

1234. The right should invariably be preserved to reject any or all of the tenders received without the assignment of reasons.

1235. Tender Forms.-Tender Forms supplied to tenderers should completely embody either directly or by reference the contents of the contract documents. In the event of there being any discrepancy between the two it should specifically be stated in the former as to which will prevail. Tender forms should inter-alia state:

- (a) the amount of earnest money to accompany the tender and the nature of security deposit, if any, required in the case of an accepted tender;
- (b) with whom or what authority, the acceptance of a tender will rest; and
- (c) whether or not tenders containing erasures and alterations of the tender documents will be considered.

Note.-Such alterations constitute fresh proposals and cannot be disregarded, but must definitely be accepted or rejected. All tenders should, therefore, in equity be placed on the same footing in this respect.

1236. Tenders involving foreign exchange.-In cases of tenders involving foreign exchange expenditure in excess of Rs. 50,000, prior reference to the Board shall be made for their approval, before tenders are called for. (c.f. para 604 F).

1237. Before the Railway Administration enter into any contractual arrangements involving payment or provision by the contractor of equipment like pneumatic set or other similar costly equipment as a stand-by, the orders of the Railway Board should be obtained.

1238: Tender Notice- Sufficient notice should be given for the submission of tenders, which in the case of large works should not be less than a month. The above prescribed tender notice period may be departed from in the most exceptional circumstances only and then too in consultation with the Principal Financial Adviser.

However:

(i) For tenders valued upto and including Rs 1 crore invited through e-tendering, the tender notice period can be reduced upto 21 days by CAO/DRM without finance concurrence and upto 14 days with the concurrence of Associate Finance.

(ii) For tenders valued above Rs 1 crore and upto & including Rs 2 crore invited through e-tendering, the tender notice period can be reduced upto 14 days by CAO/DRM with the concurrence of Associate Finance.

1239. The tender notice should in all case state :-

- (i) the place and time where contract documents can be seen.
- (ii) the place and time where blank tenders forms can be obtained.
- (iii) the amount, if any, to be paid for such documents.
- (iv) the place, where, the date on which and the time when tenders are to be submitted and are to be opened.

1240. Sale of tender forms.-When open tender system is adopted the issue of tender forms need not be restricted to contractors, whose names are in the approved list. Contractors not on the approved list may on payment of the prescribed fees be furnished with tender forms and allowed to tender for the advertised requirements.

1240 A. Cost of Tender Forms. The Cost of Tender Form shall be as under :-

(i) For works costing upto Rs. 5 lakhs.	Rs. 1000/-
(ii) For works costing above Rs. 5 Lakhs and upto 20 lakhs.	Rs. 2000/-
(iii) For works costing above Rs. 20 Lakhs and upto 50 Lakhs.	Rs. 3000/-

(iv) For works costing above Rs. 50 Lakhs and upto Rs. 2 crores .	Rs. 5000/-
(v) For works costing above Rs. 2 crores and upto Rs. 50 crores.	Rs. 10000/-
(vi) For works costing above Rs. 50 crores	Rs. 25000/-

Note:

Apart from above:-

(i)	If any plan/ drawing is attached with the Tender Form, Rs.200/- per plan/ drawing will be levied extra.
(ii)	If any Tender Form is to be sent by Regd. Post, additional Postal Expenses @Rs.500/- per Tender Form will be changed.

(Authority Board's letter No. 94/CE.I/CT/53 dated 25.07.94 & 18.5.07)

1241. Earnest Money.-The amount of earnest money deposited should be sufficiently large to be a security against loss, in event of the contractor failing to undertake the contract or to furnish the required security within the appointed time after the acceptance of his tender or until such time as the sums due to him form a sufficient guarantee, as the case may be.

1242. The amount of earnest money required to be deposited with the tenders as initial security shall be as under :-

(i)	For works costing upto Rs. 5 lakhs.	2 ½% ad valorem subject to a maximum of Rs. 10,000/-
(ii)	For works costing more than Rs. 5 lakhs but upto Rs. 20 lakhs.	2% ad valorem subject to a maximum of Rs. 20,000/-
(iii)	For works above Rs. 20 lakhs but upto Rs. 50 lakhs.	1% ad valorem subject to a maximum of Rs. 35,000/-
(iv)	For works above Rs. 50 lakhs.	¾% ad valorem subject to a maximum of Rs. 50,000/-

.In case the tenderer withdraws his offer within the validity date of his offer or fails to undertake the contract after acceptance of his tender. The full Earnest Money should be forfeited. Earnest money in the form of Guarantee Bonds should not be accepted.

1243. The Railway Administration may, however, at their discretion fix a lower or higher percentage and or the maximum amount of earnest money for any individual work in consultation with their Financial Adviser and Chief Accounts Officer, keeping in view the value and nature of the work and also ensuring that provisions of para 1241 are followed.

1/5th of the amount indicated in para 1242 should be notified and collected as a security deposit for the due performance of the stipulation to keep the offer open till such date as may be specified in the tender. The tenderer after submitting his tender will not resile from his offer or modify the terms and conditions. If the tenderer fails to observe or comply with the stipulation, the amount indicated aforesaid shall be forfeited by the Railway.

The balance 4/5th amount should be notified and recovered as a part of earnest money along with the amount indicated in sub-para above, which together constitutes the earnest money. If the tender is accepted this earnest money will be retained by the Railway as a part of security for due and faithful fulfillment of the contract.

1244. Security Deposit.-Security deposits are to be paid by contractor in token for the due fulfillment of a contract. The amount of security deposit required will be as under :--

(i)	for contracts upto Rs.1 lakh in value	10% of the value of the contract
(ii)	for contracts costing more than Rs. 1 lakh upto Rs.2 lakhs in value	10% of the first Rs.1 lakhs and 7½% of the balance
(iii)	For contracts more than Rs.2 lakhs and upto Rs.2 crores.	10% of the first Rs.1 lakhs , 7½% of the next Rs.1 lakhs and 5% of the balance subject to the maximum of Rs. 10 lakhs. The amount over and above Rs.3 lakhs. to be recovered from the progressive bills of the contractors at the rate of 10% till it reaches the required value. (Authority: Railway Board letter No.88/CE-I/CT/1 ((Vol.II) dated 1-11-02)
(iv)	For contracts above Rs. 2 crores .	5% of the contract value. The amount over and above Rs.3 lakhs to be recovered from the progressive bills of the contractors @ 10% till it reaches 5%. Of the contract value

In special cases where a reduction in security deposit may enable the Railway to obtain a more favourable rate, the percentage of security may be reduced or a suitable lumpsum, as considered necessary, be fixed by the General Manager in consultation with his Financial Adviser and Chief Accounts Officer.

The security deposit may be collected by deduction from running bills of the contractor at the rates mentioned in sub-para above. The total security recovered from a contractor including the amount of the earnest money should not exceed the security amount recoverable at the rates mentioned in sub-para above. This does not, however, preclude the contractor from depositing the security money either in cash or in other accepted forms of payment.

1245. Standing Earnest Money.-A standing earnest money of the values indicated below can be accepted from a contractor borne on the Railway list of approved contractors to cover tendering against any number of works costing upto the limit indicated against each amount on the Zonal Railway Civil Engineering Department:--

(i)	Upto Rs. 5 lakhs	Rs. 10,000/-
(ii)	More than Rs. 5 lakhs but less than Rs. 20 lakhs.	Rs. 20,000/-
(iii)	More than Rs. 20 lakhs but less than Rs. 50 lakhs.	Rs. 50,000/-
(iv)	More than Rs. 50 lakhs.	Rs. 1,00,000/-

This amount would not be adjustable towards the security deposit of individual contracts obtained by a contractor.

1246. Forms in which earnest money and security deposit is acceptable.-The earnest money should be in cash or in the form of deposit receipts, pay orders, demand drafts or guarantee bonds executed by State Bank of India of any of the nationalised bank or by a scheduled bank. Government Securities (Stock Certificates, Bearer Bonds, Promissory Notes, Cash Certificates etc.) should not be accepted as earnest money. The proviso regarding earnest money does not apply to other railways or departments of Government.

The security deposit may be in the following forms :--

- (i) a deposit of cash;
- (ii) Government securities including State Loan Bonds at 5 per cent below the market value;
- (iii) deposit receipts pay orders, demand drafts and guarantee bonds. These forms of security deposit could be either of the State Bank of India or of any of the nationalized banks;
- (iv) guarantee bonds executed or deposits receipts tendered by all scheduled banks;
- (v) a deposit in the Post Office Saving Bank;
- (vi) a deposit in the National Savings Certificates;
- (vii) twelve years National Defence Certificates;
- (viii) ten years Defence Deposits;
- (ix) National Defence Bonds; and
- (x) Unit Trust Certificates at 5 per cent below market value or at the face value whichever is less. (c. f. para 1801 A).

1247. Tenders received by Post.-Tenders received by post should be entered in the Tender Register and the time of receipt should be recorded on the cover of the tender and deposited before the closing time in the tender box.

1248. Opening of Tenders.-Tenders should be opened at the specified time, date and place by the Officer nominated for this purpose. The presence of an Accounts representative at the time of opening of tenders is required, if the tender value is above Rs. 10,000 in the presence of the intending tenderers. (c. f. 607 F).

1249. Precautions to be observed while opening the tenders.-The Officer who opens the tenders and the Accounts representative witnessing the tender opening should :

- (i) Initial (with date) the cover containing the tender, front cover page of the tender and every page of the tender on which the rates or special tender conditions are quoted;
- (ii) Initial (with date) all corrections in the schedule of quantities, schedule of materials to be issued and specification and other essential parts of the contract document;
- (iii) Mark and initial all over writings in red ink. The corrections, overwritings and omissions should be serially numbered and the total number of such corrections etc. should be clearly mentioned at the end of each page of the schedule attached to the tender proper and attested with date;
- (iv) Clearly indicate on each page of the schedule attached to the tender, any ambiguities in rates quoted by the tenderer in words or figures;

- (v) Should specifically record whether samples have been supplied or not alongwith the tender. (c. f. para 608 F).

1250. The names of the tenderers and the rates quoted by each tenderer should be read out, wherever practicable, to the tenderers or the representative who may be present at the time of opening of the tenders. While opening the tenders, no opportunity should be given to any tenderer to repudiate, amend or explain the rate and or any condition quoted in the tender. No tenders should be entertained from any party in his private capacity who is directly or indirectly connected with Government service, or for which the specified earnest money has not been received (c f. para 609 F.)

1251. Delayed and late tenders''--Delayed' tenders i. e., "tenders" received before the time of opening but after the due date and time of receipt of tenders should also be opened and dealt with in the same manner as tenders received before due date and time. "Late" tenders *i.e.*, tenders received after the specified time and of opening should be opened by the concerned Branch Officer and marked distinctly preferably in red ink, prominently on the envelope as well as on the tender papers. A suitable remark in regard to both delayed and late tenders should be made both in the Tender Register as well as in the comparative Statements. For dealing with "Delayed" and "late" tenders separate instructions as issued by the Railway Board from time to time should be followed, (c f. para 610 F).

1252. A statement of comparative rates and other important tender conditions should be prepared by the branch concerned and verified by the Accounts Department. It must be ensured that all tenders received are tabulated in the above comparative statement and put to a Tender Committee constituted for the purpose for consideration without any screening by any other official (c.f. para 611 F.)

1253. Briefing notes for the Tender Committee--Alongwith the tabulation statement a briefing note duly authenticated at an appropriate level should be submitted clearly indicating the following details :

- (i) Complete and latest information with regard to lowest contract rates for the same or similar materials or work for the particular or continguous area;
- (ii) The conditions of supply or undertaking to work with reference to information under item (i) above;
- (iii) The latest data in regard to the availability of materials and prices thereof and the working conditions etc. to co-relate the present quotation with those obtained earlier;
- (iv) Any special condition attached to the rates and works or supplies referred to in (i) above as well as technical data required for dealing with the tenders under consideration; and
- (v) Any other relevant information worthy of consideration in the contract (c f. para 612 F).

1254. Scrutiny by the Accounts Department.--The tabulation statement and the briefing notes shall be sent thereafter for scrutiny together with the original tenders to the Accounts Officer concerned. The tabulation statement should be signed by the Section Officer (Accounts) nominated for the purpose in token of his verification (c f. para 613 F).

1255. Constitution of Tender Committee.--Tender Committee should be generally constituted by the authority competent to accept the tenders where the tender value involves more than Rs. 10,000. When the General Manager is authority competent to accept the tender, the Head of the Department concerned should arrange to constitute the Tender Committee. (c f. para 614 F).

The Tender Committee should consist of a minimum three 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 (c. f. para 615 F).

The Tender Committee should be so constituted that an officer recommending acceptance of a tender in his capacity as a member of the Tender Committee shall not also be the accepting authority of the same tender. In such cases the officer concerned should put up the Tender Committee's proceedings to the next higher authority for acceptance, notwithstanding the fact that the Tender Committee's recommendations are within his own powers of acceptance (c. f. para 616 F).

1256. Acceptance of tender.--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 the binding contract takes place.

1257. Development Orders.--At certain times, contracts may have to be placed to promote indigenous development of new technology/techniques. Such contracts are called Development Orders and in the placement of such orders the rules applicable normally in such cases can be relaxed and certain concessions may by granted. The concessions may include (i) an advance commitment for placement of orders to meet the future demand for a period of 2 or 3 years provided the rates/prices are reasonable; (ii) a commitment indicating a progressively diminishing quantum of orders for a specified period. The rate/price to be accepted will depend on factors like nature of item/work development cost involved etc. and price preference evaluated on individual cases on the merits of the case.

1258. Agreement Forms.--The Form of Agreement may in cases the tenders are invited be the Tender Form itself; the Conditions of Contract, Specification etc. may be embodied in the Agreement Form or may be an annexure thereto; or may be provided, they are readily accessible to the contractor, be merely referred to therein. On behalf of the contractor the signature of only such person or persons as are competent to bind him legally shall be accepted on a contract. (c. f. paras 414S and 436S).

1259. Signing of Agreements.--For entering into any contract of the value higher than Rs.1 crore prior approval of the Railway Board should be taken. The General Managers are empowered to sign contracts on behalf of the President for approved and sanctioned works costing over Rs.1 crore each after the Board's approval has been obtained to the terms and conditions thereof and also to sign any subsidiary agreement in respect of such contracts.

No authority may enter into contract which is beyond the limits of its financial powers. Subject to any restrictions or limitations which may be imposed by the General Managers, the powers vested with the General Manager may be delegated to subordinate authorities. On behalf of the President, contract can be signed by only such authorities as have been empowered to do so vide Appendix II to the Indian Railway Code for the Stores Department.

Note.-- For the purpose of this paragraph girders, structural steel works, rolling stock and other like material which will involve manufacture come under the category of `works' and not `stores'.

1260. Execution of contract prior to commencement of works or supplies:-

- (i) No contractor should be permitted to commence work or supply materials until the relevant contract or work order has been signed by the parties competent to do so;
- (ii) Exceptions to this rule are permissible only in cases of extreme urgency such as work or supplies necessary to safeguard life or property or to repair damage to a track caused by flood, accident or other unforeseen contingency; so as to restore and maintain through communication. Even in such case, if circumstances, permit, some form of written contract or at least an agreed statement of rates to be paid should be prepared before the commencement of works or supplies, the intention being that the conditions, specifications, etc. with sufficient items and rates to carry on with, should be agreed upon hand.
- (iii) In other exceptional but less emergent cases in which the commencement of work or supply cannot be postponed till the preparation and sanction of the contract documents, prior consultation with the Financial Adviser and Chief Accounts Officer shall be necessary.
- (iv) In all cases of departure from sub-para (i) above, the completion and execution of the main contract should be proceeded with expeditiously. (cf. pra 627 F)

1261. Refund of earnest money.- The earnest money of all unsuccessful tenderers should be refunded as expeditiously is possible. The earnest money deposited by the successful tenderer, if he so desires be appropriated towards the amount of security to he furnished by him.

II Management of Contracts

1262. Agreements and Work Orders.- As soon as possible after the acceptance of a tender, the successful should be called upon to furnish the required security (refer para 1244) and to sign the formal Agreement or Work Order. For zone-contracts separate Work Orders are issued for each specified work under Agreement. For contracts for specific works, the contract document required to be executed by the tenderer whose tender is accepted shall be either an Agreement or work Order.

1263. All Work Orders and Agreements executed against a tender should be noted on the tender with a view to see that the amount of tender is not exceeded beyond the powers of the authority who accepted it. An Agreement/Work Order Register may be maintained in the following form :-

E. 1263

..... RAILWAY

AGREEMENT/WORK ORDER REGISTER

Department..... Division/District..... Station.....

Agreement Work order No.	Date	By whom issued	Name of work	Approximate cost	Allocation	Name of contractor
1	2	3	4	5	6	7

Work to be completed	Bill	Remarks

		On Account	Final	
		No. Date	No. Date	
Original date	Extensions			
8	9	10	11	12

1264: Advances to Contractors -

It shall be duty of the Executives to abstain as far as possible from giving advances and they should endeavor to maintain a system under which no payments are made except for work actually done. General Managers may, however. sanction advances within their delegation of powers, as per limits indicated hereunder for such of the works which are capital intensive and of specialized nature, if the estimated value of the tender exceeds Rs. 25 (twenty five) crore. Suitable provisions may be included in the special conditions of the tender for grant of Mobilisation Advance and advance against machinery and equipment, if the work warrants grant of such advances, subject to conditions stated hereunder:

(a): Mobilisation Advance -

This shall be limited to 10% of the Contract value and payable in 2 stages as indicated below:

Stage I – 5% of Contract Value on signing of the contract agreement.

Stage II - 5% on mobilization of site-establishment, setting up offices, bringing in equipment and actual commencement of work.

The 1st stage of advance shall be payable immediately after signing of contract documents. The 2nd stage of **advance shall be payable at the time of mobilization, after submission of a utilization certificate by the contractor that the Stage 1 advance has been properly utilized in the contract.**

(b): Advance Against Machinery and Equipment·

This advance shall be limited to a maximum of 10% of the contract value against new Machinery & Equipment, involving substantial outlay, brought to site and essentially required for the work. This advance shall not exceed 75% of the purchase price of such Equipment and shall be payable when hypothecated to the President of India by a suitable bond or alternatively covered by an irrevocable Bank Guarantee for full cost of the Plant & Equipment from a Nationalised Bank in India or the State Bank of India in a form acceptable to Railways. The Plant & Equipment shall be insured for the full value and tor the entire period, they are required for the work. This Plant & Equipment shall not be removed from the site of work without prior written permission of the Engineer. No advance should be given against old Plant & Machinery.

(c): Advances for accelerating progress of the work during course of execution of Contract .,

This advance is to be decided on the merits of each case and shall be restricted to a maximum of 5%, of contract value. This is to be granted by the General Manager on the recommendations of the Chief Engineer in-charge, in consultation with the Associate Finance, While recommending this advance for sanction of General Manager, the Chief Engineer in-charge shall also confirm that progress of the contract work has been as per milestones/ targets laid down and no extension to Date of completion of the contract has been given on contractor's account.

(d): Advances in Exceptional Cases

General Managers are further empowered to grant advances in exceptional cases upto a maximum of Rs, 20 lacs in respect of even contracts of value less than Rs 25 crore, if considered absolutely essential, depending on the merits of each ease and circumstances in each situation, to be recommended by the Chief Engineer in-charge and in consultation with the Associate Finance.

1264 (e) The above advances are subject to the following conditions

(i) The advance shall carry an interest at the rate to be decided by the Railway Board and communicated at the beginning of every financial year, to be applicable for the tenders to be opened in that financial year.

(ii) Advances except those against machinery and equipment, shall be payable against irrevocable guarantee (Bank Guarantee, FDRs, KVPs /NSCs) of at least 110% of the value of the sanctioned advance amount (covering principal plus interest). The Bank Guarantee shall be from a nationalized Bank in India or State Bank of India in a form acceptable to the Railways;

(iii) The recovery shall commence when the value of contract executed reaches 15% of original contract value and shall be completed when the value of work executed reaches 85% of the original contract value. The installments on each "on account bill" will be on pro-rata basis;

(iv) That the grant of advance is primarily in Railway's own interest;

(v) That a contract does not receive advances for same work from different officers:

(vi) That arrangements are made with the Accounts Officer for proper accounts being kept with regard to payment and recovery of these advances; and

(vii) That all necessary precautions are taken to secure Government from the possibility of loss and for preventing the system becoming more general or continuing longer than what may be absolutely necessary for proper progress of the work.

1264 (f): Method of Recovery of interest

Interest shall be recovered on the advance outstanding for the period commencing from the date of payment of advance till date of particular on-account bill (through which recovery of principal is effected) and adjusted fully against on-account bill along with pro-rata principal recovery. In the event of any short-fall, the same shall be carried forward to the next on-account bill and shall attract interest.

The Bank Guarantee for such advances shall clearly cover at least 110% of the value of the sanctioned advance amount (covering principal plus interest).

1265. Variation of Contract Conditions.-The power to vary the terms of a contract lies only with actual parties thereto. The contractor and his sureties, if any, must, therefore, be consenting parties to all variations which should be the subject of a subsidiary agreement stating what is to be varied and what will remain unchanged in the original contract. The drafting of this agreement should be the subject of careful scrutiny to ensure that the conditions, specifications etc. of the main contract are adequate for and applicable to the variation or that the latter is made self-sufficient in these respects. Such subsidiary agreement should be regarded as fresh contracts and entered into before effect is given to the variation. The contract conditions may be varied by various authorities competent to do so to the extent shown below :

(a) Variation of the conditions of contract.--These may be varied with the sanction of the authority that approved the original contract acting in consultation with his Financial Adviser and after taking legal advice, if necessary.

(b) *Variation of the Rates or Items*.--Contracts in which a price variation clause is included, the rates may be varied by the authority which approved the original contract with the concurrence of his Financial Adviser. If the total value of the contract after allowing for the variation is beyond the powers of the authority which approved the original contract, a sanction of the higher authority within whose competence as to amount it lies should be obtained.

(c) *Variation of the Quantities of any Items.*---These may be varied by the authority which approved the original contract to the extant deemed necessary, provided that Indian Railway Code Rules relating to control over expenditure are not contravened thereby and provided also that the total value of the amended contract does not exceed the powers of the authority that approved the original contract. However, in the case of contracts approved by the G. M. or higher authorities quantities of any item may be varied to a reasonable extent by the Chief Engineer-in-charge.

Where materials are required during a contract period in excess of the quantities contracted for and such excess is not sufficiently large to justify the invitation of fresh tenders, there is no objection to quantities under the existing contract being increased suitably, Efforts should, however, be made to secure more favourable terms for the increased quantities.

(d) *Variation of the Items*.--These may be varied at discretion of the authority which approved the original contract to the following extent, viz., existing items may be deleted or additional items inserted at rates, which agreeable to in general or specific orders at the time being in force, may be decided by the authority making the variation; subject only to the two provisions of Rules in sub-para (c) above. However, in the case of contracts approved by G. M. or higher authorities, powers for such variation shall lie with Chief Engineer-in-Charge (c f. para 628 F).

Note :-- Variation to be approved should be limited so as not to completely change the scope, character and purpose of the original contract.

1266. Extension of completion period.--The extension of completion periods may be sanctioned at the discretion of the authority which signed the original contract provided :

- (i) that the rate in contract was not accepted against other lower tenders in consideration of the date of completion;
- (ii) that he is satisfied that the delay will not cause loss or damage; and
- (iii) that in case it does not satisfy any or both of the above conditions such sanction shall be given only in consultation with his Financial Adviser after taking legal advice, if necessary. (c f. para 445 S.)

1267. Liquidated Damages.--It would be necessary for the Railway to serve on the contractor a notice of the intention to recover liquidated damages as required under the contract Act even though the contractor has been apprised of this

liability earlier. The Railway can, however, recover by way of liquidated damages only reasonable compensation not exceeding the amount so named or stipulated in the contract. The compensation shall be computed on the basis of the actual loss sustained by the railway or the inconvenience that has been occasioned by the failure of the contractor even though no loss has actually been caused. The decision for recovery of liquidated damages should not be taken at a level lower than the authority who signed the contract.

1268. Variation in quantity of work during the execution of work.--If during the execution of a work the initial quantities of work are expected to vary substantially a check should be made immediately by comparing the value of the revised work as per the rates quoted by the original tenderers to determine whether the decision to award the contract to a particular tenderer is vitiated by the variation in quantities. A variation between 15 to 25% depending on the nature of the particular category of work to be done would not be considered as unreasonable. If such a variation of the award of the contract as between tenderers is noticed, the railway administration should immediately examine whether it is practicable to bring in a new agency to carry out the extra quantity of work keeping in view the progress of the work on the original contract and the nature and lay-out of the work. If such a course is not practicable, the reasons for the same may be recorded and approved by the competent authority and negotiation should be carried out with the existing contractor for arriving at a reasonable rate for the additional quantities of work. If, however, it is found that there will be no serious practical difficulty in meeting the additional quantity of work done by another agency, one of the following two alternatives, as found feasible may be adopted :--

- (i) inviting fresh tenders for the extra quantity:
- (ii) negotiating the rate for the extra quantities not only with the existing contractor, but also with all the tenderers who had initially quoted for the work.

1269. Materials issued to the contractors.--The issue of materials to the contractors should be solely for the bonafide requirements of Government Works. The total issue for any particular work should be limited to the reasonable needs of that work. This precaution is particularly necessary when the issue rates are lower than the prevailing market rates or the latter are expected to rise appreciably. In cases where large issues are involved, strict watch should be maintained that the aggregate of quantities of any or all materials issued to a contractor from time to time for use on a work remains within the estimated requirements of his contract. The contract or the Work Order should specify the materials to be supplied by Government for use on the works and the rates to be charged to a contractor for such materials should also be definitely specified, vague quotations such as (at stock rates) being avoided. If materials outside the contract are supplied for use on a work on the application of a contractor or are used in excess of requirements, the Divisional Officer, should specify in each case, the rate to be charged, which should be the market rate prevailing at the time of supply of issue rate, whichever is higher plus departmental charges, which shall be computed in accordance with paragraph 2329-S. When materials outside the contracts are issued to a contractor, an acknowledgement of the receipt of the materials should be taken from him. The acknowledgement should be serially numbered and prepared in 'triplicate'-- one copy being retained as office copy, one copy for posting the contractors ledger and the third copy as a voucher in support of the recovery made in contractor's bill.

1270. Termination of Contract.--Decisions regarding the termination of contract and execution of the balance work at the risk and cost of the contractor should not be taken at a level lower than that of the authority who signed the contract.

1271. Enforcement of Contract Conditions.--It is the duty of all authorities concerned with the execution or carrying out of contracts to see that the terms of such contracts are strictly enforced and that nothing is done by them that would tend to nullify or vitiate a contract. (c f. para 452-S).

1272. Stamp Duty.--Contracts are exempted from Stamp Duty in cases where Government (as opposed to the contractor) would, but for this exemption, be liable to pay such duty. (c f. para 454-S).

1273. Responsibility of Railway Officials.--The employment of a contractor in no way relieves the authorities concerned from the responsibility as to the standard of progress of the work. (c f. para 457-S).

1274. Arbitration.--In the event of disputes between the contractor and the railway in a contract the matter may be referred to arbitration as provided for in the conditions of contract. When, however, a contractor has received all payments in respect of all his bonafide claims and has given a `No Claim' Certificate, but puts in fresh claims and demands a reference to arbitration, the Railway Administration will be justified in refusing arbitration in such cases. It is, however, advisable to take legal opinion before finally rejecting the demand for arbitration.

1275. Arbitration Awards.--All Arbitration Awards shall be executed on stamp paper in accordance with the Stamp Duty Act.

1276. Acceptance of Arbitration Award.--Where the Railway Administration decides to accept an arbitration award, it is not necessary to cause an award to be filed in a court in order to make payment to the party concerned. The party should, however, be asked to give in writing their willingness to accept the payment in full and final settlement of all claims and also furnish a `No Claim Certificate' before effecting the payment, Railway Board should be informed of payment to a contractor where as a result of the arbitrator's award, exceeded by more than Rs. 50,000 the amount considered due by the Railway Administration before the arbitration proceeding began.

In case of an award the railway has to realize the amount from the contractor, the railway should on the merits of the case, decide the course of action to be taken bearing in mind the provision of the Limitation Act 1963 in regard to finalisation of the award.

1277. Legal Proceedings.--Before any legal proceedings arising out of contracts are entered upon, the sanction of General Manager acting in consultation with his Legal and Financial Adviser should be obtained. (c f. para 451-S).

1278. Custody of Security Deposits.-The rules regarding custody of security deposits are contained in chapter XVIII of the Indian Railway Code for the Accounts Department (Part I). In the case of guarantee bonds, the Accounts Officer is responsible for safe custody as well as for giving timely intimation (say three months in advance) to the executive officer of the date of expiry of the guarantee bond. The executive officer shall take action to extend from time to time the

validity of the guarantee bond for such periods as may be necessary in relevance to the completion of the work or in subsequent period of maintenance that may have been provided for in a particular contract. It will be the responsibility of the Accounts Officer to encash the guarantee bond before its expiry in case it is in necessary to take such step.

1279. Applicability of Contract Labour (Regulation and Abolition) Act.-The provision of Contract Labour (Regulation and Abolition) Act, 1970 should be followed wherever required.

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