

CONTRACT MANAGEMENT

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Contract-Para 1201 of Engg code defines 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 (para 1256), competent to contract (see para 1259), for a lawful consideration (para 1224) and with a lawful object, and are not expressly declared to be void.*

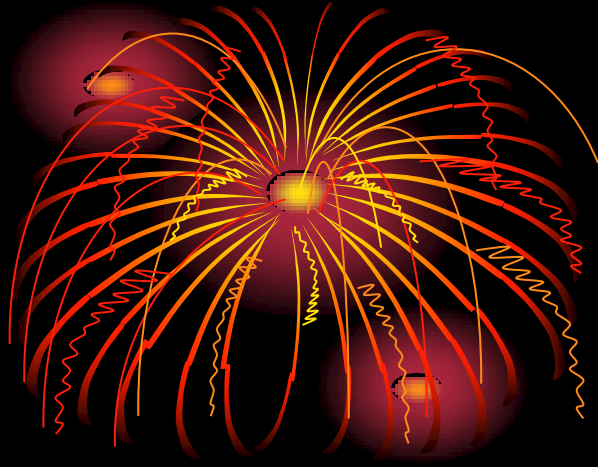
- *This is subject to any special law according to which a contract should be in writing and attested by witnesses.*

Goals of Contract Management



- **RAILWAY**
  - **GET THE WORK DONE TIMELY**
  - **OF SPECIFIED QUALITY**
  - **AT MINIMUM COST**
- **REQUIRMENT**
  - **STRONG INFRASTRUCTURE**
  - **PROMPT DECISION MAKING**
  - **ASSURED FUNDING SCHEDULE**

Goal of contract



- In simple words
- The goal of the contract is to get the work of specified Quality done in least possible cost in least possible time

- This goal is achieved by better contract management

Tender and contracts



- Pretender planning
- Tender opening
- Processing tender
- Accepting tender
- Issuing Accepting letter becomes contract
- Signing contract Agreement

Pretender Planning



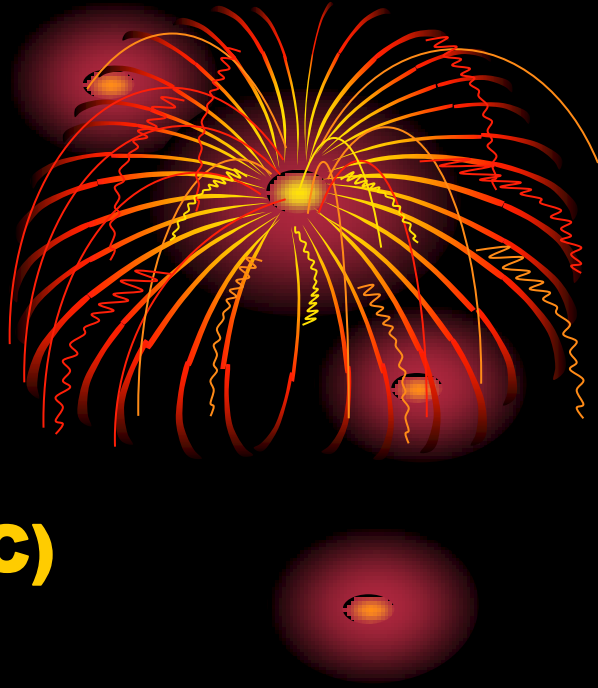
- Scope of tender..location..items of works..drawing etc
- Quantity..rate ..schedule ...cost
- Time for completion
- Type –open ..Ltd ..single..quotations
- General condition ...spl conditions
- Eligibility criteria
- NIT ..date time place for sale /downloading and Dropping

It should be clear to both party



- What is expected from contractor
- What is expected from Railways
- Payment schedule should be clear
- Remedy incase one party fail to discharge its obligations

Tender document



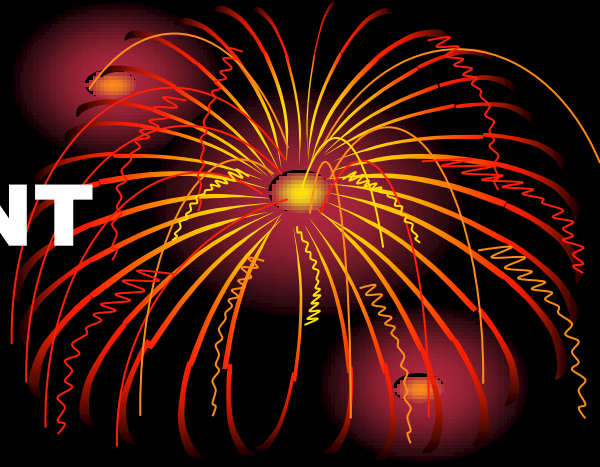
- Tender Schedule
- Notice Inviting Tender (NIT)
- Instructions to Tenderers (IT)
- Special Conditions of Contract (SCC)
- Specifications
- General Conditions of Contract (GCC)
- Earnest money & Performance guarantee details
- Drawing if required

Processing of Tender



- Opening of tender
- Briefing note and its vetting
- Tender committee nomination
- TC meeting & its Recommendation
- Recommendation Acceptance
- Issue of acceptance letter
- Accepted tender becomes contract

CONTRACT MANAGEMENT



- 1. General
- 2. Codel provisions
- 3. Type of contracts handled in Engineering Department
- 4. Problems in Construction contracts
- 5. Problems of Open Line contracts



- 6. Problems Faced By open line Engineers
- 7. Problems in contract management
- 8 .Suggestions
- 9. General precaution to avoid problems in tenders & contract managements
- 10. Contract management – myth & Reality

General



- common perception is that Indian Railways is failing in contract management – in Quality as well as timely completion
- strong talk of fixing responsibility not only from Railway Ministry but also from PMO and planning commission
- Concerns of slow progress are also being expressed by various Parliamentary committees

General



- ***Indian Railways are executing 340 projects consisting of 129 new line, 45 gauge conversion and 166 doubling projects having a throw forward of about Rs. 1,47,000 crore***
- ***Interest cost 1470 cr/yr or 4 cr per day-delay cost is 4 cr per day***
- ***Annual budget out lay is about 10000 cr***

Engineer Role in contract management



- The Success of Engineer is in getting the work done'.
- He has to use his skill & vision in selecting good contractor by following all rules & regulation in force
- not only select a good contractor but also make him successful



- The terminating of the contract is very easy but making him successful is difficult.
- Completing the work is more important than finalizing the tender.

Code, manuals ,circular

- There are plenty of instruction & procedures to be followed in work getting sanctioned, tendered, contracted, executed, monitored & finished
- Is it Possible to follow all the rules
- In India, the Work to Rule is considered a strike

Master or Slave of Rules



- All rules & regulation of tendering & contract are made with sole objective to get the work of required specification at least cost & in least time

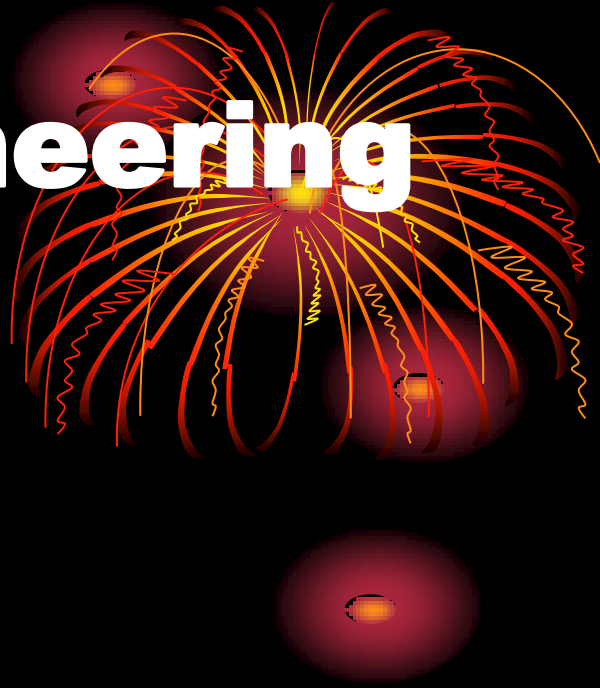
- If some rules are coming in way of achieving above objectives, then the rule needs to be changed rather than officer should be harassed for the breaching the rules to get the work completed early

Codal provisions



- The contract management on Indian Railways is governed by the provision of Chapter 12 of Engineering code, Chapter 6 of Finance code & chapter 4 of store code
- Engineering code Para 1201 defined contract

Approach of engineering officers



- Process Oriented or
- Result oriented or
- Get result duly following a process..really efficient ?
- In field all type of approach is followed depending on officer & importance of particular work

Common sense says that



- if person is made responsible/ accountable to achieve certain results, he should be given full authority to achieve that result
- It is not so in Railways . At every stage CAO or executive has to approach finance , GM or somebody else to implement his decision

Foundation of contract management –The contract Agreement



- The principles to be observed in framing the contract agreements are given in Para 1217 of Engg Code
- What the contractor is to do
- What railway administration is to do
- What payment is to be made
- When payment to be made
- Grievance addressal system



- The terms on which variations and modifications can be made
- Action in case of breach of contract

- The method of settling disputes
- Arbitration

Tenders -instructions



- System of tender –open , global , two packet etc
- Eligibility criteria
- Performance guarantee
- Price variations
- Advances
- How tenders documents is prepared , bids invited , offer evaluated etc

Tendering & vigilance

- Tendering is area where many complaints generate against the officials handling tenders which some times lead to vigilance cases or legal/audit scrutiny of cases.
- Do not put such specification or condition which can not or will not be followed during execution

Probelems in field- in openline



- Organizational problem
- Inter departmental coordination – Finance, store, traffic, signal, electrical Mech. Deptt.
- Funding problems
- Co-ordination with state govt – Land acquisition, environmental clearance , Road over bridges etc

Area of Problems



- **1. Proposal of works & its sanction**
- **whether adequate care is taken in framing the proposal-**
- **whether plans & estimates are made with adequate care & verifying feasibility in field - yes or no**
- **whether scope of work is clearly defined in proposal -**
- **whether tentative target for completion is fixed &funding schedule prescribed in commensurate with the target**

2. Approval of plan & estimate



- a. whether plans are approved within 3 months of sanction
- b. whether plan is changed after approval varying scope of work
- whether estimate is sanctioned within 6 month of sanction of work
- Any other problem

3. Tendering



- whether adequate infrastructure is available in Srden office to prepare tender document
- whether DEN/ Srden are careful in framing special tender condition –
- whether reasonability of estimated rates are examined before floating tender
- whether Quality clause /quality test is clearly defined in tender
- whether Eligibility criteria is clearly defined



- whether correct price variation clause is incorporated

- whether tender is finalized within validity - yes or no
- How many tenders at any given time are pending with DEN/srden for finalization
- How many contract in progress

4. Execution of contract – monitoring & supervision

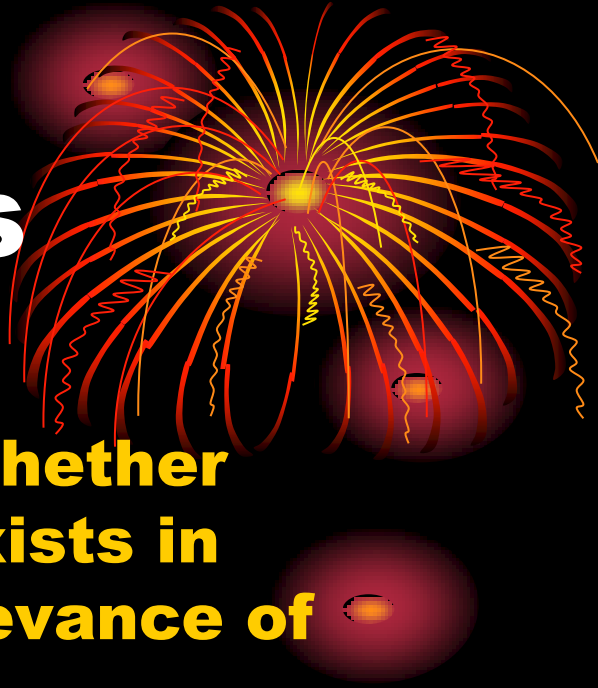
- How many contract (maintenance + new works) on an average are handled by an ADEN at any given time ..
- whether separate supervisor available for supervision of new work
- Whether site supervisor is able to ensure quality in work
- whether Drg/design/material/work orders issued to contractor in time
- whether decision are given timely on disputes between contractor & site supervisor - yes or no
- whether payment schedule ie at least one bill every month or in 2 month is ensured-
- whether regular meeting are held with contractors to monitor progress & minutes are drawn for such meeting



- whether contractor are completing work as per date of completion .if not ,any action is taken……
- whether termination of contract is done in time in case of poor performer
- whether new contract is finalized promptly

- Whether you are really managinging your contract or GOD is managing it

So if contract fails



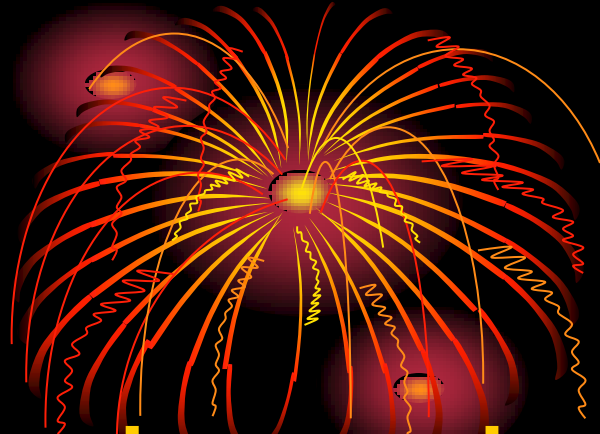
- 5.Dispute redressal system – whether grievance Redressal system exists in contract to handle genuine grievance of the contractor
- 6. Arbitration – whether proper record of correspondence with contractor is kept whether letters of claims are promptly replied.
- Whether arbitration cases are increasing in your division .if yes, reasons there of

Major Problems in Field



- Large number of contracts in division
- Lack of infrastructure / man power at every stage- no supervision/monitoring
- Lack of funding schedule. Targets without funds
- Authority is not commensurate with accountability –
- Procedures are more important than Results
- No system of grievance reprisal-Pre arbitration
- Lack of assured block/power for track work
- Decision delay-fear of vigilance /Audit/RTI
- Attitude Problem–contractor is Opposite Party
- Land acquisition/Environment clearance etc

CONTRACT MANAGEMENT.Myth



- Drawing good CPM/PERT Charts makes a good Contract Manager
- Saving lots of money makes a good Contract Manager
- Adhering to laid down rules and sticking to good and impressive formats for reporting makes a good Contract Manager.
- Using advance soft wares and computer driven techniques such as MS Projects makes a good Contract Manager.
- Interpreting Contract provisions verbatim makes a good Contract Manager
- Process is important than Result

CONTRACT MANAGEMENT - Reality



- Understanding the Costs, requirements, limitations of employed technology, materials, keeping in view the overall objective makes a good Contracts Manager.
- Having more reliance on flexibility rather than being rule bound makes a good Contracts Manager.
- Using Simpler, objective tools to monitor various stages of progress leading to overall performances makes a good Contracts Manager
- Dividing the task in various small accomplishable milestones, and monitoring the achievements both at micro as well as macro level makes a good Contracts Manager.
- Taking Speedy decisions, and resorting to required mid Course corrections makes a good Contracts Manager.

How to make a Bad contract



- Be very legal and verbose while drafting the text of Contract documents.
- Keep the provisions as inequitable and amorphous as possible
- Make sure that your Contractor is responsible for any thing, which may or not effect the performance
- Make sure your Contractor is selected through a very subjective process.
- Never check and verify the antecedents physically, rely only on the paper submitted by him to you.
- Keep changing your project team as frequently as possible.
- Always remain indecisive, for vigilance /audit /CBI/CVC is watching you.
- Insure your communication with other constituents and also in house is scanty vague.

Things should Never be done in contract management



- Award the contract on exorbitant rates
- Execute work in good faith without sanction or estimate or tender
- Execution & acceptance of substandard work- quality check
- Payment for works not executed –overpayments ,false payments
- Manipulation in tender such as
- Exaggerating performance of favorite tenderer & failures of Rivals
- Projecting artificial urgency –time is valuable
- Doctoring briefing note to project someone as most suitable
- Bypassing lowest bidder without convincing reasons
- Call negotiation for reduction of rates but accepting it after negotiation even if no appreciable reduction achieved in negotiation
- Non application of mind in tender Acceptance

- Do a thing for which your conscious is not permitting-Right or wrong –conscious will give you one signal –respect or overshoot

Human behaviour – Think ..why



- Why engineering & account departments overlooks the existing instructions to sanction works beyond norms
- why one contractor works efficiently under one engineers & fails under another engineer
- Why some one is able to get his work done from the entire department in spite of all the constraints.
- why someone who follow religiously the rules is not considered good officer & some time do lands up in problem
- why such instruction are given at times which does not follow any canon of financial propriety (Do whatever you want but complete this work .



- Any question is most welcome
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- THANKS