

**INDIAN RAILWAYS**

# **CONTRACTS AND ARBITRATION**

## **Rules and Practices**

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**Course : 21-MTC-1 : Professional Development**

**New Delhi**

**11<sup>th</sup> & 12<sup>th</sup> August, 2021**

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*Retd. CAO/Const./Northern Railway*

# REFERENCES

- ❖ **Indian Railways Code for The Engineering Department, 1999 - Chapter 12 {E-12...}**
- ❖ **Indian Railway Financial Code Volume-I - Chapter 6 {F-6..}**
- ❖ **I.R. General Conditions of Contract - 2020**

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- ❖ **Concurrent Delegation of Powers - Model SOP & Authority Letter**
- ❖ **General Financial Rule - 2017 (GFR)**

# TERMS

**"Contract"** shall mean and include the Agreement of Work Order, the accepted Schedule of Rates or the Schedule or Rates of Railway modified by the tender percentage for items of works quantified, or not quantified, the Standard General Conditions of Contract, the Special Conditions of Contracts, if any; the Drawing, the Specifications, the Special Specifications, if any and Tender Forms, if any.

# PROCUREMENT

## TENDER

*Planning, Processing &  
Finalisation*

# TENDERS

- ❖ **'Tender' is a transparent public procurement procedure, called upon for executing certain specified work, or service, or supplying specified materials; subject to certain terms & conditions.**

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- ❖ **Identify and call interested and prospective contractors / firms to give their offer for the work**
- ❖ **Now a days, majority of tenders are invited on IREPS leading to Automation of Process**

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# STAGES IN TENDERS

## Pre Tender

- Planning, Preparation and Approval of Tender schedule, NIT & Tender Document

## Tender Invitation

- Advertisement, Clarification to bidder, Pre bid Conference, Corrigendum, Submission of Tender

## Tender Opening

- Opening of Tender, Briefing Note, Comparative Statement, Special Conditions if any

## Tender Finalisation

- Tender Committee, Accepting authority, Evaluation of Credential, Bid capacity, Reasonability of Rate, Role of TC Members, Negotiation, Counter Offer, Rejection/ Acceptance of offer, Do's and Don'ts

## Issue Of Acceptance Letter

- Issue of LOA, Vetting of LOA

# PRE- BID MEETING / CLARIFICATIONS

## ❖ Pre-Bid Meeting

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- ❑ Useful in High value contracts / complex work
- ❑ To explain the intricacies of project/work to prospective bidders
- ❑ Attended by executives and finance officers
- ❑ Held well in advance of date of opening
- ❑ Clarifications given during the Pre-Bid Meeting be made part of Tender Documents

## ❖ Clarification

- ❑ Clarification to Discrepancies / Omissions notified by any Tenderer shall be available to all prospective Bidders



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# Constitution Of Tender Committee

## E-1255

- **Accepting Authority nominates** Tender Committee as per delegation of power
- **Normally Standing Tender Committees are there in different level as per SOP**
- **If General Manager is Accepting Authority- H.O.D. to constitute the Tender Committee**
- **Generally consists of three members –**
  - One from the concerned **Executive Department**
  - One should be from the **Accounts Department**
  - Third from **Other Department** dealing with such contract matters
- **Level of TC –**
  - **Based on value of Lowest bid (2 Bid tender)**
  - TC member can be of higher grade in case of non-availability
- **If officer competent to be the accepting authority is a TC member, Accepting authority will be next higher grade**

# Tender Committee

Letter No. 2015/CE-I/CT/O/20/1, dated 14/09/17 & 08/01/20

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- ❖ **Two Member Tender Committee** - With one member essentially from Finance deptt. and other from concerned Executive deptt.
  - For open tender invited through **e-tendering**, Tenders above **Rs. 50 Lakh and upto Rs 5 cr**
  - For Other tenders up to **Rs. 20 Lakh**
  
- ❖ **Three Member Tender Committee**
  - **All Other Cases**

# POWERS FOR ACCEPTANCE OF TENDERS

RB letter no. 2015/CE-I/CT/O/20/1, dated 01.01.2020

SL	Power of Acceptance of Works Tenders (For each Tender)	Accepting Authority
1	Upto Rs. 50 lakhs	SG/JAG/SS holding independent charge
2	Upto Rs. 4 Crore	Selection Grade/JA Grade
3	Above Rs. 4 Crore and upto Rs. 20 crore	SAG/ADRM
4	Above Rs. 20 Crore and upto Rs. 50 crore	DRM/CWM
5	Above Rs. 20 Crore and upto Rs. 75 crore	CHOD in SA Grade
6	Above Rs. 20 Crore and upto Rs. 300 crore	AGM/PHOD in HAG
7	Above Rs. 20 Crore and upto Rs. 300 crore	CAO/RE in HAG
8	Above Rs. 20 Crore and upto Rs. 500 crore	CAO/Construction in HAG
9	Full Powers	General Manager

- Note :**
- (i) Where no AGM is posted, such tenders shall also be accepted by GM.
  - (ii) The Tender Committee for Tenders to be accepted by “CHOD in SA Grade” shall be of SA Grade level.
  - (iii) **The Tender Committee composition and the accepting authority in case of ‘Single Tenders’ should be at least one step higher than the members nominated in case of Open Tenders/Limited Tenders except where G.M. is the accepting authority.**

# Tenderer's Credential

**Letter No. 2017/Trans/01/Policy dt 08.02.2018 & GCC-2020**

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- **All requisite documents in support of qualifying Eligibility Criteria, Bid Capacity etc as per Tender Conditions**
- **Each page of the documents/certificates to be self attested / digitally signed by the tenderer or authorized representative. Self-attestation shall include signature stamp and date**
- **Documents declared by the tenderer explicitly as “documents supporting the claim of qualifying the laid down eligibility criteria”, will be considered for evaluating his/their tender**

# Tenderer's Credential

Letters No. 2017/Trans/01/Policy, dated 08.02.18 and 2018/CE-I/CT/37/GCC/ Policy, dated 12.05.20

- Certificate based system of credential consideration
- Certificate in Standard format – Annexure-V of GCC
- Non submission of Certificate shall result in Summarily Rejection
- Practice of **verification of tenderers documents dispensed with**
- Railway reserves Right to verify all statements, information and documents and seek any information or document from tenderer
- Verification or lack of such verification shall not relieve bidder of its obligations or liabilities
- ❑ **False Forged or Incorrect information submitted by tenderer –**
  - Agency shall be banned for doing business for a period of upto five years
  - During process for evaluation of tenders – Forfeiture of the EMD
  - After the award of contract – Contract terminated. EMD, Performance Guarantee and Security Deposit & other dues available with the Railway shall be forfeited

# Tenderer's Credential - Annex-I of Tender Form (2<sup>nd</sup> Sheet) GCC-2020

## Completed Works (For Fulfilment of Credentials)

- ❖ Work even though might have commenced before the qualifying period, but **completed in last 7 yrs.** ending last day of month previous to the one in which tender is invited.
- ❖ Work is physically completed and **completion certificate is issued by the concerned organization** though final bill is pending,
- ❖ If a part or a component of work is completed but the **overall scope of contract is not completed**, this work shall not be considered for fulfilment of technical credentials even if the cost of part completed work/component is more than required.

# Tenderer's Credential - Explanation

- ❖ In case, a work is considered **similar in nature for fulfilment of technical credentials**, separate evaluation for component(s) of that work shall not be made to decide eligibility; the overall cost including PVC amount of work shall be considered.

Name	Earthwork in Formation, Adv. Cost - 150 Cr
Component	Earthwork, Blanket, RCC Work for Protection
<i>Similar Nature</i>	<i>Earthwork in Formation, Earthwork and Minor Bridges, Formation Work, Any Civil Engineering Work involving Earthwork</i>
<b>Credential</b>	<b>Earthwork and Minor Bridges - 100 Cr - 60 Crore Earthwork &amp; Blanket + 40 crore Bridges</b>
	Consideration of this credential as eligible for instant tender is a decision of TC. However once considered eligible <b>entire value of the contract will qualify</b>

## ❖ Completion Cost :

- The value of final bill including PVC amount, if paid, or
- In case final bill is pending, Minimum of –
  - the contract cost in last approved variation statement plus PVC amount paid, or
  - cumulative amount paid upto last on-account bill including PVC amount and statutory deductions



# Eligibility Criteria – Issuing Organisation

## Notes of Para 10.1 :

- Consideration of Work experience certificate issued by
  - Any Private individual- **shall not be considered**
  - Any Govt. Organisation- **Shall be considered**
  - Any Public listed company - **Shall be considered, if issued by a person authorized by the Public listed company to issue such certificates, provided such Company**
    - Have **average annual turnover of Rs. 500 crore & above in last 3 financial years excluding the current financial year,**
    - Is **listed on NSE or BSE** and incorporated / registered at least 5 years prior to the date of opening of tender,
  - In case certificate issued by **public listed company, the tenderer shall also submit** alongwith work experience certificate, Relevant copy of **work order, Bill of quantities, Bill wise details of payment received duly certified by CA, TDS certificates for all payments received and final/last bill** paid by company in support of above work experience certificate

# Eligibility Criteria - Financial

**Total contract amount received during the last three years and in the current financial year upto date of opening inviting Should be a minimum of 150% of Advertised Tender Value.**

**The tenderers shall submit an attested Certificate from the concerned department / client and/or Audited Balance Sheet duly certified by the Chartered Accountant/Certificate from Chartered Accountant duly supported by Audited Balance Sheet.**

**Note : Client Certificate from other than Govt. Organization should be duly supported by Form 16A/26AS generated through TRACES of Income Tax Department of India.**

# BID CAPACITY

Available Bid capacity shall be calculated as =  $[A \times N \times 2] - B$

A = **Maximum value of payment recd** for executed **const. works** in **any one financial year** current & last 3 financial years, upto date of opening **Inviting** of tender

N = Number of years for **completion of tendered work**

B = Value of existing commitments and balance of ongoing works with the tenderer **completed in next 'N' years**

2020-21	40
2019-20	100
2018-19	75
2017-18	90

- ❑ For **Tenders** costing >₹ 20 Cr **wherein eligibility criteria includes bid capacity also**
- The tenderers **who meet the minimum eligibility criteria** will be **qualified** only if their available bid capacity is equal to or more than **the total bid value of the present tender**
- The Tenderer shall furnish the details of existing commitments and balance amount of ongoing works duly verified by CA. **Non-submission of above statement along with offer** shall be considered as incomplete offer and will be **rejected summarily**.
- In case of no works in hand, a 'NIL' statement

## Credentials – Special Care by TC

- ❖ If a part or a component of work is completed, but the overall scope of contract is not completed, this work shall not be considered for fulfillment of technical credentials even if the cost of part completed work/component is more than required for fulfillment of credentials
- ❖ Credentials in **foreign currency**
  - ❑ shall be converted into US Dollar and then into Indian Rupee by the rate of US Dollars (in INR) published by the RBI for the last day of month previous to the one in which tender is invited.

# ROLE OF T.C. MEMBERS

❖ The responsibility of TC is generally Joint and Collective. But every members has got some additional tasks to bring the required information on table for consideration by TC at the time of drawing TC minutes and TAA later. But all the facts/information have to be considered by the TC collectively.

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## ❖ Role of the Convener :

- ❑ He has full knowledge of the work to be executed, all special features, site conditions, specifications, credential of the tenderer, time frame, urgency.
- ❑ Acts as Member Secretary of TC, Briefs other members of the TC
- ❑ Market survey for rate analysis and implication of special conditions, if any, are also to be evaluated by him. **All special conditions mentioned in the tenders and those having financial implications should be evaluated**
- ❑ Proper examination of reasonableness of rates
- ❑ Verification of documents submitted by tenderers in support of stipulated Eligibility Criteria, if considered necessary
- ❑ Clarification on technical aspects of the case, if any.
- ❑ Any other information related to work, as he/she represents the department which has generated the tender under consideration

# Role of Finance Member

- Fulfilment of pre-requisite conditions, i.e.:
  - Tenders are in properly issued form
  - Tenders are signed by authorised persons
  - All tenders are correctly filled and if there are corrections and over-writings then they have been initialed by tender opening officials
- Tenders have been opened correctly. Earnest money is requisite and in acceptable form.
- All valid tender offers are serially placed and put up in a comparative statement along with a briefing note, duly vetted.
- The arithmetical accuracy of the offer.
- Evaluation of all special conditions mentioned in the tenders and those having financial implications evaluated properly
- Consistent approach while dealing with tender for all the works as he is a common member for all tenders.
- Reasonableness of rates based on appropriate LAR/Rate analysis has been done and placed on record
- The position of funds and whether the work is sanctioned.
- The partnership deed and any legal issue involved is examined.

IREPS- No  
Such Issues

# Role Of Third Member

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He must ensure that :

- Rules are followed in general**
- Reasonableness of rates has been properly examined**
- A uniform and consistent approach has been adopted**
- In cases of difference of opinion between members of TC, he gives his definite opinion**

# Accepting Authority

- ❖ **Accepting Authority has full authority to accept, modify or reject the recommendation of TC**
- ❖ **AA to record reasons, if TC recommendation not accepted**
- ❖ **Normally case not to be sent back to TC for reconsideration**
- ❖ **Part Acceptance Of Tender –**
  - **Legally and procedurally permissible, as provided in Tender documents and GCC**
  - **However, basic nature of tender should not change, i.e. only minor changes can be made at this stage.**
  - **To be finalised within Validity Period Offer**



# Consideration of Tender

- If L-1 Withdraw ?

**CVC Circular No. 98/ORD/1, dated 24.8.2001**

- If L1 withdraws before work order is placed or supply/execution takes place, there should be re-tendering.
- Exception** vide RB letter no. 2017/Trans/01/Policy dated 17.11.2017 for **Stores & Non-Consultancy Services**

- Multiple L-1 ?

**Letter No. 2017/Trans/01/Policy, dated 08.02.2018**

- Tender may be awarded as per higher BID Capacity
- If Bid capacity is also same, tenderer having done more value of similar work in last 3 pervious financial year and current financial year

- Only/Lone Tender

- Single offer in response to open tender can be considered by TC
- Single offer in response to LT should be considered with great caution

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# LOA- Letter Of Acceptance/Award

## E- 1256

- ❖ Prepared Based on TC recommendations, as modified by Accepting Authority with a copy to concerned Executive Officer
- ❖ In Case of Direct Acceptance of Tender, LOA requires vetting by Associate Finance prior to Issue
- ❖ Brief letter (Standard Format) to successful tenderer that his offer has been accepted;
  - ❑ Relevant details such as Amount of Contract, Quantity, Item, Rates of the work, Authority to Commence & Date of Completion of Work, the required performance guarantee etc.
  - ❑ **Binding contract until a formal agreement is constituted**
  - ❑ **Prior to the expiry of the Validity period**
  - ❑ **Acknowledgeable method to deliver**
- ❖ Communication of acceptance is considered complete once it is submitted to Postal authorities

# Never in Tender Management

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- ❖ 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
- ❖ Award the Tender on exorbitant rates



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Thank  
You