

# Dos and Don'ts of TENDERS & CONTRACTS

CI/Lib

# Estimate

- Base it on minutest details of cost of labour, materials, machines, energy, water etc as per scope of work and prevalent taxes.
- Take rates from latest SOR if available
- Use rate from LAR of same location or adjoining area where wages are same
- Ensure that detailed estimate is sanctioned by competent authority

# Tender Document

- Must contain all the terms & conditions in brief and be unambiguos
- Special condition of contract shoud be unique and specific to the work & location and include scope of work, resources like manpower, materials, machines, T&P etc required , work instructions, payment clause, penalty clause

# Notice for invitation of Tender (NIT)

## **Lengthy Tender Notices:**

*( Ref. Railway Board letter No.2008/CE-I/CT/21 dt.05.03.2009)*

It is observed that Tender Notices appearing in the press are needlessly long and that unnecessary long tender notices, apart from causing loss of revenue to the Railway; also tend to lose the clarity of the subject. It was further directed in this letter that due care should be exercised by the concerned authority who approves the notices for inviting tenders to ensure that the tender notices are crisp and clear and that they do not have unnecessary repetitions and ambiguity.

The purpose of publishing Tender Notices in newspapers is to draw the attention of the eligible contractors to the proposed work. Since the complete details are available in the Tender Notices posted on the Railway website and also placed on the Notice Board of the concerned office, there is no need to give exhaustive details about the work in the Tender Notices being published in the News Papers.

The Railways need to be cautious while issuing notices and corrigendum/ addendum which should invariably be published in all the concerned newspapers besides posting the same in the Website/Notice Board of the Office, etc. where the original notice was pasted. The web-site should also specify a date up to which the tenderers may note updates/ corrigendum/ revised date of opening.

The Railways may also arrange to have all the notices including tender notices published on a fixed day in a week. For this, since the space requirements in newspapers will be in bulk, the railway may negotiate for considerable reduction in the advertisement charges with the newspapers concerned.

# Tender Notice Publication

## Publication and Opening Dates

- 30 days between NIT in paper and Opening Date ([Model SOP Page A17](#))
- Can be reduced, but with prior approval
- Publication of NIT in Newspapers ([Rly Bd Letter dt 07.01.2019](#))
- Paper Clippings should be available
  
- See
  - a) Model SOP Page A 17
  - b) Engg Code Para 1238
  - c) Rly Bd Letter No 2017/CE-I/CT/10-Procurement Cycle dt 23.10.2017
  - d) Transf Cell Letter No 2018/Trans Cell/ S&T/ NIT Period dt 26.07.2018

# Tender Offer Validity

- Rly Bd Letter No 2017/ Trans/01/ Policy dt 08.02.2018  
Para 3.2 (c) and Para 4.0

c) With such a system of self-certification of credentials, tender finalization should also be speeded up. It has accordingly been decided that the tender validity period should be reduced to 45 days for single packet and 60 days for two packet system of tendering (in place of the present limits of 90 days and 120 days) for tenders having affidavit based system of credential verification.

#### **4.0 Tender Invitation at short notice period**

In continuation of existing instructions, for tenders called with short notice period of 21 days, tender validity period would be 30 days and for tenders called with 14 days notice period, the tender validity would be 20 days only. This would in fact justify the urgency of work.

# Eligibility Criteria

- ~~Sudhir Chandra Committee~~
- The criteria may be modified on case to case basis in respect of urgent project/works and specialized nature of work with concurrence of FA & CAO (Associate Finance) and personal approval of GM
- Additional conditions if required may be incorporated.

# Performance Guarantee

- Immediate verification of its genuineness
- Monitoring the date of expiry
- Encashment or extension of validity well in time to protect financial interests of govt.
- Return of PG
- Change of PG along with Variation
- Forfeiture of PG



# Contract agreement

- Contract Agreement Signing Powers ([Model SOP 2018 Para 6](#))
  1. Finance vetting is necessary.
  2. The powers under this item are to be exercised only after the contract, purchase, lease etc. are approved by competent authority.
  3. Contract/Lease agreement to be got vetted by Law Officer where no standard agreement exists.
  4. Rider agreements to the main agreement may likewise be signed by the authorities who signed the original agreement provided the approval of the competent authority is obtained.
- Form for Contract Agreement for Works ([GCC 2018 Part 1 Annexure IV](#))

# Variation in Quantities

- Quantity Variation to be as per GCC (Clause 41, 42)
- Should be properly sanctioned
- Funds availability
- SD/PG recovery for excess quantity, if required
- Limit Variation upto +149% , else problems
- Keep an eye on quantity execution regularly, else quantity may exceed beyond limit

# Price variation Clause

- Desirable in
  - Contracts having value more than 5 Crore
  - Wild fluctuations in prices of raw materials, labour and fuel etc.
  - Large value of contract
- Advantages
  - Protects interests of both the parties
  - Government when prices fall
  - Contractor when prices rise
  - Advantage to govt. when taxes and duties are reduced.

# Price variation – other aspects

- Adjustment done once every quarter in on account payments
- If more than one on account payment each quarter adjustment in each
- No adjustment if variation is less than 5%
- Upward adjustment in the extended period only if it is on govt's account
- Downward adjustment in the extended period even if it is granted on contractors account

# Price variation- supply contract

contd...

- In case of imported items adjustment in respect of exchange rate and custom duty done subject to production of documentary evidence
- Wage escalation clause to be avoided and top be done in exceptional circumstances on the insistence of the suppliers with financial concurrence

# Price variation- supply contract contd

- Base month and date to be indicated by the contractor along with wage structure at that time per month of the permanent workers only
- Wage will consist of basic wage, dearness allowance, employer's contribution to PF, employers' contribution to state insurance scheme or any other scheme instituted by govt.
- Increment in time scale not to be included
- Number of direct workers in the base year will only be considered.

## Some common irregularities /malpractices in finalization of contract with vigilance angle

- Making alterations in the quotation subsequent to opening of tenders if the rates/conditions are not encircled and initiated.
- Basic price can be changed if rate is not written in both figures and words and cuttings/over writings not indicated
- Additional levies/taxes or conditions mentioned if the offer of firm being favoured is much lower than the next higher offer
- Adding clause offering discount where offer of favoured firm is higher, so as to make it lower
- Playing with technical aspects for rejecting inconvenient bids on grounds of technical unsuitability.
- Changing scope of work/certain items to enable acceptance of alternative items after repeated negotiations when the number of competitors in the field remain one or two.

# Malpractices with vigilance angle

- Delay in finalization of tenders necessitating the extension of validity period there by discouraging the competitors to extend their validity
- Rejection of offers on account of credentials not well substantiated or conclusion drawn wrongly
- Comparison of rates with selected last accepted rate overlooking the financial impact of certain conditions proposed to be accepted
- Unequal evaluation of financial impact of conditions or overlooking the financial impact of certain conditions proposed to be accepted.



# Malpractices with vigilance angle


- Tender accepting authority directly entering into reference with tenders or entertaining post tender offers without referring back the case to tender committee with his observation for their examination
- Intentional delay in plotting /inking of cross sections and allowing the execution of works to start before final plotting and signing of initial cross-sections
- Recording inflated measurements for on-account bill involving advance payments


# Malpractices with vigilance angle

- Changing the scope of work to increase the quantities of paying items and decrease the quantities of losing items
- Improper compaction of earthwork. Fabricated figures of OMC and MDD compaction in top layers only.
- Delay in making payment for the work executed thereby harassing the contractor to extract money
- Supply of substandard materials by contractor
- Deputed departmental labour in the scope of work of the contractor in the name of progress/urgency without observing the formalities with the contractor.

# Dos and Don'ts of contract management

- Allow adequate and reasonable minimum time ( as prescribed) for opening of all tenders to encourage proper response except in emergencies
- Ensure that tender abstract(comparative statement) and briefing note have been prepared and signed by the concerned officials only on each page
- Only consider offers accompanied by requisite earnest money
- Ensure consideration of reasonableness of rates in the tender committee minutes. This should not only be with reference to presumably accepted rates, but also after taking into account market rates and analysis of rates
- Treat the tender committee recommendations with dissenting notes carefully
- **Similar work in eligibility criteria should be defined before hand**

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- Ensure timely supply of copies of approved plans for tenders where special item rates have to be quoted for the particular details of the approved plans
  - Attempt identification of sister concerns to detect ring formations, especially in the case of limited tenders.
  - Remember - negotiation should be an exception (like where rates are unreasonably high and retendering is not possible or desirable) and not the rule in acceptance of tenders
  - Ensure negotiating for rates with lowest eligible tender only after getting approval of competent authority i.e. Accepting Authority.

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- Record relevant reasons for overlooking the lowest offer if it is not acceptable
  - Ensure that the tender committee minutes contain the relevant information as the date, venue of the meeting and dated signatures of the members
  - Check that low offers are in fact so in reality and price differential for similar but different items of schedule is reasonable

# DOs of contract management

- Record the acceptance or otherwise on the body of the tender committee minutes only
- Ensure that the reasonableness of rates is examined critically, logically and specifically, both in respect of total cost and rates of important individual items
- Ensure that the tender committee is only constituted of competent level of officers specified
- Ensure inspection and passing of materials supplied by contractors on through rated contract before these are used in work. Maintain proper records.
- Keep proper accountal and classification of released materials


# DOs of contract management

- Intensive supervision “ You can expect more , if you inspect more”
- Use of factory produced materials like use of marbonite, mosaic in place of kota stone/marbles, door and window and pavers blocks and hexagonal blocks
- Testing lab for testing bricks, sand and cubes etc in each divisional HQ or construction projects
- Testing of cement and tor steel supplied by contractors
- Design mix of concrete for M-250 and above from reputed institute /firm

# DON'Ts of contract management

- Do not change the tender committee members once constituted without proper approval of competent authority
- Do not consider delayed/late tenders except under specified exceptional circumstances(it requires RB's approval to consider late/delayed offer)
- Do not treat the tender committee's recommendations with dissenting notes from one or more members of the tender committee as a unanimous recommendation
- Do not exercise the power on the accepting authority in case you have been a member of the tender committee.
- Do not award the contract unless detailed estimate is sanctioned and LAND is available.



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- Do not order negotiation on the repeated advice of tender committee to invite fresh tenders, particularly where response to the call for negotiation is poor
  - Do not hold negotiations with those who had either not tendered originally or whose tender was rejected because of unsatisfactory credentials, inadequacy of capacity or where tenders were unaccompanied with adequate EMD or any other invalid tenders
  - Do not accept open quotations from the contractors during negotiations
  - Do not entertain letters/representations of tenderers subsequent to the opening or negotiation while consideration of tenders

# DON'Ts of contract management

- Do not accept modified offers, not considered by the tender committee
- Do not allow subsequent revision of the minutes, unless the reconsidered minutes are put up in addition
- Do not record the acceptance/otherwise of the tenders anywhere else than the body of the tender committee minutes noting side of the file is to endorse action taken only.
- Do not advise the tender committee prior to their deliberations on the suitability or otherwise of any particular offer

# DON'Ts of contract management

- Do not operate non-schedule items without sanction of the competent authority. In exceptional cases where it has to be done, maintain necessary site records.
- Do not allow execution of works without proper sanctioned work order except in special circumstances and obtain sanction of appropriate authority promptly.
- Do not permit use of sub standard materials
- Do not allow contractor to first execute only those items considered more profitable by him at his discretion so that contractor's interest in completing the whole work remains
- Do not allow anomalies in evaluation of special conditions to affect the acceptance of the offer recommended

# DON'Ts of contract management

- Do not allow simultaneous collection and training out ballast from same area
- Do not allow concave tops in ballast stack. Have it rectified before measurement
- Do not depend upon visual inspection to assess oversize ballast. Use prescribed sieves and do proper sampling
- Do not allow putting of ballast into the track in case of supply of ballast is still in progress in adjacent stretches

# Dos and Don'ts of contract management (General)

- Dos
  - Keep a track of the progress of work/supply as per the schedule laid down in the contract
  - Monitor the progress in reference to milestones agreed upon
  - Get the deficiencies/shortfalls/poor quality rectified as soon as they come to notice-avoid piling up
  - Be aware of liabilities and responsibilities as per the contract and act accordingly
  - Take immediate action in the event of eventualities like poor progress , poor quality etc.

# Dos and Don'ts of contract management (General)

- Ensure that contract is alive at all times-in case the work cannot be completed in agreed time period , ensure that the contractor applies for currency extension and extend validity promptly when the contract is alive
- As far as possible stick to the agreed upon schedule and scope
- Get the variation /operation of new items approved in advance- no work should be commenced without contractor submitting his offer and request for written permission.

# Dos and Don'ts of contract management (General)

- DON'ts
  - Don'ts sleep over a communicated claim/dispute with respect to a contract
  - Don't let the validity of a contract expire at any stage – all punitive or otherwise provisions become in-effective the moment validity of the contract expires



Thanks