

# TENDERS & CONTRACTS

*An overview*

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# What is a contract ?

- ❖ **Agreement:** When two or more persons have a common intention communicated to each other to create some obligations between them, there is said to be an Agreement.
- ❖ "An agreement" which is enforceable by law is a "Contract"
- ❖ As per section 10 of Indian Contract Act 1872,

only those agreements are enforceable by law which are made by the free consent of the parties , competent to contract , for a lawful consideration and with a lawful object, and are not expressly declared to be void.

(see Para 1201 IR Code for Engineering Dept)

# What is a Contract?

- ❖ It is basically the allocation of work to a third party in exchange for payment (profit)
- ❖ The risks and rewards of the work concerned get transferred to the other party
- ❖ This arrangement is beneficial to both parties
- ❖ **Contract = Transfer of Risk for Profit (?)**
- ❖ Must be done judiciously with due observance of 'CANONS OF FINANCIAL PROPRIETY'

# CANONS OF FINANCIAL PROPRIETY

- ❖ The expenditure should not prima facie be more than the occasion demands, and every Railway servant should exercise the same vigilance in respect of expenditure incurred from public money, as a person of ordinary prudence would exercise in respect of the expenditure of his own.
- ❖ No authority should exercise its powers of sanctioning expenditures, to pass an order, which will directly or indirectly to its own advantage.
- ❖ Public money should not be utilized for the benefit of a particular person or a section of the community **unless** (i) the amount of the expenditure involved is insignificant **OR** (ii) The claim for the amount could be enforced in a court of law **OR** (iii) The expenditure is in pursuance of a recognised policy/custom.
- ❖ The amount of allowances such as travelling allowance, granted to meet expenditure of a particular type, should be so regulated that the allowances are not on the whole a source of profit to the recipients.



ACCOUNTS  
'A'

BOSSSES  
'B'

EXECUTIVE

CONTRACTORS

AGGRIEVED  
STAFFS AND  
OFFICIALS

AUDIT  
'A'

VIGILANCE  
'V'



# Contract Management: Reading

- ❖ Indian Contract Act, 1872
- ❖ General Conditions of Contract (GCC) & Corrections
- ❖ Schedule of Powers (SOP)
- ❖ Vigilance Manual
- ❖ Works Code
- ❖ Stores Code
- ❖ Railway Board Circulars
- ❖ Previous Tender Cases (LAR & TCM)

# Stages of Contract Management

- ❖ **Pre-tender planning**
- ❖ Tender invitation and finalization
- ❖ Execution stage
- ❖ Contract finalization stage

# Pre-tender Planning

- ❖ Survey
- ❖ Scope of work (details)
- ❖ Design and drawing
- ❖ **Estimate Preparation and Sanction**
- ❖ Likely time of completion
- ❖ **Type of tender**
- ❖ Preparation of Tender Schedule
  - Notice Period
  - Tender Offer Validity
  - GCC
  - Special Conditions and Special Specifications
  - Eligibility criteria



# Open tender (with two packet system)

- ❖ Two Packet System of Tendering
- ❖ Technical Bid and Financial Bid

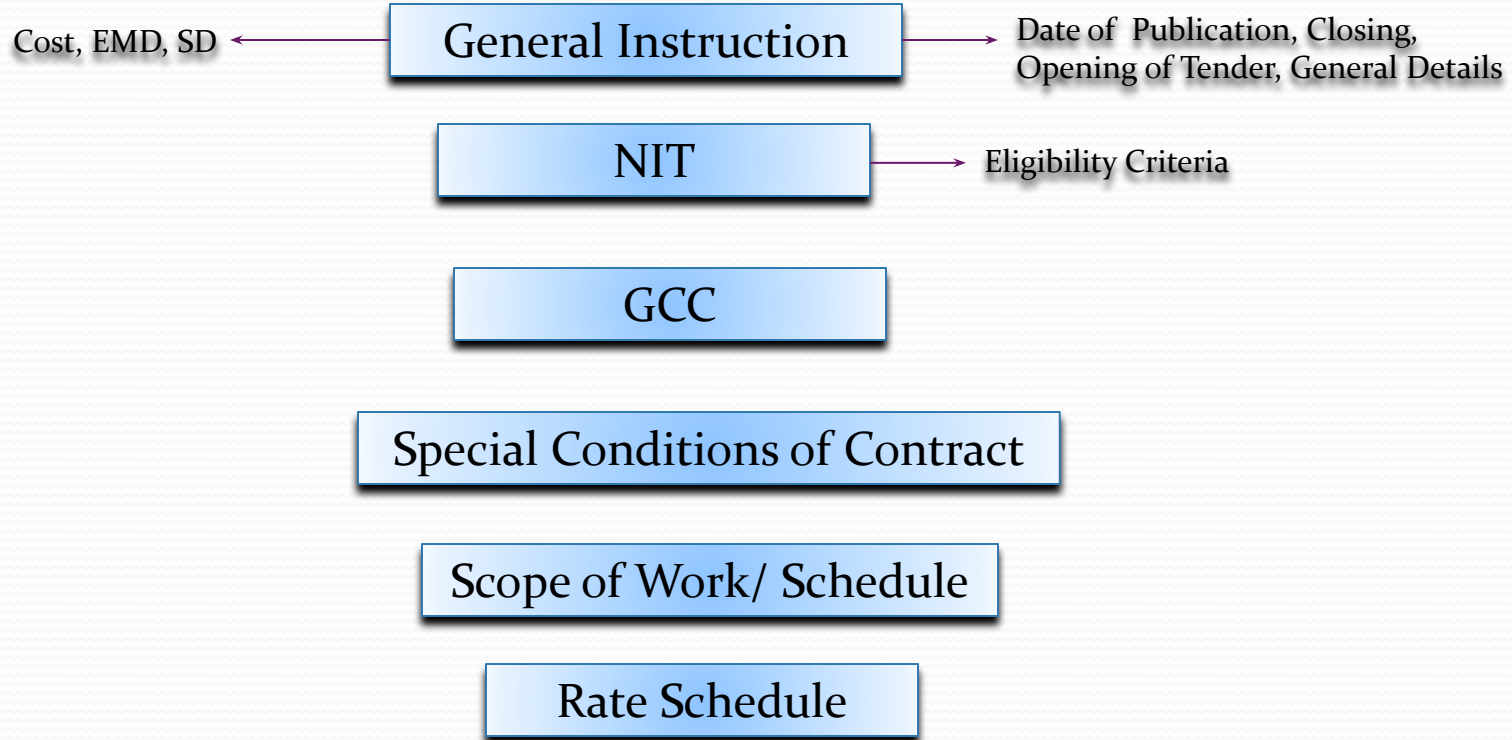
## Stage 1

- Technical Packet opened First
- TC Deliberates on Technical criteria
- Technically successful Tenderers considered for Stage 2

## Stage 2

- Financial Packet opened
- Rates are evaluated of only successful tenderers

# Components of a Tender Document



# Tender Document Cost

- ❖ Based on Tender Value
- ❖ Payable on ireps website
- ❖ Non- refundable

(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/-

# Earnest Money Deposit (EMD)

- ❖ To screen non serious firms
- ❖ Firm has to keep the offer open during the validity period
- ❖ Pre-mature withdrawal of offer leads to forfeiture of EMD

## Value of the Work Earnest Money Deposit (EMD)

For works estimated to cost up to ₹ 1 crore	2% of the estimated cost of the work
For works estimated to cost more than ₹ 1 crore	₹ 2 lakh plus ½% (half percent) of the excess of the estimated cost of work beyond ₹ 1 crore subject to a maximum of ₹ 1 crore

Note:

- The earnest money shall be rounded to the nearest ₹100. This earnest money shall be applicable for all modes of tendering.
- Any firm recognized by Department of Industrial Policy and Promotion (DIPP) as 'Startups' shall be exempted from payment of earnest money deposit detailed above.

# Security Deposit (SD)

- ❖ **GCC 2019 Part II Para 16 (1)**
- ❖ For the due and faithful fulfillment of the contract by the Contractor
- ❖ **5% of the Contract Value**
- ❖ SD Forms
- ❖ Refund of SD

# Performance Guarantee

- ❖ **GCC 2019 Part II Para 16 (4)**
- ❖ For Guarantee in Work Quality/ Performance
- ❖ 5% of the **Contract Value**
- ❖ Forms of PG
- ❖ Submission Period- Penal Interest
- ❖ PG validity

# 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

# Contract agreement

- ❖ Contract Agreement Signing Powers ([Model SOP 2019 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 2019 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 +150% ,
- ❖ Keep an eye on quantity execution regularly, else quantity may exceed beyond limit
- ❖ The Contractor shall be bound to carry out the work at the agreed rates and shall not be entitled to any claim or any compensation whatsoever upto the limit of 25% variation

- ❖ Quantities operated in excess of 125% but upto 140% of the agreement quantity of the concerned item, shall be paid at 98% of the rate awarded for that item in that particular tender;
- ❖ Quantities operated in excess of 140% but upto 150% of the agreement quantity of the concerned item shall be paid at 96% of the rate awarded for that item in that particular tender;
- ❖ Variation in quantities of individual items beyond 150% will be avoided and would be permitted only in exceptional unavoidable circumstances with concurrence of PFA & approval of GM and shall be paid at 96% of the rate awarded for that item in that particular tender.

# 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 Clause contd..

- 46A.4** Adjustment for variation in prices of material, labour, fuel, explosives, detonators, steel, concreting, ferrous, non-ferrous, insulators, zinc and cement shall be determined in the manner prescribed.
- 46A.5** Components of various items in a contract on which variation in prices be admissible, shall be Material, Labour, Fuel, Explosives, Detonators, Steel, Cement & Lime, Concreting, Ferrous, Non-ferrous, Insulator, Zinc, Erection etc. However, for fixed components, no price variation shall be admissible.
- 46A.6** The percentages of labour component, material component, fuel component etc. in various types of Engineering Works shall be as under :

Component	Percentage	Component	Percentage
<b>(A) Earthwork Contracts :</b>			
Labour Component	50%	Other Material Components	15%
Fuel Component	20%	Fixed Component *	15%
<b>(B) Ballast and Quarry Products Contracts :</b>			
Labour Component	55%	Other Material Components	15%
Fuel Component	15%	Fixed Component *	15%
<b>(C) Tunnelling Contracts :</b>			
Labour Component	45%	Detonators Component	5%
Fuel Component	15%	Other Material Components	5%
Explosive Component	15%	Fixed Component *	15%
<b>(D) Other Works Contracts :</b>			
Labour Component	30%	Fuel Component	15%
Material Component	40%	Fixed Component *	15%

\* It shall not be considered for any price variation.

# Formula - Labour

- $L = R \times (L - L_0) L_0 \times P / 100$

- Where

L = Amount of price variation in labour

R = Gross work done by contractor as per on account bill excluding cost of materials supplied to him at fixed price and payment made to consultants engaged by the contractor

$L_0$  = All India consumer price index Number for industrial workers published by RBI for the base period 21

L = All India consumer price index Number for industrial workers published by RBI average for the 3 months of the current quarters

# Formula – Labour Contd...

$$M = R \times (W - W_0) / W_0 \times Q / 100$$

Where

M = Amount of price variation in materials

W<sub>0</sub> = index number of wholesale price – by group and sub-group for fuel, power, light and lubricants as published by RBI for the base period.

W = Above for average for 3 months of the quarter

Q = % of materials component

# Formula – Labour Contd...

$$U = R \times (F - F_0) / F_0 \times Z / 100$$

Where

U= Amount of price variation in Fuel

F<sub>0</sub>= index number of wholesale price – by group and sub-group for fuel, power, light and lubricants as published by RBI for the base period.

F= Above for average for 3 months of the quarter

Z= % of Fuel component

# 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 extend period only if it is on govt's account
- ❖ Downward adjustment in the extended period even if it is granted on contractors account<sup>24</sup>



# 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.

# Contract Finalisation

- Bill Passing
- Return of SD/ PG
- Closure Agreement

# Contract execution stage

- ❖ Site order book
- ❖ Use of machine numbered M.B and level books
- ❖ Quality control registers
- ❖ Field laboratory
- ❖ Detailed programme
- ❖ Variations
- ❖ Time extension
- ❖ Non schedule items
- ❖ Prompt correspondence and proper record keeping

# Why Contracts Fails

- ❖ On Railway's account
  - Poor pre-tender planning
  - Faulty tender schedule
  - Improper tender conditions
  - Site related problems
- ❖ On Contractor's account
  - Unworkable rates
  - Subsequent changes
    - Rate changes
    - Scope changes



**Thank You**