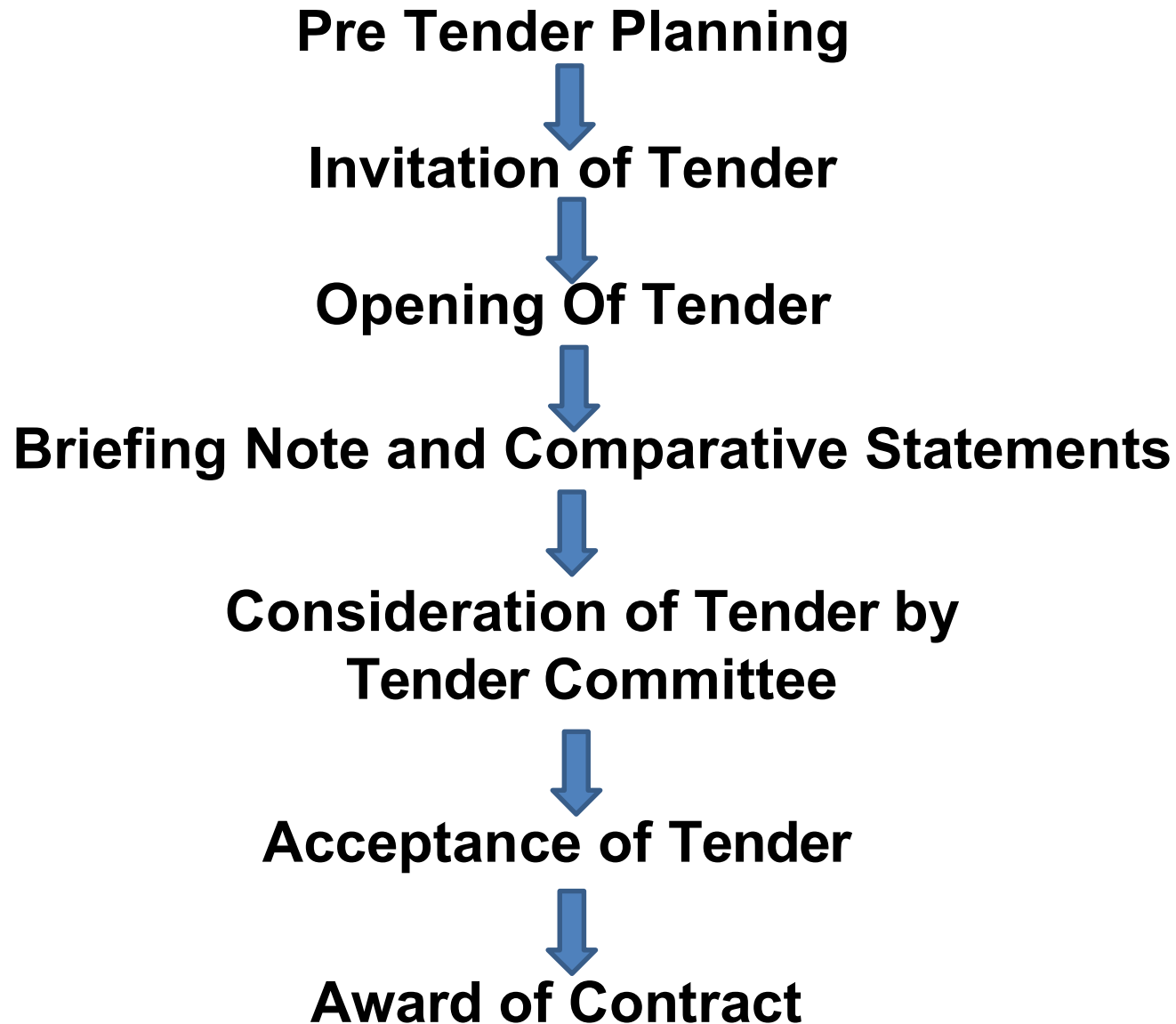


# TENDER PROCESS



# **GCC (General Conditions of Contract)**

**General Conditions of Contract (GCC)** is an important term related with contract. Indian Railway circulates GCC for every financial year due to change in monetary ceiling, sanctioning limit of appointed Authority, EMD, Security Deposit, BG, LD, Price Variation Clause (PVC), termination of contract etc. GCC 2015, 2017, 2019, 2020 etc are the important GCC circulated by Indian Railway for the best performance of contract.

The GCC is the safeguard for both Railway Authority and Contractor for overcoming disputes as well as not to arise disputes. Contractor can't easily go to Tribunal for settling disputes avoiding the GCC.

The most important clauses under GCC are as follows:

## **Modification of contract (Clause19):**

**19.1** The purchaser may at any time, by a written order given to the supplier pursuant to GCC clause 31, make changes and modifications within the general scope of contract in any one or more of the following:

- a) Drawings, designs or specifications, where goods to be supplied under the contract are to be specifically manufactured for the purchaser,**
- b) the mode of packing,**
- c) the mode of despatch**
- d) the place of delivery,**
- e) the services to be provided by the supplier and/or**
- f) any other area(s) of the contract, depending on the merits of the case.**

**19.2** If any such change causes an increase or decrease in the cost of, or in the time required for the supplier's performance of any provision under the contract, and equitable adjustment shall be made in the contract price or contract delivery schedule or both, and the contract shall be amended accordingly. Any claim by the supplier for adjustment under this clause must be asserted within 21 (twenty-one) days from the date of the supplier's receipt of the purchaser's amendment/modification of the contract.

**19.3** Subject to GCC sub-clauses 19.1 and 19.2, no variation in or modification of the terms of the contract shall be made except by written amendment signed by both the parties.

**Sub Contracts (Clause 21):**

**21.1** The supplier shall notify the purchaser in writing of all sub contracts awarded under the contract, if not already specified in its bid. Such notifications, in its original bid or later, shall not relieve the supplier from any liability or obligation, whatsoever, under the contract.

**21.2** Subcontract shall be only for bought-out items and sub-assemblies.

**21.3** Subcontracts must comply with the provisions of GCC clause 3.

**Delay in the supplier's performance (Clause 22):**

**22.1** Delivery of the goods and performance of the services shall be made by the supplier in accordance with the time schedule specified by the purchaser in the "Schedule of Requirements".

**22.2** Except as provided under GCC clause 25, any unexcused delay by the supplier in maintaining its contractual delivery obligations shall render the supplier liable to any or all of the following sanctions:

**imposition of liquidated damages, forfeiture of its performance security and/or termination of the contract for default.**

**22.4** The supplier shall not despatch the goods after expiry of the delivery period. The supplier is required to apply to the purchaser for extension of delivery period and obtain the same before despatch. In case the supplier despatches the goods without obtaining an extension, it would be doing so at its own risk and no claim for payment for such supply and/or any other expense related to such supply shall lie against the purchaser.

**Termination for default (Clause 24):** The purchaser, without prejudice to any other remedy for breach of contract, may, by written notice of default sent to the supplier, terminate the contract in whole or in part, if the supplier fails to deliver any or all of the goods or fails to perform any other contractual obligation(s) within the time period specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC clause 22.

**LD (Liquidated Damages) GCC clause 25,** is one of the most important point in which Railway Authority can impose penalty a sum equivalent to **0.5%**( half percent) of the delivered price of the delayed goods or unperformed services for each week of delay or part thereof until actual delivery or performance, up to a maximum deduction of **10%**(ten percent) of the delayed goods' or services' contract price. Once the maximum is reached, the purchaser may consider termination of the contract, if the same have not been terminated already.

**Under GCC clause 25**, any unexcused delay by the supplier in maintaining its contractual delivery obligations shall render the supplier liable to any or all of the following sanctions: a) imposition of liquidated damages, b) forfeiture of its performance security c) and/or termination of the contract for default.

**Termination for insolvency (Clause 26):** If the supplier becomes bankrupt or otherwise insolvent, the purchaser may terminate the contract by giving written notice to the supplier, without any compensation to the supplier, provided, that such termination will not prejudice or affect any right of action or remedy which has accrued and/ or will accrue thereafter to the purchaser.

**Resolution of disputes (Clause 28):**

- **28.1:** If any disputes or difference of any kind shall arise between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve the same amicably by mutual consultations.
- **28.2:** If after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.
- **28.3:** Any dispute or difference, in respect of which a notice of intention to commence arbitration has been given in accordance with GCC sub-clause 28.2, shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of goods under the contract. 28.4 The dispute resolution mechanism to be applied pursuant to GCC sub clause.

**28.3** shall be as follows:-

- a) In the case of a dispute or difference arising between the purchaser and the supplier relating to any matter arising out of or connected with the contract, such disputes or difference shall be settled in accordance with the Arbitration and Conciliation Act, 1996. The arbitral tribunal shall consist of three arbitrators, one each to be appointed by the purchaser and the supplier. The third arbitrator shall be chosen by the two arbitrators so appointed by the parties and shall act as presiding arbitrator. In case of failure of the two arbitrators appointed by the parties to reach upon a consensus within a period of thirty days from the appointment of the arbitrator appointed subsequently, the presiding arbitrator shall be appointed by the **Indian Council of Arbitration or President of the Institution of Engineers (India)**.
- b) The decision of majority of arbitrators shall be final and binding upon both the parties.
- c) The cost and expense of the arbitration proceedings will be paid as determined by the arbitral tribunal. However, the expenses incurred by each party in connection with the preparation, presentation etc. of its proceedings as also fees and expenses paid to the arbitrator appointed by such party or on its behalf shall be borne by each party itself.  
**The venue of arbitration shall be the place from where contract is issued.**

## **SCC (Special Conditions of Contract)**

**Special Conditions of Contract** means **terms** and **conditions** that sets out the rights and obligations of the parties that are peculiar to a specific **contract**, or as necessitated by the circumstances of specific works.

**Special Conditions of Contract** means the documents titled Special Conditions of Contract as included in the Contract, which are compliment to GCC in accordance with the Contract. Such documents specify any special terms and conditions forming part of this Contract and shall be read along with these Conditions when referring to the Contract. Special Conditions of Contract also the special conditions of contract setting out specific deviations from the General Conditions of Contract and other relevant provisions and datas which are to be read in conjunction with the General Conditions of Contract. It also includes the Special Conditions of Contract (if any) in the Request for Tender.

**Special Conditions of Contract** deals with special contractual conditions entered into by the Parties to address specific conditions applicable to specific Services with the purpose of either amplifying or amending these Terms and Conditions of Contract.

**Special Conditions of Contract** or "special conditions" also means any amplification or amendment or addition to or departure from the General Conditions pertaining to the specific contract as set out in the Special Conditions (Volume 3).

**It also states about the** documents entitled Special Conditions of Contract as included in the Contract, and any additions and modifications to such document in accordance with the Contract. Such document specifies any special terms and conditions forming part of this Contract.

### **Basic comparison between GCC & SCC**


<b>GCC</b>	<b>SCC</b>
1. Contains Standard terms and conditions which are generally applicable for all contracts irrespective of the nature of work, supplier type and other factors.	1. Relates to the specific contract. It includes terms and conditions which are applicable for that particular contract only and will vary for each contract.
2. These are an inherent part of the Contract for construction.	2. Extends anything not included or modified in the supplementary conditions.
3. Where any portion of GCC is contradicting any provision(s) of the SCC of contract will override the provision(s) of the GCC.	3. SCC shall be read in conjunction with the GCC also referred to as general terms & conditions of work contract, schedule of work, drawing and any other document forming the part of the contract.



# Opening & Scrutiny of Tenders

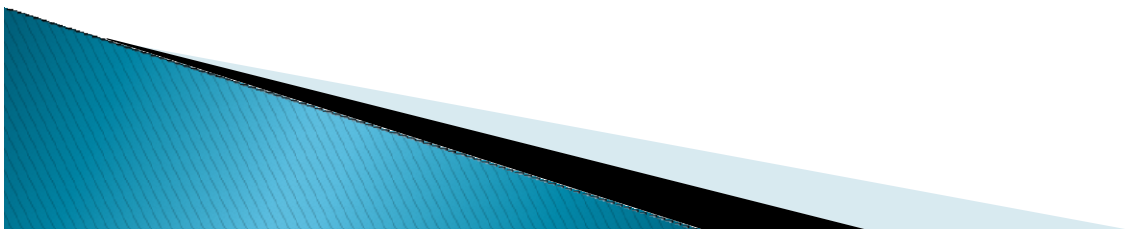
- Tenders should be opened at the specified time, date and place by the Officer nominated for the purpose. The presence of Accounts representative at the time of opening of tenders is required, if the tender value is over Rs. 10,000/- in the presence of the intending tenderers . The sale of tender papers should be stopped four hours before opening of tenders .

# Opening & Scrutiny of Tenders


- The officer, who opens the tenders and the Accounts representative witnessing the tender opening, should:
  - Initial (with date) the cover containing the tender, front cover page of the tender every page of the tender on which the rates or special tender conditions are quoted.
  - 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 documents.
  - Clearly indicate on each page of schedule attached to the tender, any ambiguities in rates quoted by the tenderers in words or figures.
- 

# Opening & Scrutiny of Tenders

- ❑ Mark and initial all over writing in red ink. The corrections, over writing 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 paper and attested with date.
- ❑ Should specifically record whether samples have been supplied or not along with tender

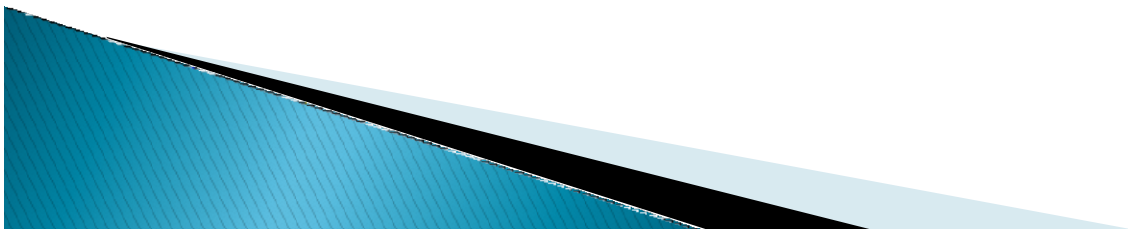


# TENDER REGISTER

- Particulars of tenders should be noted in a register which should include the following information
  - **Name of work**
  - **Tender notice no.**
  - **Nature of tender**
  - **Date of opening of tender**
  - **Earnest money required**
  - **Serial number**
  - **Name of tenderers**
  - **Date of application**
- 

# TENDER REGISTER

- Cash received
- **Tender forms no.**
- Signature of issuing officer
- Signature of tenderer
- Remarks
- The tender register should be signed by the representative of the Executive and Accounts who open the tenders. The original tenders should always be kept in the custody of a Gazetted Officer till tabulation chart is prepared and got signed by the tender opening committee.



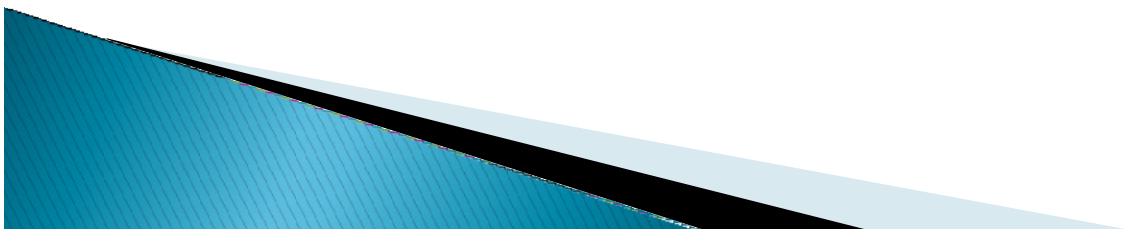
# COMPARATIVE STATEMENT

- After the tenders are opened, the tender documents should be in the custody of a Gazetted Officer till the tender is finalised. A comparative Statement of rates, amounts, quantities and other important tender conditions should be prepared by a responsible staff in presence of the executive Officer who opens the tenders for which necessary office order fixing responsibility of the staff concerned should be issued prior to giving the work to him.



# COMPARATIVE STATEMENT

- Each and every page of the comparative statement must be signed by the staff preparing it and checked and signed by the section in charge.
- The Executive Officer and the Accounts Officer associated with Opening of tender should carry out 100% check of the comparative statement and sign each and every page thereof and not the last page only.



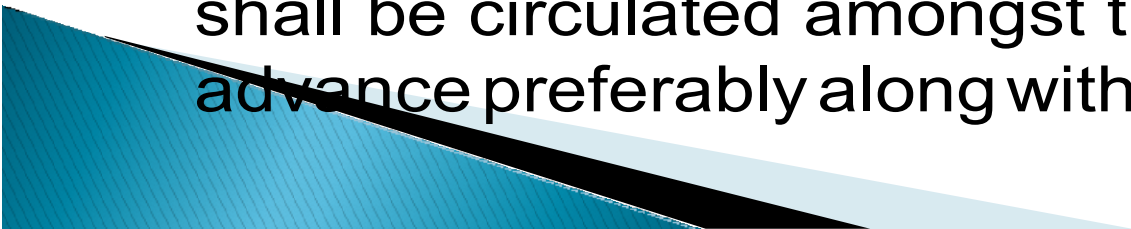
# COMPARATIVE STATEMENT

- It must be ensured that all tenders received are tabulated in the comparative statement and put up to the Tender Committee for their consideration without any screening by any other official.
- The briefing notes shall be prepared under the direction of the concerned Executive Officer. He will ensure that all aspects enumerated above are included in the briefing note and sign each page of the briefing notes.



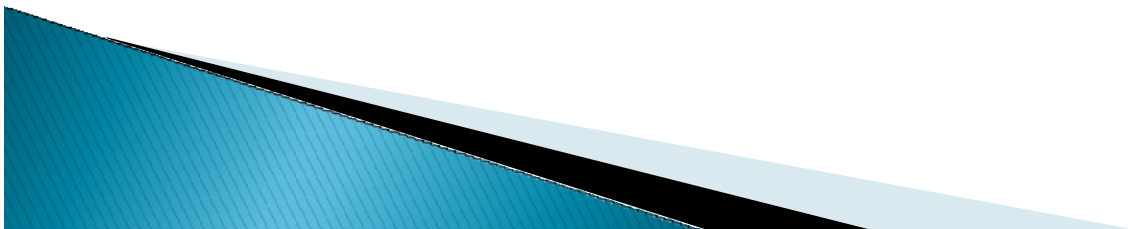


# COMPARATIVE STATEMENT


- The financial evaluation will be done by the Estimator assigned for the job and shall be checked by Head of Chief Estimator. They will be responsible to the correctness of the comparative statement and the briefing note and sign each page of the same.
  - The section in charge dealing with the tenders shall ensure that all special conditions have been accounted for and that comparison has been made with prevailing rates of the area and sign on each page of the briefing note.
  - Only the signed and vetted copies of briefing note shall be circulated amongst the T. C. members in advance preferably along with T. C. Meeting notice.
- 

# CONSTITUTION OF TENDER COMMITTEE

- Tender Committee should be generally constituted by the authority competent to accept the tenders when the tender value involves more than Rs. 25,000/-. When the G. M. is authority competent to accept the tender, the HOD concerned should
- The Tender Committee should consist of a minimum 3 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.

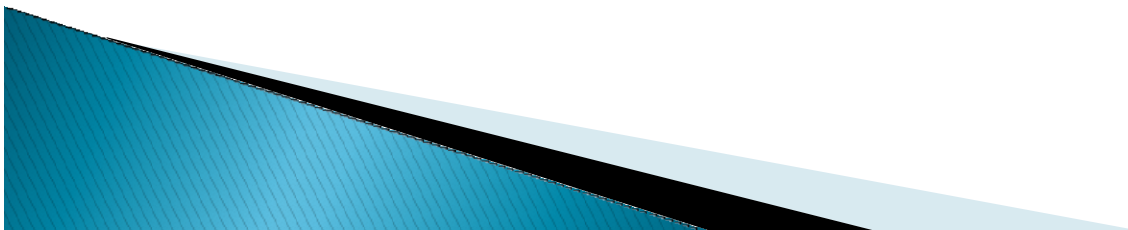


# TENDER COMMITTEE


- On basis of value of tender following authorities are decided Tender inviting authority, Tender Opening Committee, Members of Tender Committee, Tender accepting authority, Contract Signing authority.
  - The tender Committee should be so constituted that an officer recommending acceptance of a tender in his capacity as a member of Tender Committee shall not be also the accepting authority of the same tender.
  - The proceedings of the Tender Committee will be put up by convenor member of tender Committee direct to the accepting authority.
- 

# RESPONSIBILITY OF TENDER COMMITTEE

- Tender should be considered without delay
- Tenders should be finalised within the period of validity of offers.
- Clarification should not be sought in piecemeal from the tenderers. All the information necessary for consideration of offers should be called for at one time, leaving no occasion for seeking further extension of time.
- In all cases where the lowest or lower tenders are rejected, full reasons for the rejection should be recorded, so that reasons for such rejection would be available on files.



# RESPONSIBILITY OF TENDER COMMITTEE

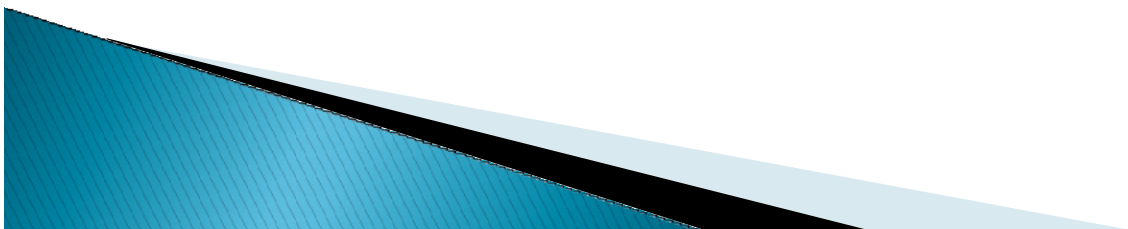
- ❑ In case of 'Open' tenders, if the lowest tenderer is not on approved contractor, he should be asked to produce evidence of his capacity of execution and financial position. If he fails to produce such credentials this fact should be kept place on record
  - ❑ The capacity, credentials and financial status of the tenderer should be investigated and only if these are found satisfactory the contract should be awarded .
  - ❑ In addition to the generally known responsibility of the Tender Committee, they have a special responsibility to scrutinise carefully the rates.
- 

# NEGOTIATIONS

- Where all the tenders are considered to be unreasonably high in value and it is felt that re-tendering would not secure better advantage to the Railway and/or
- Where the lowest tender is technically not acceptable or is rejected because of unsatisfactory credentials, inadequacy of capacity or unworkable rates and next higher offer to be considered in accordance with the established procedure is found to be unreasonably high.
- **The decision whether to invite fresh tenders or to negotiation should be taken by the competent authority after obtaining the recommendations of the Tender Committee.**

# NEGOTIATIONS

- After the competent authority has decided to call specific tenderer for negotiation, the following procedure should be adopted
- The lowest tenderer to be called in for negotiations should be addressed as laid down by Board, so that the rates originally quoted by them shall remain open for acceptance in the event of failure of negotiation .
- In case, however, the selected tenderer prefers to send a revised bid instead of being present at the negotiation, the offer should be taken into account.



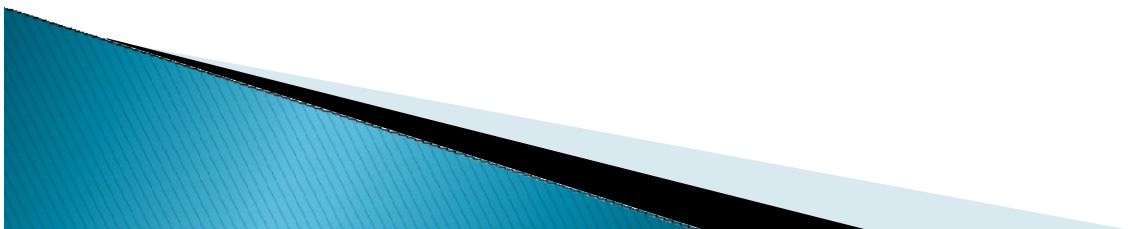
# NEGOTIATIONS

- While conducting negotiations with tenderer and obtaining revised rates and recommending the same for acceptance, the tender committee should ensure that the fundamental requirements of safeguarding Railway's financial interest have been fully observed.
- In no case, including where a ring is suspected, should negotiation be extended to those who had either not tendered originally or whose tender was rejected because of unsatisfactory credentials, inadequacy of capacity or unworkable rates or (in the case of other than stores tenders only) whose tender was not accompanied by requisite earnest money.

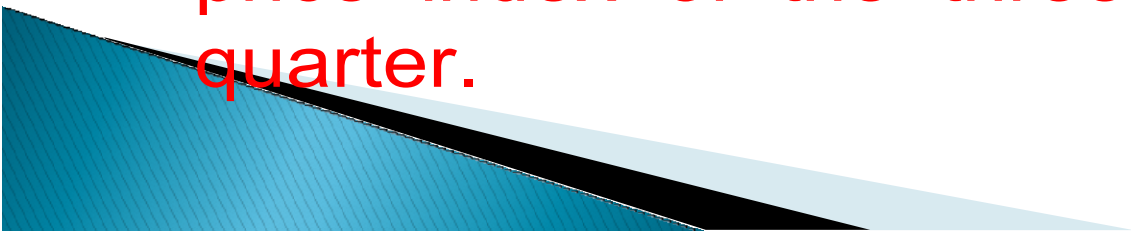


# PRICE VARIATION CLAUSE

- Price variation clause will not apply if the price variation is up to 5%. Reimbursement/ recovery due to variation in prices shall continue to be made only for the amount in excess of 5% of the amount payable to the contractor, as hitherto (in other words price variation up to 5% is to be absorbed by the contractor). The escalation is to be worked out as per given formula taking into consideration the price index prevalent at the time of calculating the price variation.



## PRICE VARIATION CLAUSE

- Price variation will be calculated once every quarter for the on account payments made in that quarter if more than one on account payment is made, calculation for payment towards price variation will be made in each
  - No maximum value for the price variation is to be prescribed.
  - Calculation of payment, on account of price variation should be based on the average price index of the three months of the quarter.
- 

# PRICE VARIATION CLAUSE

- If the rates quoted in negotiated tender are accepted it is logical that the base month for price variation clause is the month in which negotiation are held. This may, however, is required to be clarified on the tender conditions or in negotiation.
  - The fixed cost of the contract value on which no price variation would be permissible may be kept at 15% of the value of the contract.
  - The demand for escalation of the cost may be allowed on the basis of provisional indices made available by Reserve Bank of India. Any adjustment needed to be done based on jointly published indices is to be made as and when they become available.
- 