



## Indian Railways Institute of Mechanical & Electrical Engineering (IRIMEE), Jamalpur



# TENDERS & CONTRACTS

*A Booklet & Compendium for Study & Reference*

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January 2022

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Govt. of India, Ministry of Railways  
**National Academy of Indian Railways**  
Lalbaug, Vadodara - 390 004.

No./NAIR/CTI/Misc.

Date: 21-01-2022

Director General, IRICEN, Pune  
Director General, IRIEEN, Nasik Road  
Additional Director General, IRISSET, Secunderabad  
DEAN & Sr. Professor (RST), IRIMEE, Jamalpur

Sub: Training on 'Preparation of Tender Schedules and Quality Checks of Works' for Railway Officers and Supervisors.

Railway Board has desired that Centralized Training Institutes organize training programs on 'Preparation of Tender Schedules and Quality Checks of Works' for capacity building of officers and supervisors of Indian Railways.

In this regard, Centralized Training Institutes may kindly prepare the action plan containing Road map for covering all officers and supervisors of respective departments for training on above domain, plan training programs for calendar year 2022 (Remaining Period), prepare a Booklet covering course material and reference material.

It is requested to complete above exercise by 31<sup>st</sup> January, 2022 and send a copy to NAIR so that the same can be shared with the Railway Board.

This has the approval of DG/NAIR.

  
(Dr. Kamlesh Gosai)  
Deputy Director General

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## Introduction

With increasing importance of outsourcing in every Department, there is a constant feeling among officers and supervisors alike that Tenders, Contracts and their execution is something quite new and adds a hitherto unanticipated level of complexity to daily functioning. To eliminate uncertainty and enable field executives to carry out their tasks properly, it falls to CTIs to conduct training programmes for the same. IRIMEE is no different.

We regularly organize online training courses as part of our Training Calendar, and officers and supervisors can be nominated and join from anywhere. In 2021-22 so far, 3 training courses with a total of 730 trainee-days have been completed, with another course starting in Feb. This booklet is another attempt to broaden our base and provide a ready reference to one and all for Tender & Contract rules.

## To Start With... Back to the Basics

Many times one is faced with the question, “What is my role in the Railways (or in the Govt. in general)?” In other words, what is the nature of my job in the field? An Officer? Bureaucrat? Technocrat? A Leader? Babu? Middle Manager? Facilitator? Rule Maker? Breaker? Follower? Enforcer? System representative? Figurehead? Something else altogether?

The answer is both “All of the above” and “None of these”. Our role is not so much to “do the job” oneself so much as to “know it and how to get it done”. In other words, one is a **Techno-Manager**.

# Techno – Manager

- |  |                            |
|--|----------------------------|
| ★ Engineering qualification                    | ★ Communication & Liaising |
| ★ Technical awareness, understanding & working | ★ Cost & Timing            |
| ★ Specs. Or Constraints                        | ★ Labour Mgt / Discipline  |
| ★ Knowing new techniques                       | ★ Legal Considerations     |
|  | ★ Improve & Implement      |

*Role as a Techno-Manager in the Railways*

Now with this as a given, let's move on to how to get work done!

## Getting Work Done

Departmental work is done when one has the work, and all resources for accomplishing it including the Design and Technical Knowhow, along with the requisite Manpower, Machines and Material, within one's own control. When this fails, we seek outside help through outsourcing. Getting work done Departmentally or by Outsourcing is governed by completely different norms and regulations.

## Departmental / Outsource

- |  |                               |
|--|-------------------------------|
| ★ Design, Knowhow, Expertise, Infrastructure, Material are <b>all available in-house</b> | ★ Don't have the knowhow?     |
| ★ <u>Economical</u> / Viable RoR   | ★ Pressed for Resources? RoR? |
|  | ★ Non-core Activity?          |
|  | ★ New technology/expertise?   |



Enforced and executed through the



Org. Hierarchy, Duty Lists, Conduct Rules, DAR

Contract Agreement

Departmental staff are governed by a variety of Conduct Rules and Duty Lists, the enforcement of which is governed by DAR rules and procedures nested within the organizational and Service hierarchy.

The players on either side of an outsourcing activity, however, are governed by nothing other than their Contract Agreement, enforceable within the bounds of the law of the land. This leads us on to the next question:

### 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.
- ❖ Please see Para 1201 IR Code for Engineering Dept for more information

So a contract is basically a **fiduciary relationship** involving the allocation of work to a third party in exchange for payment.

The responsibility for the work, along with all associated risk, is taken up by a third party in exchange for payment or, more accurately, profit.

Hence, a contract is also the transfer of risk and reward by an agreed arrangement that is mutually beneficial to both parties.



In the context of the Railways and outsourcing, however, *"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.*

### **Government Contracts & Public Spending: Canons of Financial Propriety**

When a government organization spends public (taxpayer) money, it must abide by a basic public responsibility. In the Railways, these are defined and summed up by the Canons of Financial Propriety, as under:

- ❖ 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 be 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 traveling 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.

### **General Financial Rules (GFR), 2017**

- ❖ Every authority delegated with the financial powers of procuring goods in public interest shall have the responsibility and accountability to bring efficiency, economy, and transparency in matters relating to public procurement and for fair and equitable treatment of suppliers and promotion of competition in public procurement.
- ❖ The procedure to be followed in making public procurement must conform to the following yardsticks:
  - The description of the subject matter of procurement to the extent practicable should:
    - Be objective, functional, generic and measurable and specify technical, qualitative and performance characteristics,
    - Not indicate a requirement for a particular trademark, trade name or brand

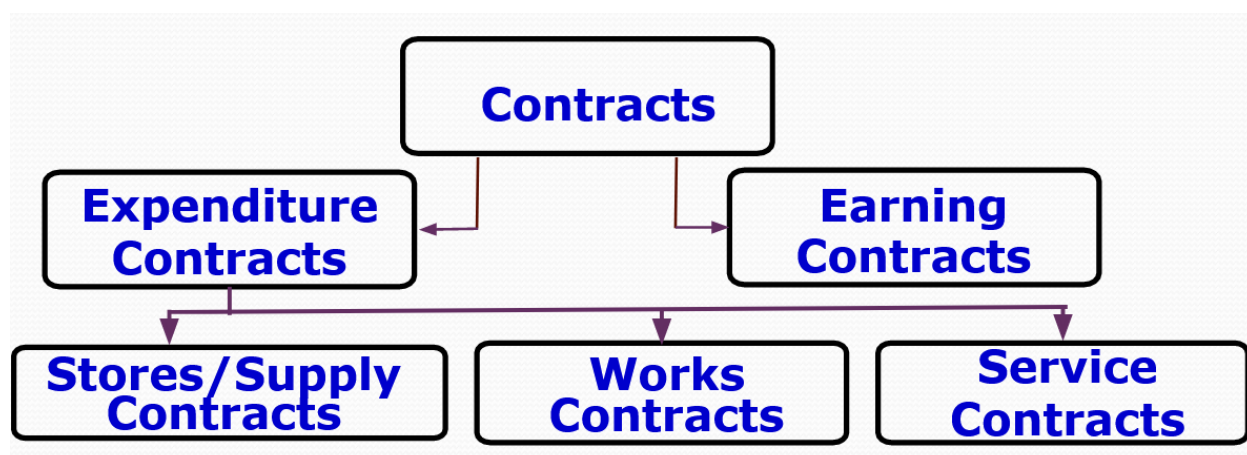
- The specifications in terms of quality, type etc., as also quantity of goods to be procured, should be clearly spelt out keeping in view the specific needs of the procuring organizations.
- Care should also be taken to avoid purchasing quantities in excess of requirement to avoid inventory carrying costs.
- Offers should be invited by following a fair, transparent and reasonable procedure.
- The procuring authority should be satisfied that the selected offer adequately meets the requirement in all respects.
- The procuring authority should satisfy itself that the price of the selected offer is reasonable and consistent with the quality required.

### **Schedule of Powers (SOP)**

- SOP specifies the scope of officers' financial powers in the Railways, operated as a Delegation of Authority from the top down.
- The SOP defines and lays down which officer or level of officer can sanction different types of expenditure and the restrictions thereon, such as a budgetary ceiling, Finance Concurrence, GM's or Board's approval etc.
- For Tenders, SOP specifies level and conditions of Tender Committee (TC) and Tender Accepting Authority (TAA)
- In general, power of RB > HQ > Field officers', and powers of the senior officers > JS/SS level.

- Unless otherwise specified, each step/power needs to obtain Finance Concurrence at the appropriate level
- Thus, SOP becomes a document to decide route of file for obtaining permissions/sanction for proposed works
- For most cases, the Indian Railways Model Schedule of Powers 2018, issued by the Railway Board, is used absent any superseding instructions.

### Types of Contracts in Railways



Let's discuss each of these in more detail.

#### Works Contract

Governed by Para 1203 of the Engineering Code, a Works contract consists of all works and supplies relating to the Engineering Department executed through the agency of contractors, including:

- ❖ **Zone Works:** lumpsum contracts for routine repair work charged and billed using repair Work Orders

- ❖ **Special Works:** Such as the construction of bridge, the formation of an embankment etc. other than zone works;
- ❖ **Supplies of building materials:** Such as bricks, tiles, lime, doors, windows, ballast, moorum, fire bricks, pitching stone etc. which are *not usually stocked or purchased by the Stores Department.*

### Forms of Works contracts:

The following forms of contract are primarily intended for application to Works Contracts:--

- ❖ **Schedule contract;**  
It is the simplest and most common form of Contract, in which rates and quantity of various activities are fixed. The contractor agrees to carry out work as specified, within a given period, at the fixed or accepted unit rates for each item comprising such work. The sum to be paid will depend on actual quantities of the work done against each item of work (measured).
- ❖ **Piece work contracts (Zonal contracts);**  
Under E1208, this means a contract under which only unit rates or prices for various kinds of work or materials are agreed upon, without reference either to the total quantity of work to be done or materials supplied; or to the quantity of work to be done or material supplied within a given period.  
Zonal Contract on the Railways (refer para E1209) fall under this category (c.f. para 406S), wherein:
  - The Railway indicates the approximate total cost of work. It is often advantageous to allot all minor works and repair and maintenance work to one contractor, who is also made responsible for conveyance and supply of engineering materials

- Zonal contracts include:
  - New Works, additions and alterations to existing structures, special repair works and supply of building materials subject to the contract value of each such work not exceeding Rs. 5 lakh.
  - (Authority Railway Board letter No. 2001/CE-1/CT/17/pt.III dt. 27.09.2017)
  - All ordinary repairs and maintenance works; and
  - Conveyance of materials e.g. bricks, lime, sand etc. which are likely to be required in a zone during the year.
- After the contract is executed/signed, specific work orders or supply orders are placed based on the Schedule of Rates (SoR).
- The rate of progress of work may not be specified but if it is unsatisfactory the contract can be terminated.
- To avoid the vitiation or undue benefit, the approximate cost in each group of the works of master schedule is specified.
- Time period of such contracts is normally 1st July to 30th June (1 year), and maximum value of one work order is Rs 5.0 lakhs
- It should be ensured that as far as practicable, no work orders are approved against the old contract after the opening of the new tenders and all works of the old contract are completed by the end of June.
- Exceptional cases may, however, be dealt on their merits with the approval of the competent authority, taking into account all relevant facts including such information as is available regarding the trend in rates.

❖ Lumpsum contract

Under E1205 & E1206, the lumpsum contract is one under which the contractor engages to carry out a work or effect supply as specified and within a given period for a fixed total sum; his receipt of this sum

being dependent on his completing the work or supply to specification and time, irrespective of the actual quantities and kinds of work done or materials supplied in achieving his results (c.f. para 403S).

In the case of such contracts, a scale of rates or prices may be agreed upon by which enhancement of or reduction from the lumpsum may be regulated in the event of any departures from the work or supply as specified being made subsequently under the order of competent authority; or by which reductions may be made, at the discretion of competent authority for failure on the contractor's part to conform to specification. (c.f. paras 1328 and 404S).

❖ Engineering, Procurement, Construction (EPC) Contract

In EPC, the engineering and construction contractor will carry out the detailed engineering design of the project, procure all the equipment and materials necessary, and then construct to deliver a functioning facility or asset to their clients. EPC features the following major advantages:

- Effective project management, with fewer contracts to manage,
- Engagement of professionally managed agencies,
- Well defined system of obligation associated with damages both for Railway & Contractor,
- Assigning risk to the party who is in a better position to mitigate it e.g. land, statutory clearances assigned to Railway whereas design, site uncertainty, sub contracting are assigned to contractor,
- Milestone based payments

❖ Consultancy Contract

These are required to hire professional experts to render advisory services to the Railways, for works requiring highly specialized technical assistance, including for pre-investment studies, specialized

design and analysis using computers, architecture, landscaping, etc.  
**Consultancy contracts can be undertaken via Item No. 5 of Works Matters of Model SOP 2018, as below:**

Powers for deciding Consultancy Contract

<b>GM</b>	Rs. 10 Crore per case with concurrence of PFA
	<b>Further delegate as under</b>
<b>CAO</b>	Rs 50 lakh each case, with annual ceiling of Rs.5 cr.
<b>PCE/ CHOD</b>	Rs 20 lakh each case, with annual ceiling of Rs 1.5 cr
<b>DRM</b>	Rs 10 lakh each case with annual ceiling of Rs. 1.5 cr.

- Minimum level of tender acceptance: SAG level
- Means minimum level of TC: JAG/SG  
(vide letter no. 2017/Trans/01/Policy dt. 8/11/2017)
- For single tender: TC shall be of SAG level
- If a contract is to be fixed only on a single tender basis due to special circumstances, GM's personal approval is required, irrespective of the value of the contract.

❖ Works Contracts in Mechanical Department

Responsibility for works and supplies related to a particular work handed over to the contractor for a fee. Thus, in Mechanical Department, Works Contracts are generally departmental functions outsourced to an external agency, such as:

- **Annual Maintenance Contract (AMC)** or Repair Contract (RC) of key machines and important equipment – by single tender on OEM or otherwise,



- **Outsourced Works:** For labour saving, such as stripping, bogie shot blasting, etc.;
- **Non-core Activities:** Such as loading/unloading, Shop floor cleaning, Transportation (Inter-shop or outside), etc.

### Stores/Supply Contracts

Undertaken for public procurement of items, material, goods and spares for the Railways' use. Generally done through the Stores Department, at Railway Board or Zonal or Divisional/Depot levels.

They are generally done in one of two ways:

#### ❖ Stock items

These are those items which need to be stocked in a Store depot as they are frequently required by the user department for maintenance of their assets. They are:

- Supposed to be available in the Stores depot.
- Generally procured by the PCMM office. Only in an emergency situation or when advised by the PCMM office are these items procured at Stores Depot level by generating ERM or NRM in iMMIS.

#### ❖ Non-Stock items

They are those items which need not be stocked since they are not required frequently. They are only procured to meet the emergent demands of the user department, as and when required.

For procurement of these items, a non-stock demand is prepared and submitted to the Stores department through iMMS.

They are charged to respective revenue heads (PU-28) or planned works under RSP, M&P and Works Programmes.

All Stores Tenders follow the same rules and procedures of public procurement as any other form of Tender done in the Railways.

## Service Contracts

A “service” is defined as *any subject matter of procurement other than goods or works, except those incidental or consequential to the service, and includes physical maintenance, housekeeping, professional, intellectual, training, consultancy and advisory services or any other service classified or declared as such by a procuring entity but does not include appointment of an individual made under any law, rules, regulations or order issued in this behalf.*

In other words, it is the procurement of a public good for its intangible material benefit. It is the newest class of contract in the Railways.

In recent years, Railways has seen a rise in the number of service contracts in non-operational areas such as cleaning, facilities management, consultancy etc. Given their diverse nature, a need was felt to reclassify these and deal with them using a simplified mechanism focussed on outcomes and delivery operated separately from a Works Contract.

Service contracts have thus got their own SOP and GCC.

## Contract Management in the Railways

Major steps in contract management in the Railways are as under:

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

As discussed above, all contracts carry a certain amount of risk and have a financial ramification. Thus, they place a large responsibility on the shoulders of the executive, who must balance several pressures at once.



To balance these pressures and to ensure error-free tender finalization and contract execution, one must remain abreast of the contents of, and all updates on, the following:

- Indian Contract Act, 1872
- General Conditions of Contract (GCC) & Corrections
  - GCC for Works (latest in 2020)
  - GCC for Services (issued in 2018)
- Schedule of Powers (SOP) – IR Model SOP, 2018
- Indian Railway Vigilance Manual (IRVM)
- Works Code
- Stores Code
- Railway Board Circulars
- Previous Tender Cases (LAR & TCM)

## Pre-Tender Planning

Before undertaking the work of calling proposed offers for a work (tenders), the following points must be taken care of:

- 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

The most important steps are given in **bold** in the checklist above.

### Estimate Preparation & Sanction

Of these, the most technical step is the **Estimate** that must be prepared based on the Scope of Work, and then sanctioned by the Competent Authority after Finance concurrence. For large works, estimates are prepared in two parts, as abstract estimates and detailed estimates. While the former gives an overview of the work cost outlay under major headings, the latter is a far more detailed document that requires some care.

Estimates should be:

- True to life (Realistic), including contractor's profit margin.
- Based on latest rates for each component
- Latest Minimum Wages (EPF, ESI etc)
- Based on one or more LAR/ LPR/ Budgetary Quotes     Maintain Caution
- Include cost of Machinery/ Chemical / Electricity/ Water Charges etc
- Abstract Estimate: Para 702
- Detailed Estimate: Para 703 & 704
- Model SOP Item No. 2 (C)

## Tenders

Refers to identifying and calling interested and prospective contractors or firms to give their offers (tenders) for the proposed work. It is done:

- To obtain the best possible value for money
- For judicious use of Public money
- To get Competitive rates
- To ensure Transparency

## Types of Tenders

Major tender types include:

- Open Tender
  - One Packet System
  - Two Packet System
- Limited Tender
- Special Limited Tender
- Single Tender
- Dispensing With Tender (Quotation)

Choosing among these is based on:

- Ensuring a reasonable level of competition
- Importance and urgency of the proposed work
- Availability of skilled/qualified contractors or any Approved firms
- Specialised nature of the Work, if any
- Value of work (Estimate amount)

### Open Tender

- Publicly floated so anyone can bid. It is the least restrictive mode of tendering and involves the most competition.
- General mode for govt. to give equal opportunity to all bidders.
- Eligibility Criteria as per rules. Manipulative tendering restricts competition and therefore has a Vigilance angle.
- Model SOP 2018 Item – 5 (A) (i)
- **Two Packet System of Tendering: Technical Bid and Financial Bid**
- **Stage 1:** Technical Packet opened First, TC Deliberates on Technical criteria. Only technically successful tenderers considered for Stage 2
- **Stage 2:** Financial Packet opened and rates of only the successful tenderers are evaluated ⇒ **Technically suitable L1**

Rules for following 2-packet system

- RB Letter No. 94/CE.I/CT/4 Pt.17 dated 13.08.2012
- RB Letter No. 2017/Trans/01/Policy dt 26.12.2017
- For all tenders requiring techno-economic evaluation, the “Two Packet System” shall be the norm as far as possible.
- For tenders > Rs 10 Crore, “Two packet system” shall **mandatorily** be followed, except where it is decided not to do

so by the Tender Accepting Authority (not below SAG), with finance concurrence.

- For tenders < Rs 10 crore, decision lies with tender inviting authority, with Finance concurrence.

### Limited Tender

Where for reasons in the public interest, it is considered not practicable or advantageous to call for open tenders, limited tenders may be invited with the concurrence of the Financial Adviser and Chief Accounts Officer and approval of the competent authority.

- This system of inviting tenders is for works costing up to Rs. 7.5 Crores (Rupees Seven Crore Fifty lakhs) each,
- Only from amongst the contractors on the **Approved List**, provided the number of contractors on the Approved List for that particular type of work is **not less than 10**.
- For formulating approved list of contractors and invitation of Limited Tenders, the norms specified in the Board's letter No.94/CE- I/CT/4 dt.17.10-02, 12/16-5-06 and No. 2007/CE/ I/CT/18 dt. 28-9-2007 and subsequent revisions on the subject shall be followed.
- Reasons for inviting limited tenders from firms/contractors should be kept on record while approaching finance for concurrence.
- Notice Inviting Tender (NIT) sent to all contractors on the Approved List by Registered Post
- Tender notice period is not to be less than 14 days. Notice to be published in newspapers, displayed on notice boards and also put on the Internet wherever possible.
- **Model SOP 2018 Item – 5 (A) (ii)**

- Regular updating of the Approved list after careful screening of applications by the standing committee and approval by higher authority is a must.

Category	Eligibility Criteria		
	Engg Organization	Work Experience	Contractual Payment
C	Diploma holder of 3 yr experience	2 works costing not less than Rs. 10 lakh each	Rs 25 lakh in last 3 Financial years
B	Graduate engineer of 5 yr experience	2 works costing not less than Rs. 25 lakh each	Rs 1 cr in last 3 Financial years
A	Graduate engineer of 10 yr experience and Diploma holder of 5 yr experience	2 works costing not less than Rs. 1 cr each	Rs 5 cr in last 3 Financial years

- Contractors in higher slab cannot tender for works of lower slab unless separately registered.
- Open Tenders may be invited in the following cases:
- Insufficient response
  - Due to specialized nature of work, experienced contractors are not available
  - Ring formation suspected.



- Sometimes Open Tenders can be periodically invited to gauge prevalent market rates

### Special Limited Tender

- For important or urgent works special limited tenders can be invited.
- In this system few contractors are picked up who are considered to be capable of doing that work. Their credentials are verified.
- These can be other than those on the approved list. But care should be taken to include the contractors in the approved list, in that area capable of doing that work.
- The calling of the Special Limited Tender and selection of the limited contractors needs finance concurrence and approval of CAO/GM
- SLT in following cases in consultation with FA&CAO:
  - Works of Specialized nature (Personal Approval of PHOD- full power, DRM- upto Rs. 10 lakh)
  - Works of Urgent Nature (Personal Approval of CAO/GM- full power, DRM- upto Rs. 10 lakh)
  - Consultancy Work (Personal Approval of CAO/GM)
- As per Rly. Bd's. Lr. No. 2007/CE/I/CT/18 dt. 28-9-2007 CAO/C with the concurrence of FA&CAO/C may invite special limited tenders not only for specialized nature of work but all types of works depending upon the merit of the case.
- To be invited from specialized and reputed contractors/ organizations/ agencies not necessarily on the Approved List.
- Preferably more than six but not less than four (Rly. Bd's letter No. 94/CEI/CT/4 dated 17.10.2002)
- Tender notice period must not be less than 14 days.

## Single Tender

When under special circumstances/urgency, the offer is taken from only a single agency, it is called single tender.

- Model SOP 5 (C) for Single Tender
- Not to be called for routine work. Tight targets cannot be accepted as reasons for calling of single tenders. Only in rare or emergent situations, with Finance Concurrence; accidents, breaches involving dislocation to traffic (powers to GM, PHOD, DRM)
- Work of specialized nature-(i) CAO/C (ii) PHOD: 20 Lakhs with annual ceiling 1 crores (with finance concurrence) or Any other situation if GM personally approves
- AMC for equipment can be placed on Single Tender basis on authorized dealer on approval of AGM
- **TC and TAA should be one step higher than that in the case of open/limited tenders, except in the cases where GM is the accepting authority**
- CAO/C can call and finalize Single Tender of value upto Rs.5cr for early completion of the last milestone of throughput enhancement works under 'New lines', 'Doubling', 'Gauge conversion', and 'Traffic Facility' plan heads and CAO/RE in 'Railway Electrification' plan head in respect of projects targeted for completion in 2017-18, with the personal concurrence of FA&CAO/C.
- In this case, tender Committee would be of SAG level and acceptance by CAO/C

## Dispensing with Calling of Tenders (Quotation)

For small value urgent works (Letter no. 2007/CE-I./Ct/18/Pt.13 dt. 11/09/2017).

(A) Works directly related to safe running of trains: **without** finance concurrence, on a certificate by accepting authority that the work is of urgent nature,

Rank/Grade	Cost(per case)	Annual Ceiling
S.S.(ind. ch.)	Rs.2 lacs	Rs.10 lacs
JAG/SG		

(B) All other works, including Works directly related to safe running of trains: **With finance concurrence**

Rank/Grade	Cost(per case)	Annual Ceiling
S.S.(ind. ch.)	Rs.5 lacs	Rs.60 lacs*
JAG/SG	Rs.5 lacs	Rs.60 lacs*
SAG	Rs.10 lacs	Rs.1.2 Cr.

### Do's and Don'ts of quotation contracts

- Powers will be exercised by the officers with their own administrative approval and no separate administrative approval is necessary.
- Powers should be exercised sparingly.
- The circumstances under which quotations have to be called should be spelt out.
- The work should not be split up for the purpose of bringing it within the ambit of this dispensation
- The reasonableness of rates should be gone into objectively and in detail by the accepting authority.
- Quotations should not be for fancy (expensive & low utility) items.
- Quotations should only be for works which are urgent in nature.
- Quotations should be invited from at least three well experienced contractors/agencies, not necessarily on the Approved list.
- Accepting Authority must take precautions to see that the quotations are from genuine firms (and not from fictitious firms).
- A Register showing the full particulars of works authorized through quotations will be maintained by the officer having powers to dispense with calling of tenders. The register shall be sent to associate finance while seeking their concurrence.

## Tendering & Tender Documents

After pre-tender planning is complete, tender is floated with the requisite tender documents:

- Include schedules, special conditions, drawings etc.
- Conditions should be precise but exhaustive
- Should be ready before calling of tenders
- Contractor should be able to visualize the exact nature of work , scope and difficulties etc.
- Pre-tender planning and approvals should have been completed

### Powers for Calling of Tenders

Type and Value		Authority
<b>O T</b>	Upto Rs. 4 Crore	Selection Grade/JA Grade
	Above Rs. 4 Crore and upto Rs. 20 crore	SAG/ADRM
	Above Rs. 20 Crore and upto Rs. 50 crore	DRM/CWM
	Above Rs. 20 Crore and upto Rs. 75 crore	CHOD in SA Grade
	Above Rs. 20 Crore and upto Rs. 300 crore	AGM/PHOD in HAG
	Above Rs. 20 Crore and upto Rs. 300 crore	CAO/RE in HAG
	Above Rs. 20 Crore and upto Rs. 500 crore	CAO/Construction in HAG
	Full Powers	General Manager

<b>L T</b>	Upto Rs. 37.5 lakh	Selection Grade/JA Grade
	Above Rs. 37.5 lakh and upto Rs. 1.5 crore	DRM/ADRM/HOD
	Above Rs. 1.5 Crore and upto Rs. 8 crore	PHOD/CHOD

<b>S L</b>	Works of Specialized Nature- Upto Rs 10 L	DRM/ADRM/SAG
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<b>T</b>	Up to Powers of acceptance	PHOD/CHOD/CAO/C
	Works of urgent Nature- Upto Rs 10 L	DRM/ADRM/HOD
	Up to Powers of acceptance	CAO/C

<b>S</b> <b>T</b>	(i) In case of accidents, breaches involving dislocation to traffic	DRM/ADRM/SAG
	Up to Rs. 20 lakhs per case subject to annual limit of Rs.1 Cr	
	Up to Rs.10 Lakhs per case subject to annual limit of Rs. 50 L	DRM
	(ii) Works of specialized nature -Full Powers	CAO/Con
	(iii) In each case to tackle emergency situation arising out of geological condition - Upto Rs. 2 Crores	CAO/C- (in charge of USBRL project) of NR only
	Last Mile works (DL, TF, NL, GC and RE)- Upto Rs 5 Crore	CAO/C and CAO/RE

### Stages in Tenders

Pre Tender	<ul style="list-style-type: none"> <li>• Planning, Preparation and Approval of Tender schedule, NIT &amp; Tender Document</li> </ul>
Tender Invitation	<ul style="list-style-type: none"> <li>• Advertisement, Uploading on Website, Clarification to bidder, Pre bid Conference, Submission of Tender</li> </ul>
Tender Opening	<ul style="list-style-type: none"> <li>• Opening of Tender, Briefing Note, Comparative Statement, Special Conditions if any</li> </ul>
Tender Finalisation	<ul style="list-style-type: none"> <li>• Tender Committee, Accepting authority, Negotiation, Counter Offer, Rejection/Acceptance of offer</li> </ul>
Issue Of Acceptance Letter	<ul style="list-style-type: none"> <li>• Issue of LOA, Vetting of LOA</li> </ul>

### Notice Inviting Tender (NIT)

- Brief specification/description of work
- Estimated cost of work
- Place and time for obtaining tender papers/downloading
- Cost of tender paper and mode of deposit
- Place and time submission of offers and time of opening
- Amount and form of earnest money if not exempted
- Eligibility Criteria
- Uploaded on web site of the outsourcing organization
- Address of website to be printed in NIT

### Components of a Tender Document

- General Instructions – TD Cost, EMD, SD, Date of publication, date of closing, Date of tender Opening, General details
- Notice Inviting Tender (NIT)
- General Conditions of Contract (GCC)
- Special Conditions of Contract (SCC)
- Scope of work and Schedule
- Rate Schedule

### Tender Notice Publication & Opening Date

- 21 days between NIT in paper and Opening Date (Model SOP Page A17, see also Engg Code Para 1238)
- Can be reduced, but with prior approval
- Publication of NIT in Newspapers (Rly Bd Letter dt 07.01.2019)
- Paper Clippings should be available
- CPRO must be contacted in each Tender Publication

## 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.

## Tender Document Cost

Payable on IREPS website depending on the NIT value (Para 1240 of Engineering Code) but e-forms are downloadable free of cost:

(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, the 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:

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

To be submitted by the tenderer alongwith their offer and forfeited, if:

- The tenderer withdraws or amends their offer;
- If the successful tenderer fails to sign contract or furnish the required performance

EMD Waiver

Recently (since 2020), bidders are exempt from paying EMD in light of the financial pressure on firms due to the Covid-19 pandemic.

- Any firm recognized by the Department of Industrial Policy and Promotion (DIPP) as 'Startups' shall be exempted from payment of earnest money deposit detailed above.
- 100% Govt. owned PSUs shall be exempt from payment of earnest money deposit
- Labour Cooperative Societies shall deposit only 50% of above earnest money deposit
- Service/ Goods Tender for STARTUP Firm and MSE Firm

### Pre-Bid Meeting

- 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
- Clarification to Discrepancies / Omissions notified by any Tenderer shall be available to all prospective Bidders
- Clarifications given during the Pre-Bid Meeting be made part of Tender Documents

### Tenderer's Credentials

Vide Letter No. 2017/Trans/01/Policy dt 08.02.2018 & GCC-2020, tenderer submits documents testifying tenderer previous experience and financial status should be produced along with the tender. All requisite documents in support of qualifying Eligibility Criteria, Bid Capacity etc as per Tender Conditions are to be self attested before submission.

- 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
- In case of false, forged or incorrect information submitted by the tenderer:

- Agency shall be banned from doing business for upto five years
- During the evaluation of tenders – Forfeiture of EMD
- After the award of contract – Contract terminated. EMD, Performance Guarantee and Security Deposit & other dues available with the Railway shall be forfeited

#### Completed Works

- Work even though it might have commenced before the qualifying period, but completed in the last 7 yrs. ending the last day of the month previous to the one in which a 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 fulfillment of technical credentials even if the cost of part completed work/component is more than required.
- 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
- 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.
- 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

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.

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

### Eligibility Criteria

For Open Tenders costing above Rs. 50 lakhs (GCC: Part-1, Clause-10)

The criteria may be modified on a 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, and additional conditions if required may be incorporated.

#### Technical Eligibility

Must have successfully completed any of the following during last 7 years, ending last day of the month previous to the one in which tender is invited:

- Three similar works each costing  $\geq 30\%$  of ATV(Advertise Tender Value) or
- Two similar works each costing  $\geq 40\%$  of ATV or
- One similar work costing  $\geq 60\%$  of ATV

Total value of similar nature of works (defined by PHOD/CAO) completed during the qualifying period, and not the payments received within the qualifying period, to be considered.

#### Financial Eligibility

Total contractual payments received during the last three years and in the current financial year (up to date of inviting of tender) should be a minimum of 150% of ATV of Work.

#### Bid Capacity

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

A = Maximum value of payment received for executed construction works in any one financial year during the current & last 3 financial years, up to date of 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 to be completed in next 'N' years

For Tenders costing > Rs 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 is to be submitted.

### Price Variation Clause (PVC)

Desirable in

- Large value Contracts having value more than 5 Crore
- Cases of large fluctuation in price of raw materials, labour, fuel etc.

Advantages

- Protects interests of both the parties: Government when prices fall and Contractor when prices rise
- Advantage to govt. when taxes and duties are reduced

PVC Formula – Labour

$$L = R \times (L - L_0) / L_0 \times P / 100, \text{ where}$$

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

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

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

P = % of labour components

PVC Formula – Material

$$M = R \times (W - W_o) / W_o \times Q / 100, \quad \text{where}$$

M = Amount of price variation in materials

W<sub>o</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

PVC Formula – Fuel

$$U = R \times (F - F_o) / F_o \times Z / 100, \quad \text{where}$$

U = Amount of price variation in Fuel

F<sub>o</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

PVC Adjustments

- Adjustment done once every quarter in on account payments
- If more than one 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
- 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

#### PVC in Supply Contract

- 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 the Government
- Increment in time scale not to be included
- Number of direct workers in the base year will only be considered.

### **Tender Committee (TC) and Acceptance Stage**

#### Constitution of Tender Committee (TC)

Per E-1255,

- Accepting Authority nominates TC as per delegation of power
- Normally Standing TCs are there at different levels as per SOP
- If General Manager is Accepting Authority, H.O.D. to constitute the TC
- Generally consists of three members: One each from the concerned Executive Department, Accounts Department and a sister Department



- Level of TC is based on value of Lowest bid (for a 2+ Bid tender)
- TC member can be of higher grade in case of non-availability
- If an officer is competent to be the accepting authority is a TC member, Accepting authority will be next higher grade

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

- **Two Member TC** – With one member essentially from Finance deptt. and other from the concerned Executive deptt., for OT (invited through e-tendering) above Rs. 50 Lakh and upto Rs 5 cr
- Three Member TC for all Other Cases

### Consideration of Tenders: Anomalous Cases

- If L-1 Withdraws?
  - 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 previous financial year and current financial year
- Only/Lone Tender offer
  - Single offer in response to open tender can be considered by TC
  - Single offer in response to LT should be considered with great caution

### Role of Tender Committee (TC)

The responsibility of TC is generally Joint and Collective. But every member has 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.

#### Role of Convener

- He has full knowledge of the work to be executed, all special features, site conditions, specifications, credential of the tenderer, time frame, urgency etc.
- 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
- Credentials of the Tenderers and 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

- Earnest money is as per demand and existing rules/guidelines
- Arithmetical accuracy of the offer
- Fund position, and if work is properly sanctioned
- Partnership deed, power of attorney, any legal issues that may arise

- Being a common member, he must ensure a uniform and consistent approach to dealing with all tenders in his office

#### Role of Third Member

- 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

#### Role of Tender Accepting Authority (TAA)

- TAA is finally and ultimately responsible for acceptance.
- TAA must ensure that:
  - Work is essentially required and funds & sanction are available
  - Full opportunity has been given to all tenderers in case of OT
  - Other special features have been recorded.
- 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 & procedurally permissible as per Tender documents and GCC
- However, the basic nature of tender should not change, i.e. only minor changes can be made at this stage.
- To be finalized within Offer Validity Period

**Once accepted, a tender is now a contract**, binding on both the Railways and the winning party. **No change is now allowed** in TC, conditions, etc.

## Contract Finalization

As stated above, once tender is finalized and accepted, it is now a contract. No change in TC Minutes, Contract conditions, etc. is now permitted on either side – Railway or the contractor.

Contract finalization proceeds as:

- ❖ Letter of Acceptance (LoA) and its Acceptance
- ❖ Execution of Contract Agreement
- ❖ EMD/ SD/ PG
- ❖ Formalities preparatory to starting the Work

Letter of Acceptance (LoA) Per 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) issued to successful tenderer that their offer has been accepted;
  - Relevant details such as Contract Amount, Quantity, Itemized rates, Authority to Commence & Date of Completion, PG etc.
  - Binding contract until a formal agreement is constituted
  - Prior to the expiry of the Validity period
  - Verifiable or reportable method of delivery
- Communication of acceptance is considered complete once it is submitted to Postal authorities

## Contract Agreement

- Consists of a notarized agreement on Rs 100/- stamp paper for executing the work under the given contractual agreement, obligations, laws, rules etc. and payment of designated Security Deposit (SD)/ Performance Guarantee (PG) amount by Contractor to Railways, before starting the work.
- It includes a signed acceptance of the LoA and handing over of contract documents.
- Form for Contract Agreement for Works in GCC Annexure

Important Tender Documents include:

- Conditions of Contract (Standard or Special)
- Specifications (Standard or Special)
- Plans/Drawings, as necessary
- Schedule of Items (BoQ)
- Contract Agreement
- Instructions to Tenderers
- Tender Forms
- Letter of Acceptance (LoA)

Contract Agreement Signing Powers

- Model SOP 2019 Para 6
- Finance vetting is necessary.
- The powers under this item are to be exercised only after the contract, purchase, lease etc. are approved by competent authority.

- Contract/Lease agreement to be vetted by the Law Officer where no standard agreement exists.
- 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.

### Security Deposit (SD) & Performance Guarantee (PG)

#### Security Deposit (SD)

- Security Deposit is 5% of contract value, paid in advance for faithful execution of the contract by the Contractor.
- Paid in standard SD Forms (ref. GCC) and is forfeited if the work is not completed, unduly delayed etc.
- EMD of successful tenderer is retained as part of SD, for due and faithful fulfillment of the contract.
- Balance SD to be deposited before “first on-account bill” or to be recovered from "on account" bills @6% of each bill value.
- SD deducted can be released on submission of Bank Guarantee of equal amount, with validity 60 days beyond date of completion of work if there is no maintenance period, and 60 days beyond maintenance period in other cases.
- SD to be returned after expiry of the maintenance period and after passing the final bill based on No Claim Certificate.
- To be certified that no dues from Contractor to Railway against the contract.
- Unconditional and unequivocal no claim certificate from contractor to be obtained before release of SD.

- Approval of competent authority..... competent to sign the contract. But not lower than JAG.
- After physical completion of the work, amount recovered can be returned in lieu of FDR/ BG
- No interest shall be payable upon the EM or SD or amount payable to the contractor.

#### Performance Guarantee (PG)

- Successful bidder must submit PG @5% of contract value within 21 days from date of issue of LOA, with validity upto stipulated completion date + 60 days.
- Extension up to 60 days can be given, with penal interest @12% per annum for delay beyond 21 days.
- Immediate verification of its genuineness and monitoring of the date of expiry must be done to prevent fraudulent award of work to a non-serious contractor causing unnecessary delay
- Encashment or extension of validity well in time to protect financial interests of government
- In case the contractor fails to submit PG even after this, the contract is liable to be terminated duly forfeiting EMD and other dues
- The failed contractor will be debarred from participating in re-tender for that work.
- The PG is released after completion of work based on “Completion Certificate” issued by the competent authority.

## Contract Execution

Once the contract is finalized and work starts, we enter the contract execution stage. Notable aspects at this stage are as follows:

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