

# TENDERS & CONTRACTS

*An overview*

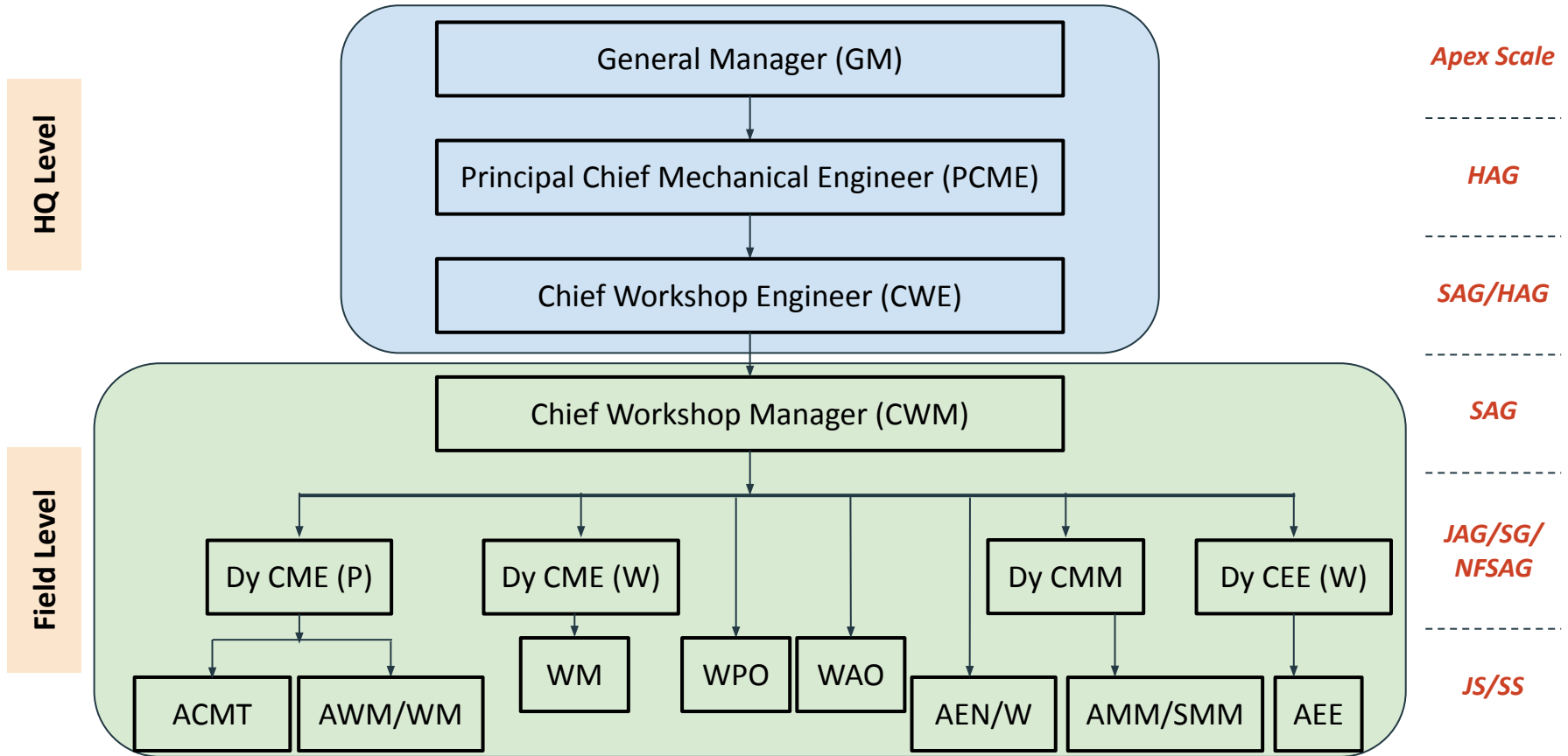
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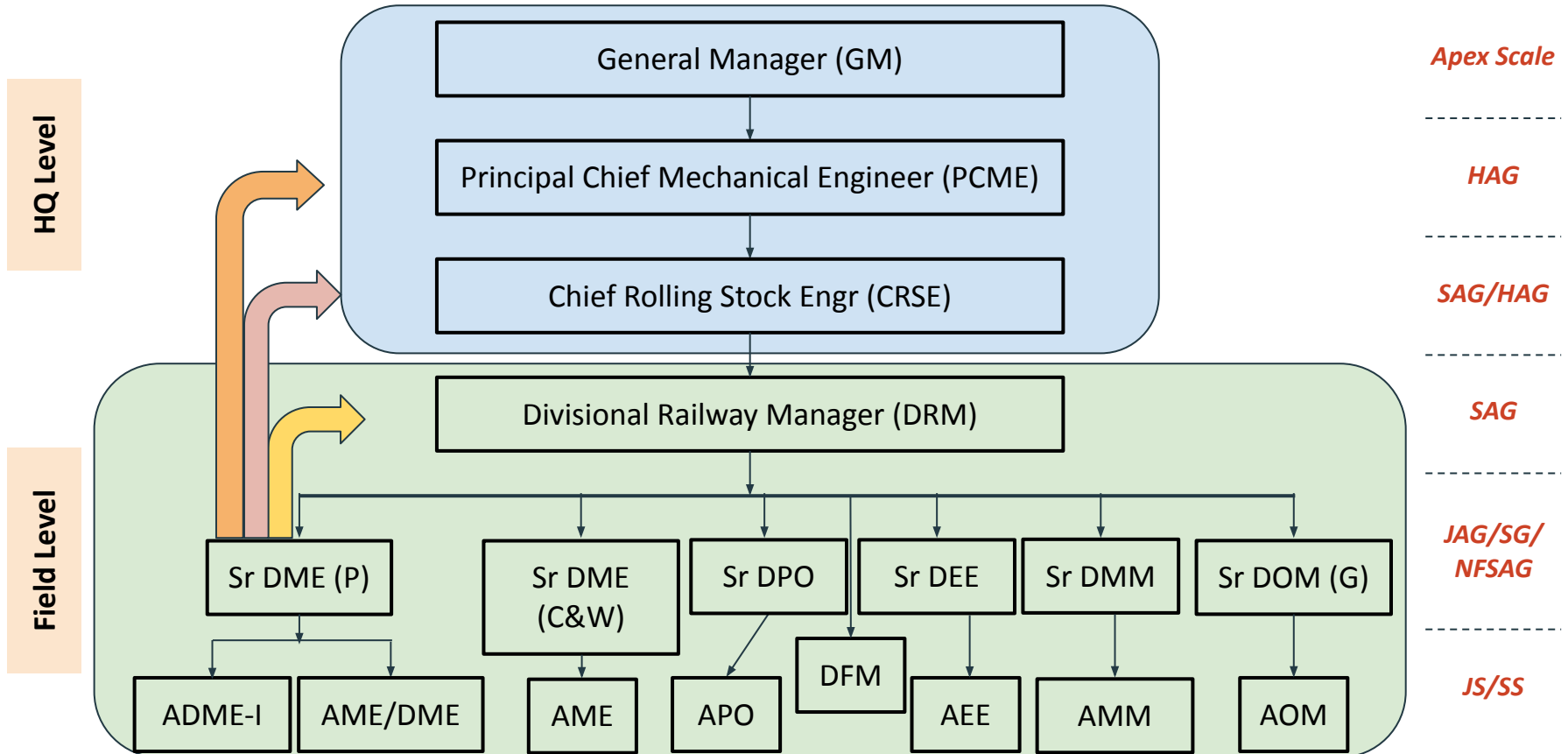
# **YOUR THOUGHTS**

**What would you like to cover this week?**

# ORGANISATIONAL HIERARCHY (WORKSHOP)



# ORGANISATIONAL HIERARCHY (OPEN LINE)



# To Start...Back to the Basics

- What is my role in the Railways (or Govt. in general)?
- Officer? Bureaucrat? Technocrat?
- A Leader? Babu?
- Middle Manager? Facilitator?
- Rule Maker? Breaker? Follower? Enforcer?
- System representative? Figurehead?
- **What is the nature of your job in the field?**



# To Start...Back to the Basics

What is the nature of your job in the field after posting?

**Techno – Manager**

# Your Role In The Field

- Not so much to ~~DO the job oneself~~, so much as to **KNOW it and GET IT DONE**

## Techno – Manager

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

# Getting Work Done

→ How should a particular job be executed in the field?

## Departmental / Outsource

- ★ Design, Knowhow, Expertise, Infrastructure, Material are **all available in-house**
- ★ Economical / Viable RoR

- ★ Don't have the knowhow?
- ★ Pressed for Resources? RoR?
- ★ Non-core Activity?
- ★ New technology/expertise?



Enforced and executed through the



Org. Hierarchy, Duty Lists, Conduct Rules, DAR /

Contract Agreement



# 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)

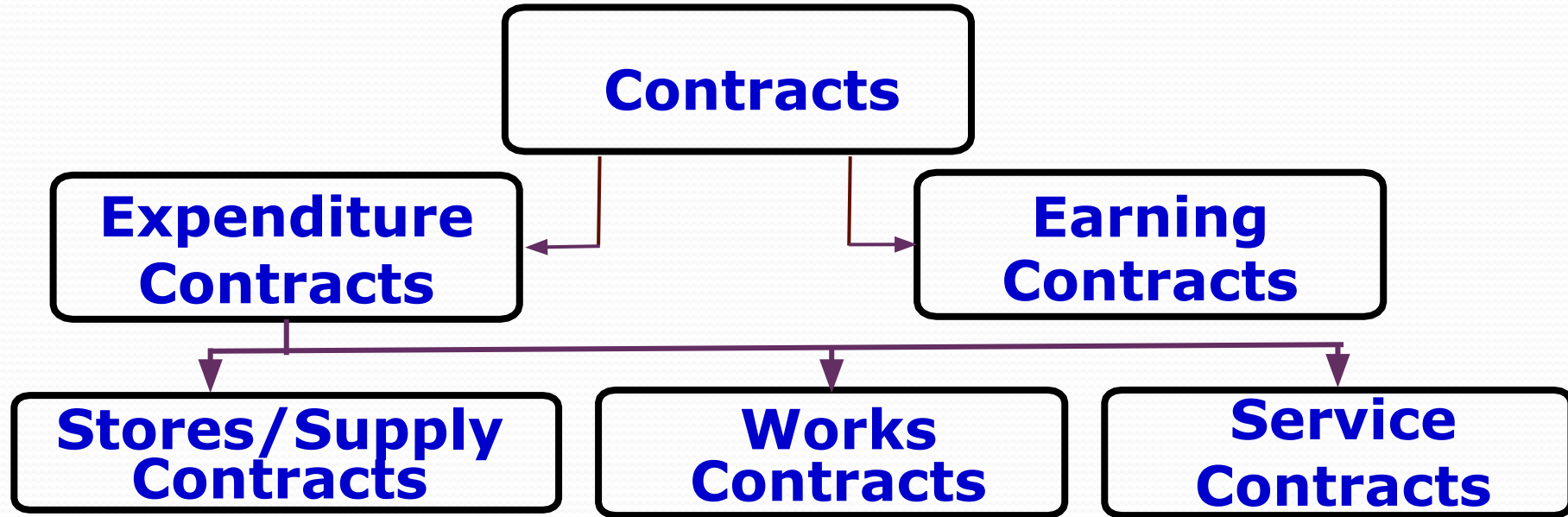
# What is a Contract?

- ❖ It is basically the allocation of work to a third party in exchange for payment (profit)
- ❖ It is the transfer of risk and reward by an arrangement that 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.

# TYPES OF CONTRACTS



# WORKS CONTRACT

(Para 1203 of Engg. code)

All **works and supplies relating to the Engineering Department** executed through the agency of contractors:

- (i) **Zone Works**
- (ii) **Special Works:** Such as the construction of bridge, the formation of an embankment etc. other than zone works;
- (iii) **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.**

Contracts relating to **these three classes** will for the purpose of this Code be termed as '**Work Contracts**' as distinguished from '**Stores Contracts**' which pertain to the **supply of stores arranged by the Stores Department.**

# Forms of Works Contracts

## ● Forms of Works Contracts –

- The following forms of contract are primarily intended for application to Works Contracts:--
- (i) Schedule contract;
- (ii) Piece work contracts; and
- (iii) Lumpsum contract;
- (iv) Engineering, Procurement and Construction (EPC) Contract

# SCHEDULE CONTRACT:

- **Simplest** form of Contract.
- Contract in which **rates and quantity** of various activities are **fixed**.
- The contractor agrees to carry out a work as specified, **within a given period**, at the **fixed/accepted unit rates** for each of the various items comprising such work.
- The sum to be paid will depend on actual quantities of the work done against each item of work (**measured**).
- **Most commonly used** type of contracting format in Railways

# SCHEDULE CONTRACT

- QUANTITY NEED TO BE KNOWN
- POOR QUANTITY CALCULATION WILL RESULT IN VARIATIONS
- DRAWINGS SHOULD BE AVAILABLE
- BILLING NEEDS DETAIL MEASUREMENT
- LITTLE FLEXIBILITY AFTER AGREEMENT IS SIGNED
- BUT GENERALLY RESULTS IN ECONOMIAL OFFERS



# Piece Work Contract

- E 1208 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.
- The Zonal Contract adopted on the Railways (refer para 1209) fall under this category (c.f. para 406S).

# Piece Work Contract

## ● Note:--

- Agreeable to the above definition of a piece work contract -- (a) the Railway may indicate its intention as to the maximum value of the orders it is likely to place; but the contractor cannot claim to be given an order for more than one unit of work or supply;
- (b) after the contract is executed, specific orders for work or supply may be placed against it; and
- (c) rate of progress may not be specified; but if it is not satisfactory the contract can be terminated.

# PIECE WORK CONTRACT:

- In this type of contract only **unit rates for various kinds of the works are agreed upon**, without reference to the quantity of work to be done within a given period.
- The **zonal contracts** adopted on the Railways fall under this category.
- Generally time period of such contracts is **one year**

# PIECE WORK CONTRACT (contd)

- The Railway indicates the approximate **total cost of work**.
- After the contract is executed/signed the specific **work orders** or supply orders are placed based on master schedule of the rates.
- The rate of progress of work may not be specified but if it is unsatisfactory the contract can be terminated.
- To avoid the **vitiating** or undue benefit, the approximate cost in each group of the works of master schedule is specified.

# PIECE WORK CONTRACT

- **Merits:**
  - Detailed advanced planning is not required.
  - As and when petty repair works arise, the work orders can be placed.
- **Prerequisite:** Availability of an updated master schedule of the rates (**USSOR**)
  - If the schedule of rates is old, for some items the rates will be profitable and for some items loss making. There is likely a tendency on the part of the contractor not to execute loss making items.
- Time period of such contracts is normally **1st of July to 30th of June.**
- Maximum value of one work order is **Rs 5.0 lakhs**

# Zone Contracts

- **E 1209 Contracts for Zone works and Engineering Materials –**
- It is often advantageous to allot all minor works and all works of repairs and maintenance in a particular zone for a definite period to one contractor.
- It may be likewise advantageous to make this contractor who can be called a zonal contractor responsible for the conveyance or supply of engineering materials as and when required, in a particular zone during a specified period.

# Zone Contracts

- (i) 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)
- (ii) All ordinary repairs and maintenance works; and
- (iii) Conveyance of materials e.g. bricks, lime, sand etc. which are likely to be required in a zone during the year.

# Zone Contracts

- The zonal contracts should be for the period from 1st of July to 30th of June.
- The contracts for these works or supplies should as a rule, be on a yearly basis.
- If, however, any special advantage, such as more favourable rate is likely to be secured by giving out contracts for longer periods, contracts for more than a year may, with the concurrence of the Accounts Officer, be entered into



# Zone Contracts

- 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

- **"Lumpsum" Contracts** – E1205 , 1206
- The Lumpsum Contract is a contract 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 of materials supplied in achieving his results (c.f. para 403S).

# Lumpsum Contract

- 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).

# LUMPSUM CONTRACTS

## Merits:

- easy to finalize,
- do not result in the tender vitiating,
- do away with the need of the detailed measurements, and readily indicate the cost of work.

# WORKS CONTRACT IN MECHANICAL

Responsibility for **works and supplies** related to a particular work handed over to the contractor for a fee:

- **Annual Maintenance Contract (AMC)** of key machinery
- **Outsourced Works:** Such as stripping, bogie shot blasting, etc.;
- **Non-core Work:** Such as loading/unloading, Shop floor cleaning, Transportation (Inter-shop or outside), etc.

In Mechanical Dept., Works Contracts are generally departmental functions outsourced to an external agency

# SUPPLY CONTRACT

- Public Procurement of **Material** required for the Dept.
- Done through Stores Department
- **Two types:** Stock items & Non-Stock Items
- **Stock Items:** regular use; have an **EAC** and a **PL** No.
- **Non-Stock Items:** need a separate requisition to purchase, as and when required (irregular)
- DGS&D supplies (Goods and Services) procured through **Government e-Marketplace (GeM)**

# SERVICE CONTRACTS

- Procurement of Services for the Railways, such as Cleanliness, Consultancy, Catering, Digitization, Facilities Management, etc.
- Newest class of contract, usually for an intangible benefit
- Recently, governed by a separate SOP and GCC for Services

# CONSULTANCY CONTRACT

- Consultancy Contracts are required for **advisory services** for works requiring highly specialized technical assistance
- These could be
  - pre-investment studies,
  - specialized design of structures using computers such as bridge or multistoried buildings,
  - acoustics and illumination in auditorium or important buildings,
  - architecture or landscaping of important structures etc.



# MODEL SOP. Item 5 of Works Matter

- Consultancy works for other than property development schemes from outside bodies including PPP projects
- Consultancy works for property development schemes i.e., for commercial exploitation from outside bodies

# CONSULTANCY CONTRACT

To incurrence of expenditure in engaging /obtaining consultancy services from outside (for calling tender)

<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 Lt no. 2017/Trans/01/Policy dt 8/11/2017)

# **CONSULTANCY CONTRACT`**

**For single tender – TC shall be of SAG level**

**If contract is to be fixed only on single tender basis due to spl circumstances- GM' personal approval irrespective of value of contract**

# EPC CONTRACTS

- EPC stands for Engineering, Procurement, Construction and is a prominent form of contracting agreement in the construction industry.
- 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.
- Companies that deliver EPC Projects are commonly referred to as **EPC Contractors**.

# Perceived Advantage of EPC

- Effective project management - **less no. of 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.



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

# **TENDERS**

Identifying and calling interested and prospective contractors/firms to give their offer for the work.

- **To obtain the best possible value for money**
- **Judicious use of Public money**
- **To get Competitive rates**
- **To ensure Transparency in system**

# TYPES OF TENDER

- OPEN TENDER
  - *ONE PACKET SYSTEM*
  - *TWO PACKET SYSTEM*
- LIMITED TENDER
- SPECIAL LIMITED TENDER
- SINGLE TENDER
- DISPENSING WITH TENDER (QUOTATION)

# Open tender (with two packet system)

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

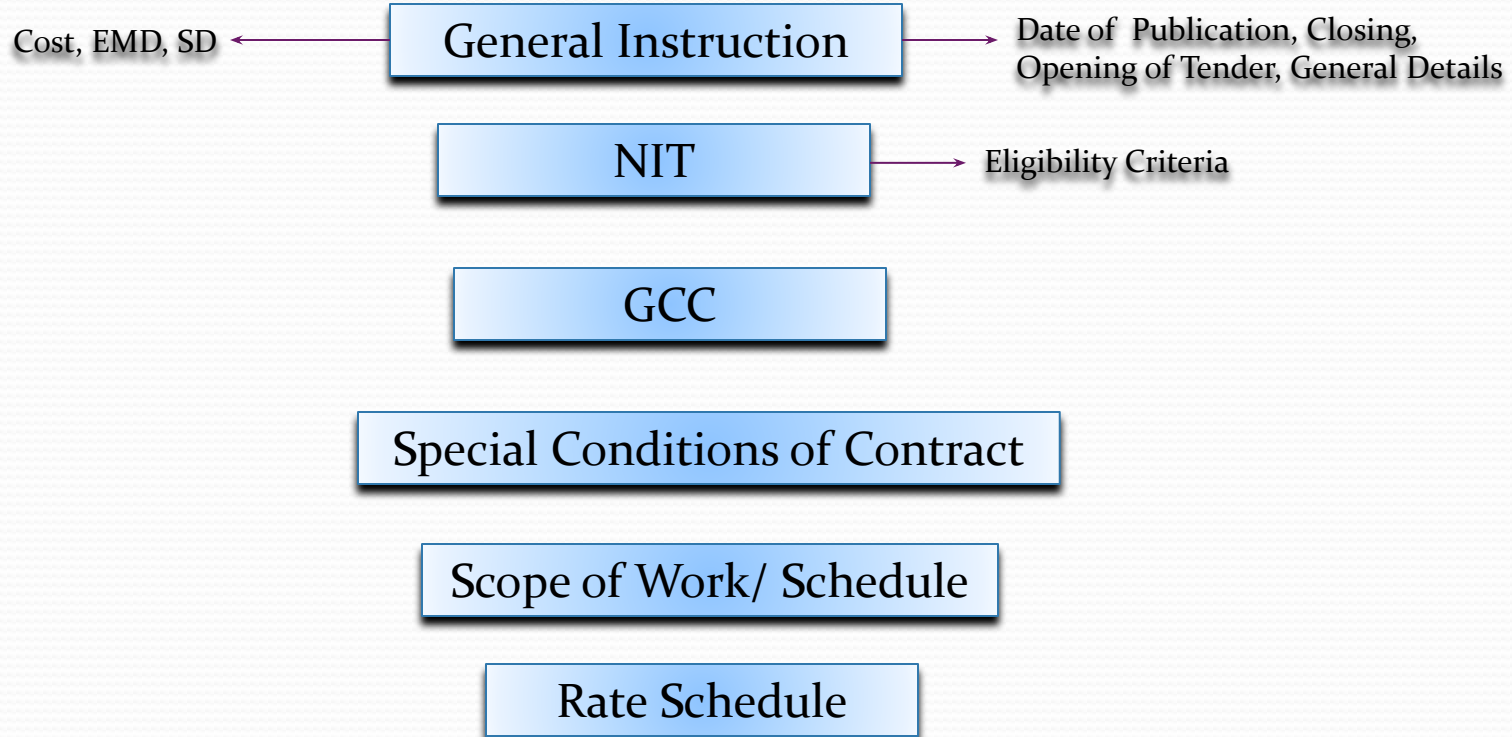
## Stage 1

- 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
- ❖ Para [1240](#) of IR Engineering Code

(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/-

# Two 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 “Two Packet System” shall be norm as far as possible.
- For tenders > **Rs.10 Crore**, “Two packet system” shall mandatorily be followed, **except** where it is decided not do so by Accepting Authority (not below **SAG**) **with finance concurrence**.
- For tenders <Rs.10 crore, decision lies with tender inviting authority with Finance concurrence.

# Limited Tender System

## ● Limited Tender System :--

- (i) Where for reasons which should be 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.
- Reasons for inviting limited tenders from firms/contractors should be kept on record while approaching finance for concurrence.



# Limited Tender System

- (ii) The systems of inviting tenders for works costing up to Rs. 7.5 Crores (Rupees Seven Crore Fifty lakhs) each from amongst the contractors borne on the approved list may also be adopted when it is considered advantageous to do so, provided the number of contractors borne on the **approved list** for the particular type of work is not less than **10**.
- (iii) Some percentage of the tenders which would normally be finalised by calling limited tenders, be finalised by calling open tenders so as to test the market rates periodically.

# Limited Tender System

- iv) Notice for Limited Tenders be sent to all eligible contractors borne on the approved list.
- **Note:--**Notwithstanding the provision contained in para 1214 (ii) above, the **Railways may invite open tenders in the following circumstances :--**
- (a) In the event of **insufficient response** to the tender from the contractors borne on the approved list;
- (b) When the work is of special nature and contractors with requisite **experience are not available** on the approved list; and
- (c) When **ring** formation is suspected.

# LIMITED TENDERS

- At times offers are invited from a limited number of tenderers.
- They are generally tenderers from the **approved list** to save the time,
- For **smaller value of work** or for the **specialized nature of work**.
- E-1214, (Bd's Lr. No. 83/W1/CT/14(Policy) dt.30.3.87)

# LIMITED TENDERS

- However if:

- ✓ Insufficient response
- ✓ Specialised nature of work, experienced contractors not available
- ✓ Ring formation suspected.

**invite Open Tenders**

# LIMITED TENDERS

- For works costing **upto Rs. 7.5 crore.**
- To be invited from the contractors borne on approved list.
- Notice to be published in newspaper, displayed on notice board and also put on internet where ever possible.

# LIMITED TENDERS

## Approved List of Contractors

- In government departments many times the works to be executed are of **repetitive nature**. So to reduce the time of finalisation of the tenders and to eliminate incapable bidders a system of preparing “**Approved List of Contractors**” is followed in the tendering process.
- The System intends pre-qualification of the contractors for the different categories or groups of the works in advance and updating this list periodically.

# Model SOP 2018

- **5 . (ii) Calling of Tenders**
- **Limited Tenders from approved list for Works Contract**
- PHOD/ CHOD More than Rs.1.5 Cr. and up to Rs.7.5 Cr.
- HOD More than Rs.37.5 lakhs and up to Rs.1.5 cr.
- DRM/ADRM/CWM (in SAG) More than Rs.37.5 lakhs and Up to Rs.1.50Cr.
- JAG /JAG(SG) Up to Rs. 37.5 lakhs

# Model SOP 2018

- 2) 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.
- 3) **At least 10 names** should be on the approved list of contractors.
- 4) Tender Notice period should **not be less than 14 days.**



# LIMITED TENDERS

Category	Eligibility Criteria		
	Engg Organisation	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

# LIMITED TENDERS

- Contractors in higher slab cannot tender for works of lower slab **unless separately registered.**

# SPECIAL LIMITED TENDERS

- 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**

# SPECIAL LIMITED TENDERS

- SLT in following cases in consultation with FA&CAO :
  - ✓ Works of **Specialised nature** (Personal Approval of PHOD- full power, DRM- upto Rs. 10lakh)
  - ✓ Works of **Urgent Nature** (Personal Approval of CAO/GM- full power, DRM- upto Rs. 10lakh)
  - ✓ **Consultancy Work** (Personal Approval of CAO/GM)
- To be invited from specialised and reputed contractors/ organisations/ agencies.
- Preferably **more than six** but **not less than four**.

# SPECIAL LIMITED TENDERS

- Special limited tenders may be invited from specialised & reputed contractors / organisations / agencies not necessarily borne on approved list (numbers of tenders from whom special limited tender is to be invited should preferably with more than six but not less than four) in the following situations in consultation with associate finance.
- Work of specialised nature to be approved by PHOD or CAO (C)
- Work of urgent nature to be approved personally by GM/CAO (C)

# SPECIAL LIMITED TENDERS

- These powers can be delegated upto SAG as per ceiling fixed by railway board time to time.

The special limited tenders may be invited for all types of works by CAO (C) with the concurrence of FA & CAO (C) depending upon the merit of the case.

# Calling of Tenders

## 5(A)(iii) Special Limited Tender - Calling of Tenders

### (a) Works of specialized nature

- PHOD/CAO/C Full Powers
- DRM/ADRM/SAG Upto Rs. 10 Lakhs

### (b) Works of urgent nature.

- CAO/C Full Powers
- DRM/ADRM/SAG Upto Rs. 10 Lakhs

# Item 5 A(iii) Special Limited Tender

- Associate Finance concurrence is necessary.
- 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.
- Special Limited Tenders may be invited from specialised and reputed contractors/organisations/agencies. (Rly. Bd's letter No. 94/CE-I/CT/4 dated 17.10.2002)
- Tenderers from whom Special Limited Tenders are to be invited should preferably **be more than Six but not less than Four** (Rly. Bd's letter No. 94/CEI/CT/4 dated 17.10.2002)
- Tender Notice period should **not be less than 14 days.**



# SINGLE TENDER E-1214A

- When under special circumstances/urgency, the offer is taken from only a single agency, it is called single tender.
- Not to be called for routine works.
- Tight target cannot be accepted as reasons for calling the single tenders.
- 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.

# SINGLE TENDER E-1214A (Contd.)

- In rare or emergent situations, with Finance concurrence
- Accidents, breaches involving dislocation to traffic (powers to GM, PHOD, DRM)
- Work of specialised nature-(i) CAO/C (ii) PHOD:20 Lakhs with annual ceiling 1 crores with finance concurrence) Any other situation if GM personally approves
- AMC for equipment can be placed on Single Tender basis on authorised dealer on approval of AGM

# Model SOP 2018

## ● 5 (C) Single Tender

- (i) in case of accidents, breaches involving dislocation to traffic.
- PHOD Up to Rs.20 lakhs per case subject to annual limit of Rs.1 Cr.
- DRM Up to Rs. 10 Lakhs per case subject to annual limit of Rs.50 lakhs.
  
- (ii) Works of specialized nature
- CAO/Con Full Powers

# SINGLE TENDER

(Rly bd letter 2011/CE-I(SPL)/CT/O/4 dt 02/05/2017)

- CAO/C can call and finalise 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.
- Personal concurrence of FA&CAO/C
- Tender Committee would be of SAG level and acceptance by CAO/C

# DISPENSING WITH CALLING OF TENDERS

● 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 and directly related to safe running of trains in his jurisdiction:

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

# DISPENSING WITH CALLING OF TENDERS

- (Letter no. 2007/CE-I./Ct/18/Pt.13 dt. 11/09/2017)
- (B) All other works including Woks 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.

Including (A)

- Powers to be exercised with own administrative approval.

# Quotations Dos & DON'Ts

- 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 Dos & DON'Ts

- Quotations should not be for fancy (expensive but of low utility) items.
- Quotations should only be for works which are urgent in nature.
- Quotations should normally be invited from at least three well experienced contractors/agencies not necessarily borne 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.



# CONSIDERATIONS FOR SELECTING TYPE OF TENDER

- Reasonable level of competition
- Importance and urgency
- Availability of contractors
- Specialised nature
- Value of work
- Availability of Approved List

# Minimum Eligibility Criteria

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

## **(i) 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.**

# ELIGIBILITY CRITERIA- Technical

## ● Work experience certificate

- from private individual- shall not be considered.
- From any Govt. Organisation- considered
- work experience certificate issued by **Public listed company** shall also be considered provided
  - having average **annual turnover** of Rs 500 crore and above in last 3 financial years excluding the current financial year,
  - **listed on** National Stock Exchange or Bombay Stock Exchange,
  - **incorporated/registered at least 5 years** prior to the date of invitation of tender,
- the work experience certificate has been issued by **a person authorized by the Public listed company** to issue such certificates.

# ELIGIBILITY CRITERIA- Technical

## ● Work experience certificate

- In case tenderer submits work experience certificate issued by *Public listed company*, along with work experience certificate he has to submit-
  - the 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
  - copy of final/last bill paid by company in support of above work experience certificate.

## **(ii) 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 minimum 150% of ATV of Work.**
- **Tenderer to submit certificates in support of this which can be attested certificate(s) from concerned Department/client and/or Audited Balance sheet certified by the Chartered Accountant.**

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

# Bid Capacity

For work costing more than Rs. 20 crores.

$$\text{Available Bid Capacity} = [A \times N \times 2] - B$$

**A** = Max. value of construction works executed and payments received in any one financial year, during current and last 3 financial years.

**N** = Completion period of work under bid (in years)

**B** = Value of existing commitments and balance amount of on-going works with the tenderer, to be completed in “N” years.

# 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 Formula – Labour

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

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

$L_o$  = 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



# Price Variation Formula – Material

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

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

# Price Variation Formula – Fuel

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

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

# 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

# Price variation- supply contract contd

- ❖ Base month & date to be indicated by the contractor along with wage structure per month (permanent workers only)
- ❖ Wage consists of basic wage, dearness allowance, employer's contribution to PF and State Insurance or any other scheme instituted by Govt. (Increment not included)
- ❖ Number of direct workers in the base year will only be considered.
- ❖ For imported items, adjustment done wrt exchange rate and custom duty, subject to documentary evidence<sup>84</sup>
- ❖ Wage escalation to be avoided, save in exceptional cases at suppliers' insistence with financial concurrence

# Contract Finalization

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

# Important Contract Documents

- ❑ 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

# Contract Conditions

```
graph TD; A[Contract Conditions] --> B[General Conditions of Contract (GCC)]; A --> C[Special Conditions of Contract (SCC)]; C --> D[Special Technical Conditions]; C --> E[Other Special Conditions];
```

**General Conditions of  
Contract (GCC)**

**Special Conditions  
of Contract (SCC)**

**Special Technical  
Conditions**

**Other Special  
Conditions**

# 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
- ❖ Forfeiture of SD

# Performance Guarantee (PG)

- ❖ **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
- ❖ Immediate verification of its genuineness
- ❖ PG validity: Encashment or extension of validity well in time to protect financial interests of the Government
- ❖ 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](#))

# 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

# 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 in quantity of individual item of works.

# Quantity Variation – Rates

- ❖ 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.

# Contract Closing

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

# Arbitration

- A form of “Alternative Dispute Resolution” (ADR)
- It is a Quasi-judicial Process
- Choice of the Arbitrators: Both parties can select a person having domain knowledge of the matter/dispute
- Faster than Litigation in Courts
- Simpler & cheaper (No Court Fee, Deposits etc.)
- Preservation of Business relationship



# Contract Termination

- ❖ Engineer to serve 7 days Notice (proforma at Annexure-IX).
- ❖ In case contractor, within 7 days of delivery of this notice to him, does not make good his default: Engineer to serve 48 hours notice (Proforma at Annexure-X or XII), for termination in whole/part.
- ❖ After expiry of 48 Hours, Final Termination Notice to be issued (Proforma at Annexure-XI or XIII), for termination in whole/part.

# Why Contracts Fail

## ❖ On Railway's account

- Poor pre-tender planning
- Unrealistic tender schedule
- Improper tender conditions
- Site related problems
- Improper record keeping
- Irregular/ Late correspondence, esp. Complaints and quality issues

## ❖ On Contractor's account

- Unworkable rates
- Labour issues
- Improper/Late Correspondence
- Subsequent changes
  - Rate changes
  - Scope changes
  - Market/Financial changes



# **IMPORTANT ASPECTS TO CONSIDER IN TENDERS AND CONTRACTS**

## **Basic Dos & Don'ts**

## ✓ Do...

- ❑ Allow adequate and reasonable time for tender opening to get a proper response
- ❑ Attempt to identify sister concerns (esp. LT or Quotations)
- ❑ Ensure consideration of reasonableness of rates in TC (LAR, Market Rates, Analysis of Rates, Justification)
- ❑ Carefully record reasons for bypassing L1, if applicable
- ❑ Record and/or examine TC dissent carefully
- ❑ Negotiation should be the exception and not the rule
- ❑ Negotiation is only with L1 and after approval of TAA

# ✗ Don't...

- ❑ Split demands to reduce TC level for expediency
- ❑ Undertake quotations without certifying urgency
- ❑ Change TC members without approval of TAA
- ❑ Consider late/delayed/incomplete tender offers
- ❑ Change tender conditions post-facto
- ❑ Act as/exercise the powers of TAA if you are a TC member
- ❑ Entertain representations/open quotations from contractors after Tender Opening or in Negotiation stage
- ❑ Allow revision/changes in TC minutes after acceptance



# Thank You