

## **IMPORTANT ASPECTS TO BE CONSIDERED WHILE DEALING WITH TENDERS AND CONTRACT**

### **Do's**

- 1.1 Allow adequate and reasonable minimum time (as prescribed) for opening of all tenders to encourage proper response - except in emergencies.
- 1.2 Ensure timely supply of copies of approved plans for tenders where special item rates have to be quoted for the particular details of the approved plans.
- 1.3 Ensure that tender abstract (comparative statement) and briefing note have been prepared and signed by the concerned officials on each page.
- 1.4 Consider the offers which are accompanied by requisite valid earnest money or against valid SEM and no subsequent modification, substitution or submission of EMD is allowed.
- 1.5 Attempt identification of sister concerns to detect ring formations, especially in the case of limited tenders.
- 1.6 Ensure consideration of reasonableness of rates in the tender committee minutes. This should not only be with reference to presumably accepted rates, but also after taking into account market rates and analysis of rates.
- 1.7 To decide the Tender Committee recommendations with dissenting notes carefully.
- 1.8 Remember - negotiation should be an exception (like where rates are unreasonably high and retendering is not possible or desirable) and not the rule in acceptance of tenders.
- 1.9 Ensure negotiating for rates with lowest eligible tender only after getting approval of competent authority i.e. Accepting Authority.
- 1.10 Record relevant reasons for overlooking the lowest offer if it is not acceptable.
- 1.11 Ensure that the tender committee minutes contain the relevant information as the date, venue of the meeting and dated signatures of the members.
- 1.12 Record the acceptance or otherwise on the body of the tender committee minutes only.
- 1.13 Ensure that the reasonableness of rates is examined critically, logically and specifically, both in respect of total cost and rates of important individual items. 41
- 1.14 Check that low offers are in fact so in reality and price differential for similar but different items of schedule is reasonable.
- 1.15 Ensure that the tender committee is only constituted of competent level of officers specified.

## **Don'ts**

- 2.1 Do not change the Tender Committee members once constituted without prior approval of competent authority.
- 2.2 Do not consider delayed/late tenders except under specified exceptional circumstances (it requires RB's approval to consider late/delayed offer).
- 2.3 Do not treat the Tender Committee's recommendations with dissenting notes from one or more members of the tender committee as a unanimous recommendation.
- 2.4 Do not order negotiation on the repeated advice of tender committee to invite fresh tenders, particularly where response to the call for negotiation is poor.
- 2.5 Do not exercise the powers of the accepting authority in case you have been a member of the tender committee.
- 2.6 Do not hold negotiations with those who had either not tendered originally or whose tender was rejected because of unsatisfactory credentials, inadequacy of capacity or where tenders were unaccompanied with adequate EMD or any other invalid tenders.
- 2.7 Do not accept open quotations from the contractors during negotiations.
- 2.8 Do not entertain letters/representations of tenderers subsequent to the opening or negotiation while consideration of tenders.
- 2.9 Do not accept modified offers, not considered by the Tender Committee.
- 2.10 Do not allow subsequent revision of the TC minutes, unless the reconsidered minutes are put up in addition.
- 2.11 Do not record the acceptance/otherwise of the tenders anywhere else than the body of the tender committee minutes. Noting side of the file is to endorse action taken only.
- 2.12 Do not advise the tender committee prior to their deliberations on the suitability or otherwise of any particular offer.
- 2.13 Do not allow anomalies in evaluation of special conditions to affect the acceptance of the offer recommended.

## **ARBITRATION**

### **Preventive measures to check tendency of inflating the claims:**

- Keep an eye, watch on contractor's tendency to create records for unjustified claims, prompt replies bringing out factual position must be ensured in time.
- Ensure signing of all level books. M.Bs, bills in ink and with prescribed certificate.
- Maintain authenticated registers day to day record of actual progress, cement and steel consumed and labour employed by the contractor at site, machine deployed, hindrance in working, etc.
- Proper record of reinforcement as actually provided including laps/cut pieces etc. to be maintained.
- Refute all vague or wrong allegations for holding up the progress of work.
- While granting extension of completion time, clearly mention in the letter, the reasons accepted/repudiated and the extent to which accepted vis-à-vis contractor's letter for extension of time.
- Do not leave any procedural or legal lacunae in the process of finalization or termination of contract.
- As soon as some dispute arises and the tendency of the contractor to go for arbitration is noticed all basic records like level books, cross sections, M.Bs., correspondence file, sites records should be sealed and kept under custody of a responsible officer.
- Detailed programs /revised programs for execution of work should be got signed by the contractor and kept on record.
- Record of actual progress of work should also be available duly signed by contractor at regular intervals during the course of work execution.
- Ensure that proper numbering or folio numbers are given to each letter, particularly at the time of transfers, closing the file or when reference to arbitration is anticipated so that it is impossible to remove any crucial letter that are in favour of Railways.
- Ensure monthly statement of claims as per Clause 43(1) of GCC. If contractor does not submit then the executive should ask for it every month. Repudiate the claims not submitted as above in arbitration.

### **Measures to avoid contractual problems:**

- Proper professional and courteous attitude on the part of both the parties.
- Clear knowledge of all contract conditions, rules and orders.
- Adequate pre-contract planning leading to a fair, accurate tender, specially scheduled items, descriptions, quantities, specifications, special conditions drafted to be realistic.

- Selection of an appropriate contractor.
- Refrain from making changes in the scope of the work, specifications, conditions after entering into contract.
- Alertness and fairness in the administration of the contract, especially avoidance of oral instructions and instructions outside the scope of the contract.
- Maintain minimum and neat correspondence and proof of delivery.
- Maintain proper records and register with signed acknowledgements in site orders.
- Ensure quick response to Contractor's letters, e.g. giving decisions.
- Do not allow potential claims by refuting mischievous statements and allegations.
- Timely fulfillment of Railway's obligations like: land issue of drawings. issue of materials payments, etc. as per contract conditions.
- Ensure that files are handled by minimum but reliable staff.

### **Measures to avoid Arbitration:**

As per laid down procedures, tenders should be called after approval of drawing, estimate and also clearance of site. (a) During Tender Stage: i) Drafting of Special Conditions related to work. ii) Assessment of correct quantity, as per Drawing/Estimate. iii) Drafting of Specifications and Schedule to suit the requirement of work. iv) Assessment of Realistic Completion Period. 37 v) Assessment of PVC if completion period is more than one year. vi) Inclusion of Railway Board circulars applicable for the work. vii) Timely finalization of tender. (b) During execution stage:- i) Ensure timely commencement of work. ii) Handing over site immediately after issue of Letter of Acceptance, issue of approved / full set of drawings in time officially, with proper acknowledgement. iii) Collecting signed programme from contractor whenever warrants. iv) Monitoring of progress as per programme submitted by the contractor. v) Compliance of specifications of Works and Materials, by conducting tests. vi) Maintaining various registers and records. vii) Removal of obstacle/hindrance below G/L and throughout the period of work. viii) Processing of new items before execution. ix) Prompt reply to contractor's letters. x) Timely measurement and payment. xi) Making FCC and closing agreement after obtaining NOC.

## **VIGILANCE ANGLE**

CVC tenders advice in cases which involve a vigilance angle. It has defined vigilance angle as the following:

- (i) Demanding and/or accepting gratification other than legal remuneration in respect of an official act or for using his influence with any other official. (ii) Obtaining any valuable thing, without consideration or with inadequate consideration, from a person with whom he has or is likely to have official dealings, or with whom his subordinates have official dealings or where he can exert influence. (iii) Obtaining for himself or for any other person any valuable thing or pecuniary advantage by corrupt or illegal means or by abusing his position as a public servant. (iv) Possession of assets disproportionate to his known sources of income. (v) Cases of misappropriation, forgery or cheating or other similar criminal offences. 206.
- (ii) This is not an exhaustive list. CVC has mentioned other irregularities where circumstances will have to be weighed carefully to take a view whether the officer's integrity is in doubt. These include cases of gross or willful negligence; recklessness in decision making; blatant violations of systems and procedures; exercise of discretion in excess, where no ostensible public interest is evident; failure to keep the controlling authority/superiors informed in time. In these cases, the Disciplinary Authority and the Chief Vigilance Officer should carefully study the case and conclude whether there is reasonable ground to doubt the integrity of the officer. 206.3 Thus, the CVC gives its advice only in such cases in which there is a vigilance angle. In other cases where it concludes that the lapses do not attract vigilance angle, however, it does not imply that the concerned official is not liable to face the consequences of his action. Necessary disciplinary action will have to be taken by the concerned disciplinary authority under conduct/disciplinary rules, as deemed appropriate. These cases are not to be referred to CVC for any further advice.