

Vigilance Pitfalls in Tenders and Contracts

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Dy CVO/Northern Railway

Service Contracts

- Mostly labour oriented contracts where labour component is as high as 80-90%
- Even within Service contract there are 2 distinct types
 - Where only manpower is required (eg. Security, linen distribution)
 - Where both manpower and material/machinery is reqd (eg. cleaning)
- Presently barring few, the estimates for all such contracts are based on minimum wages * no. of persons + consumables+ margins etc.
- Perhaps the practice of tendering on this pattern has started in last few years only.
- It is seen that in cases where the quotes are even a few paise below the minimum wage component, they are simply ignored.

Service Contracts contd..

- In one such case the estimated cost of labour was Rs 1,00,06,972/- and estimated cost of material was Rs. 14.69 lakhs .
- It is interesting to note that one bidder who had quoted Rs. 1,00,06,970/- was considered ineligible on minimum wages ground. The tenderer who was ultimately considered as eligible for award of work had quoted Rs.1,00,70,675/-.
- Leave apart the profit, if one considers even half the material cost (as estimated) to be utilized during execution of work, the whole equation changes and it indirectly comes out to paying less than minimum wages, the basis taken by TC to ignore bidders quoting less than estimated cost of labour

Service Contract contd..

- In a recently opened tender of a division on NR following conditions were inserted :

*The estimate of this tender is based on cost of manpower (worker as unskilled and supervisor as semi skilled) at minimum daily wages calculated for 365 days, cost of employees' ESI contributions, cost of materials, tools, uniforms, cost of equipments, Service Tax, EPF, Income tax and contractors profits for a period of one year i.e. 365 days from the award of work. **Tenderers may kindly note that quoting their rates based merely on Minimum Wages without factoring in the cost of machines and other consumables, profits, etc. shall be summarily be rejected.***

*Those tenderers which do not fulfil the minimum wages condition for manpower cost as per existing notification will be summarily rejected. **Similarly the cost of each item like consumables, machine, taxes, etc. should be realistic***

- When the tender was opened, 05 offers were having exactly similar rate and the quoted rate was just 01 paisa more than the estimate. Now what about realistic rates of consumables/M&P. What are the options before TC ?

Service Contracts-Issues

- During visits to different divisions, field officers have unanimously raised their concerns in dealing with service contracts mainly:
 - Equal quotes being received in all offers
 - Nil cost of material being quoted
 - Nil profit margin being quoted
- Clear guidelines from Board are required in light of Department of Expenditure's OM dated 28.01.2014, wherein it is categorically stated that *Ministries/ Departments may consider inclusion of clause in bid document itself that "if firm quotes "Nil" charges/ consideration, the bid shall be treated as unresponsive and will not be considered"*.

Issues which need to be addressed

- Technical eligibility criteria
- Financial conditions including insertion of conditions like certain minimum turnover etc.
- Special conditions viz. ISO certification, certain minimum manpower on rolls etc.
- EMD/SD/PD- In case an MSME certificate is produced
- Suitable Penalty clauses
- Minimum period of contract
- Equal quote received- Splitting or what ???
- Monitoring of quality-Parameters
- Fall back arrangement in case contract fails

Issues which need to be addressed

contd..

- Fulfilment of legal requirements
- Mode of payment and furnishing of proof with next billing
- Offers with NIL material & M&P cost
- Offers with NIL profit/consideration
- Whether to include clause of *summarily rejection* in case of minimum wages condition not getting fulfilled.

Case study based on preventive
checks at select Stations and
Coaching depots

Times of India, Dec 7

New Delhi station filthy, Railways told to pay Rs 5 lakh

EXPRESS NEWS SERVICE
NEW DELHI, DECEMBER 7

OBSERVING THAT there was "definite negligence" and "intentional lack of will" on the part of all authorities, the National Green Tribunal Monday imposed a cost of Rs 5 lakh on the railways for failure to keep tracks and platforms at New Delhi railway station clean.

The NGT also imposed a fine of Rs 1 lakh each on the Delhi Urban Shelter Improvement Board (DUSIB) and north municipal corporation.

"We are satisfied that concerned authorities are at fault. If the railway authorities have engaged contractors for cleaning of tracks and platforms, one fails to understand as to why the railways failed to discharge even this supervisory function... There is a definite negli-

gence on the part of all authorities... If railway tracks within a few km of the national capital cannot be kept clean, then it is really a sad state of affairs," said the bench headed by NGT chairperson Justice Swatanter Kumar.

The orders were issued after a report was filed by advocate Sanjay Upadhyay, who had been appointed by the NGT to inspect the tracks from New Delhi station to Adarsh Nagar.

The report indicated that piles of garbage was found along the tracks.

The bench then warned authorities that if they failed to ensure cleanliness on railway property in the future, it would resort to more "coercive" measures.

"We will burden you with Rs 1 lakh fine per day. We are of the view that taxpayers' money should not be spent by default on public servants," it said.

" If the railway authorities have engaged contractors for cleaning of tracks and platforms, one fails to understand as to why the railways failed to discharge even this supervisory function. There is definite negligence on the part of all authorities...." - NGT

Case Study

Important contract conditions:

- Minimum manpower stipulated : 90 + 03 supervisors.
- Provision of **Bio-metric machine** at the work site for regular attendance of contractor's men
- Concerned depot officer/incharge to ensure that the contractor is providing stipulated minimum manpower and regular attendance. Attendance basis of bill payment.
- Contractor to deposit adequate quantities of chemicals for at least 15 days with Railways.

Case study contd..

- Ensuring availability of equipments for mechanised cleaning viz. high pressure water jet machines, portable vacuum cleaner, power scrubber etc.
- Provision of uniform and protective gears like shoes, gloves etc. ID Badges to be issued by the contractor for the staff/supervisors at work place.
- Provision of plastic wield bins of 120 L capacity and disposable bags for collecting the garbage and piling up at the nominated place

Discrepancies –Cleaning standards

- As a test check, internal cleaning of one passenger train No. was seen. In a number of coaches berths were dusty and water was found spread in the toilets .
- [Washing line](#) was extremely dirty as if never cleaned.
- [Main garbage dustbin](#), which is required to be cleaned periodically, was full of garbage and in a shabby condition.

Discrepancies - Staff availability related

- On the day of check no contractor's staff was found working in sick line and office area.
- No attendance record of staff was available either with contractor's supervisor or with any Railway authority.
- No authority could confirm or show availability/attendance of all the contractor's 93 staff.
- None of the staff/supervisors of the contractor were having valid I-cards, neither were they found in prescribed uniforms.
- **The entire arrangement is such as to nobody knows the whereabouts/presence of contractor's labour in totality.**

Discrepancies – Equipment related

- It was noted that the [Bio-metric machine](#) installed at the premises is out of order for months altogether.
- Two Vacuum Cleaners and four Water Jet Machines were found lying in [defunct condition](#) in contractor's store.
- No mechanised cleaning was in place. Only manual cleaning was being done.
- Plastic bins found were highly inadequate and no disposable bags were found.
- Even the contractor's men (if at all they were) were found collecting the garbage in a bag like a local rag picker as they were neither in uniform nor having ID badges

Discrepancies- Responsibility unclear

- Every supervisor is verifying his own area of work and availability of manpower at that place.
- What is happening in such a chaotic environment is that even with lesser than stipulated no. of men present, their presence is shown at individual work centres and full payments are made.
- This is possible as the timings of work at various centres is scattered in the system. However quality takes a dig which is clearly evident from the photographs.

Discrepancies –Consumables related

- As regards chemicals, a 15 days quantity was required to be kept with Railways on a continuous basis for daily/periodic issue however **there was no record of them being issued from Railway store**. Following stipulated quantities were deposited in Railway Stores but never issued :
 - Cleaning compound R-7: 75 lts.
 - Glass cleaner R-3: 75 lts.
 - Toilet cleaner R-1/R-6: 75 lts.
 - Deodorant R-5: 75 lts.
 - Only two chemicals were found in contractor's store viz
 - Tuski – R-3 (03 Litres)
 - Unbranded Liquid Soap – Approx. 50 Litres
 - No system of preparing any record to show the issue of chemicals/consumables to labourers on a daily basis was found.

Discrepancies –Billing related

- 22 score cards' sets (comprising of 04 copies) of Mechanized cleaning and watering of terminal trains for the month of May and June, 15 i.e. 3 months behind schedule were found in the custody of contractor's supervisors on which Railway Supervisor's signatures were missing.
- 101 nos. of contractor's copy of mechanized cleaning score cards for May, 2015 (4 months behind schedule) were found in contractor's store on which only contractor's signatures were available.
- No system of filling and depositing these cards on a daily basis found, thus making them liable to alteration/ manipulation.

Discrepancies- Penalty related

- Penalty imposed on contractor for non usage of chemicals is quite meagre (about Rs. 15,000/- p.m only) considering the fact that contractor would have saved upto Rs. 1 lac by not using the chemicals.
- It is seen that the payments in this contract are activity based wherein certain penalty (200/-) is leviable for non deputing the specified manpower for that particular activity. It is observed that penalty is only to levied when that activity is not attended to which has also been confirmed from the bills passed. There is no aspect of poor quality/unsatisfactory work for the purpose of levying penalty.

Points to ponder

- It has been observed that invariably in all such tenders, contractors are quoting at amount equal to minimum stipulated wages only. There is no cost element of either chemicals, consumables, machines, cranes, etc in the rates quoted, leave besides the profit margin.

The point is whether the contractor is a social worker or running an NGO or a philanthropist ? The answer is a clear NO.

- Such contracts by their very character therefore thrive on manipulating the number of personnel made available at site. This fact has been corroborated in almost all the checks conducted by NR vigilance.

Points to ponder contd..

- The scope of manipulation widens owing to the fact that tenders get decided based on minimum wages but payments are made on the basis of cleaning activity with no correlation to actual availability of manpower.
- Manpower requirement stipulated in the contract should account for the activities involved with reference to they being simultaneous or in series.

**Few Other Case Studies and System
improvements in contractual works**

System improvement-Engg

1. Compilation of Standard Tender Document

- For similar works contracts Divisions/Field units/Construction units were adopting different Tender Documents/allied conditions which were at variance with each other.
- Officers getting transferred were often adopting practice of previous posting and facing difficulty in finalisation of tenders. This was leading to complaints.
- Moreover this also made comparison of LARs of contiguous regions unscientific.
- Standard tender document has now been issued for all Civil Engg tenders to enable uniform evaluation.

System improvement- Electrical

2. Irregularity in Estimation

In a tender case for repair and rewinding of stators and rotors of WAP5 traction motors, it was observed that estimate of the work was itself wrong due to consideration of single budgetary offer (No market survey etc.) and incorrect tax calculation. To avoid the same in future, it was suggested that:

- Estimate should be based on average of LARs or sound rate analysis based on budgetary quotations where LARs are not available.
- Technical specifications to be frozen prior to estimation.
- Taxes and duties considered during estimation should be based on the type of work i.e. works contract, material supply work, repair of equipments/machines etc as provided statutorily.

System improvement – S&T

3. Improper specifications and incomplete terms and conditions of schedule items.

- Certain items of tender schedule mentioned specifications/ drawings that didn't exist or were incomplete, leaving scope for misinterpretation to the advantage of execution agencies.
- The terms and conditions didn't specify inspecting agency for many items.
- Part payment against supply and warranty period was also not clearly specified leading to subjective decisions.

Case studies- Mechanical

1. Irregularity in execution of Running Room contract for cleaning Housekeeping and cooking activities

- In a running room contract on one of the divisions, a total of 16 men had to be provided by the contractor across three shifts
- Check revealed that payment was being made for all the 16 persons on a daily basis. The records didn't indicate any shortfall as seen over a two month period.
- Seizure of records from the contractor's representative(which was maintained for his own accounting purpose) revealed that there was shortfall on a daily basis of up to 3 to 4 persons.
- The contractor's internal payment record further revealed that only about 50% wages was being given to the labour though stipulated minimum wages were being given by Railways.
- This only corroborates our fears and explains why our service contracts are failing in giving desired results.

Case studies- Mechanical

2. Manipulation of records for bill payments

- In a check related to execution of shed cleaning and loco washing contract, it was found that records were manipulated for passing of bills. Bills had been cleared without deducting payments for shortfall in stipulated manpower.
- The daily check sheets seized by vigilance during check indicated availability of only 8 men on daily basis over a two month period.
- After passage of two months when the bills for the same period were scrutinised it was found that duplicate sheets had been created for bill passing which indicated 10-12 men on daily basis.
- The check sheets which indicate the area and quality of shop floor cleaning were also not being filled up on daily basis (lag of 15 days noticed).
- This defeats the very purpose of daily check sheet.

Case studies- S&T

3. Execution of unsanctioned work with multiple irregularities

- By clubbing CTR estimates, a work costing Rs. 2.21 crore was executed, without preparing any S&T detailed sub-estimate.
- Surge arresters & maintenance free earthing, which was not related to CTR work, valuing Rs. 1.75 Crore (78.95% of NIT value) was made part of the schedule without any sanction.
- Only one LAR taken while preparing schedule. Two more LARs' included later at TC stage which had description different from the first LAR.
- LAR of MF earthing mentioned four earth pits which was omitted in the schedule resulting in provision of only one earth pit.

Case studies- Engineering

4. Review of disposal of Unserviceable PSC Sleepers

- N. Rly. paid Rs. 3.50 per unserviceable sleeper for disposing it off.
- The agency returned MCI inserts valuing Rs. 164 to NR and retained HTS wire (8 Kg.) valuing Rs. 200/-.
- On other Rlys., the agency paid to Rly. Rs. 241/- per unserviceable sleeper by retaining both MCI inserts and HTS wire.
- Thus roughly, N. Rly. was losing Rs. 80/- per unserviceable PSC sleeper as compared to other railways. Calculation: Rs. [241-(164-3.50)]
- The earlier method of disposal has now been banned.

Case studies- Electrical

5. Irregularity in similar nature of work criteria

- Divisions have specified similar nature of work in various tenders without the approval of PHOD.
- Revised guidelines for incorporation of eligibility criteria for works above Rs. 50 lakh as against Rs.20 Lakh ceiling earlier, were also not followed.
- Similar nature of work criteria included in the tenders was doctored to suite one particular firm.
- Two different works containing items with different RDSO approved sources were clubbed in the scope of one tender to make a particular firm eligible for both works.
- Out of eight tenders scrutinized, it was found that 6 tenders were awarded to one firm only and wherever that particular firm was not L-1, tender was either discharged or the eligible L-1 tenderer was overlooked.

Thanks

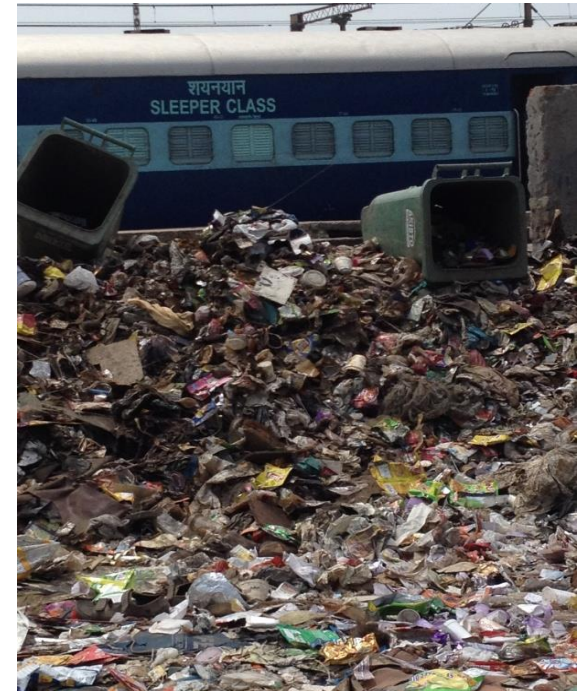
Mechanised cleaning machines lying in dilapidated condition



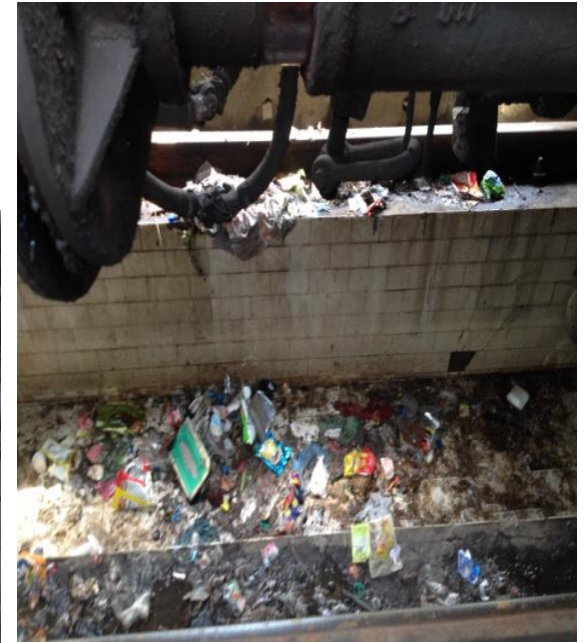
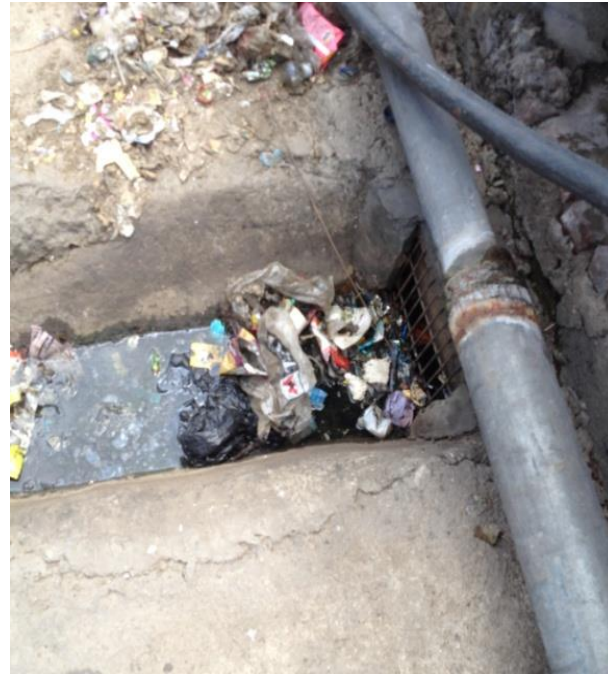
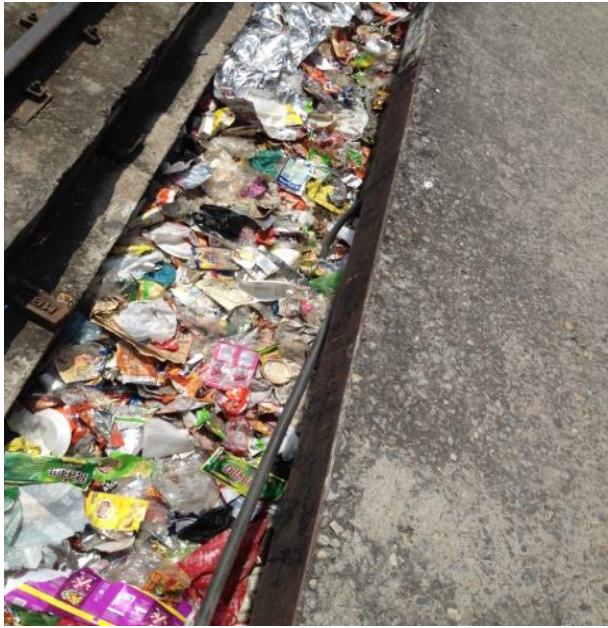
Defunct Biometric machine



Main Garbage Dumping Place



Washing Lines



Manipulation of manpower

MONTH OF JULY 2015

SNO	MORNING 06/- to 14/-	ATTENDANCE	MORNING 06/- to 14/-	ATTENDANCE
01	SUPERVISOR	?	SUPERVISOR	?
02	COOK	?	COOK	?
03	HELPER	?	HELPER	?
04	ATTENDED	?	ATTENDED	?
05	CLEANER	?	CLEANER	?
06	GUARD	?	GUARD	?
07	GARDNER	?	GARDNER	?
	TOTAL	7	TOTAL	7
	EVENING 14/- to 22/-		EVENING 14/- to 22/-	
08	COOK	?	COOK	?
09	HELPER	?	HELPER	?
10	ATTENDED	?	ATTENDED	?
11	CLEANER	?	CLEANER	?
12	GUARD	?	GUARD	?
	TOTAL	5	TOTAL	5
	NIGHT 22/- to 06/-		NIGHT 22/- to 06/-	
13	COOK	?	COOK	?
14	HELPER	?	HELPER	?
15	ATTENDED	?	ATTENDED	?
16	GUARD	?	GUARD	?
	TOTAL	4	TOTAL	4

Attendance Register
उपस्थिति पंजीक

Sl. No.	Name	Rank	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
1	Vinod Rawat	SUP	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
2	Kedar Singh	COOK	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
3	Ravi Kumar	HEL	P	L	L	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
4	Kaish Rawat	U.T.	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
5	Naveen Rawat	H/K	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
6	Pooja Devi	HEL	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
7	Bhat Singh	GARD	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
8	Hetti Lal	S/Pe	L	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
9	Najir	S/Pe	P	P	L	L	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
10	Rajpal	mali	P	P	P	P	L	L	L	P	P	P	P	P	P	P	P	P	P	P	P	P
11	Vishesh Panwar	HEL	L	L	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
12	Vipul Bishr	H/K	L	L	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P

MONTH OF JULY 2015
R.R. JUN STAP SALARY

Name	Post	day	Rate	WAGES	
✓ Kedhr Singh	Cook	30	8000	8000	Rawat
✓ Ravi Kumar	H/K	30	6000	6000	Rawat
✓ KAILASH RAWAT	U/T	30	5200	5200	Rawat
✓ NAVEEN RAWAT	H/K	30	5200	5200	Rawat
✓ TRADEEP UNIAL	COOK	30	5200	5200	Rawat
✓ PRATAP SINGH	GARD	30	5200	5200	Rawat
✓ Hetti Lal	S/Pe	28	5200	5200	Rawat
✓ Naji	S/Pe	27	5200	5200	Rawat
✓ Rajpal	mali	26	5200	2600	Rawat
✓ VIRESH PANWAR	HEL	30	5200	5200	Rawat
✓ VIPUL BISHR	HEL	30	5200	5200	Rawat

1 LONDERY Bill = 5874
 2 Newspaper Bill = 621
 3 RASAN Bill = 11695
 4 MASALA Bill = 1500
 5 Rail Two TN Bill = 2180
 Total = 21070 Total = Paid

24y Book = 14000 Paid 27/08/15
 Rawat

Record officially maintained for billing purpose

Record seized from contractor custody