

CHAPTER-VI

CONTRACTS GENERAL PRINCIPLES

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Ministry of Railways (Railway Board)

CHAPTER - VI

CONTRACTS- GENERAL PRINCIPLES

601 Within the power delegated by the competent authority, contracts are awarded by the officers of the various Departments in the Railway Administration and the Railway Board for and on behalf of the President of India for supplies and services broadly categorized below:--

Department responsible for awarding contract.

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| 1. Supplies of stores of all description except those which may form part of a work contract. | Headquarters Stores. |
| 2. Fabrication and supply of clothing and uniforms, printing and supply of books and forms. etc. | -----do----- |
| 3. Fabrication and supply of sleepers, points and crossings and other fabricated stores against items for P. way. | Engineering/Stores |
| 4. Works contracts, including those involving supply and erection /commissioning of machinery and plant. | Civil Engineering, Electrical, Mechanical, Signal and Tele-communication and Stores Departments. |
| 5. All types of 'handling' contracts at Railway Stations Transshipment points and goods sheds, etc. in respect of Public freight and coaching traffic. | Commercial |
| 6. Catering contracts of all types | ----Do---- |
| 7. Cycle/Scooter/moped stands at Railway stations. | ----Do---- |
| 8. Book stalls and weighing machines at Railway Stations. | ----Do---- |
| 9. Out-agency and City Booking Offices. | -----Do----- |
| 10. Lease of plots of land to Railway users. | -----Do----- |
| 11. Contracts with siding owners (whether private siding or assisted siding). | Engineering and Commercial. |

Department responsible for awarding contract.

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| 12. Lease of Railways' surplus land for 'grow more food' campaign, etc. | Engineering
-----Do----- |
| 13. Zonal contracts for civil maintenance and other works. | |
| 14. Ash-pit cleaning, cinder picking and disposal of foundry waste in loco sheds and mechanical workshops. | Operating/mechanical |
| 15. Technical Collaboration. | Concerned Technical Department. |
| 16. Hire of tools and plants materials | Concerned Department |
| 7. Hoardings and display of advertisements at Railway stations or on Railway property. | Public Relations. |
| 18. Sale of scrap by auction or by inviting tenders. | Stores. |

The above list of categories of contracts is by no means exhaustive. The guiding principles laid down in this Chapter for inviting tenders and conducting their scrutiny, etc., are generally applicable to all types of Railway contracts and should be treated as supplemental to the rules prescribed in Charter III and IV of Indian Railway Code for the Stores Department and Chapter XII of the Indian Railway code for the Engineering Department. Regarding Contracts for the sale of railway materials, reference may also be made to Chapter XXIII of the Indian Railway Code for the Stores Department.

602. Tender System.-- It is a primary duty of the officers authorised to enter into contracts to obtain the best value for the money spent , and the tender system should be given very careful and serious consideration in all cases as one of the most effective methods of securing competitive rates.

603. Following are amongst the different methods of obtaining tenders:--

- (1) By advertisement (i.e., 'open'- tenders),
- (2) By direct invitation to a limited number of firms (i.e., 'limited' /bulletin Tenders,)and
- (3) By invitation to one firm only (i.e., 'single' tender).

The limits laid down under the orders of the Railway Board from time to time for sorting to any of the above methods of calling for tenders should be followed.

604. Invitation to tender --In case of tenders for supplies/ services involving foreign exchange expenditures in excess of Rs. 50,000, Railway Board's prior approval should be obtained for inviting tenders. Where the foreign exchange expenditure is estimated to exceed Rs. 2 lakhs, special procedure laid down in this behalf by the Railway Board should be followed.

605. Tenders should be invited sufficiently in advance of the date of expiry of the existing contract so as to leave adequate time for negotiation or re-tendering, if necessary. In all cases, sufficient notice should be given to tenderers for submission of their tenders, the lower limit in the case of large works and handling contracts being 30 days, and for supply of stores 14 days.

606. As far as possible, only standard tender form should be used and each tender form should be duly initialled and entered in an appropriate register by the concerned Departmental official before being issued to the tenderers.

607. Opening of Tenders -Tenders should be opened, at the specified time, date and place by the officer nominated for the purpose. All advertised (Open) stores tenders must be opened in the presence of a representative of the Accounts Department. Whether 'limited' stores tenders should be opened in the presence of a representative of the Accounts Department and if so beyond what minimum tender value, may be decided by the Railway Administration in consultation with the Financial Adviser and Chief Accounts Officer. As regards tenders of other Departments, presence of the Accounts representative may be restricted to opening of tenders of the approximate value of Rs. 10,000 and above.

608. The officer who opens the tenders and the Accounts representative witnessing the tender opening should (i) initial (with date) the cover containing the tender, the front cover page of the tender and every page of the tender on which the rates or special tender conditions are quoted, (ii) initial (with date) all corrections in the schedule of quantities, schedule of materials to be issued and specifications and other essential parts of the contract documents, (iii) mark and initial all over-writings in red ink and (iv) clearly indicate, on each page of the schedule attached to the tender, any ambiguities in rates quoted by the tenderer in words or figures. The corrections, over-writings and omissions should be serially numbered, and the total number of such corrections, etc., should be clearly mentioned at the end of each page of the Schedule attached to the tender proper and attested with date.

609. The names of the tenderers and the rates quoted by each tenderer should be read out, wherever practicable, to the tenderers or their representatives who may be present at the time of opening of the tender. While opening the tenders, no opportunity should be given to any tenderer to repudiate, amend or explain the rate and/or any condition quoted in the tender.

610. 'Delayed' tenders, i. e., tenders received before the time of opening but after due date and time of receipt of tenders, should also be opened and dealt with in the same manner as tenders received before the due date and time. 'Late' tenders, i. e., tenders received after the specified time of opening should be opened by the concerned Branch Officer and marked as

such in red ink prominently on the envelop as well as on the tender papers. A suitable remark in regard to both the 'delayed' and 'late' tenders should be made both in the Tender Register as well as the comparative statement. For dealing with Delayed and Late Tenders, separate instructions as issued by Railway Board from time- to- time should be followed.

611. A statement of comparative rates and other important tender conditions should be prepared by the Branch concerned and verified by the Accounts Department. It must be ensured that all tenders received are tabulated in the above comparative statement and put up to the Tender Committee for consideration without any screening by any other official.

612. Along with the tabulation statement a briefing note duly authenticated at an appropriate level should be submitted clearly indicating the following details:-

- (i) Complete and latest information in regard to the lowest contract rates for the same or similar materials or work in the particular or contiguous area;
- (ii) The conditions of supply or of undertaking the work with reference to information under item (i) above;
- (iii) The latest data in regard to the availability of materials and prices thereof and the working conditions, etc., to correlate the present quotations with those obtained earlier;
- (iv) Any special conditions attached to the rates and works or supplies referred to in (i) above as well as the technical data required for dealing with the tenders under consideration; and
- (v) Any other relevant information worthy of consideration in the contract.

613 The tabulation statement and the briefing note both in duplicate shall be sent, thereafter, for scrutiny together with the original tenders to the Section Officer (Accounts) deputed for the purpose, and the tabulation statement should be signed by him in token of his verification.

614 Constitution of Tender Committees -Tender Committees should be generally constituted by the authority competent to accept the tenders where the tender value involves--

- (i) In the case of purchase of stores-Rs. 50,000 or more; and
- (ii) In other cases, Rs. 10,000 or more.

When the General Manager is the authority competent to accept the tender, the Head of the Department concerned should arrange to constitute the Tender Committee. In the cases where Tender Committee is not formally constituted the advice of the Accounts Officer should be obtained in considering such tenders. Where it is not practicable to obtain such advice at the time of considering the tenders, it should be sought immediately thereafter.

615. The Tender Committee should consist of a minimum of three members of whom one should be from the Accounts Department and one from the concerned Executive Department. The third member should be from the allied or user Department or, failing that, from a Department dealing with award of contracts for supplies or services, etc.

616. The Tender Committee should be so constituted that the officer recommending acceptance of a tender in his capacity as a member of the tender Committee shall not also be the accepting authority for the same tender. In such cases the officer concerned should put up the Tender Committee's proceedings to the next higher authority for acceptance notwithstanding the fact that the Tender Committee's recommendations are within his own powers of acceptance.

617. In the case of open tenders, if the lowest tenderer is not on the approved list of contractors kept by the Railway, but his tender is otherwise satisfactory, he should be asked to produce evidence of his capacity to carry out the proposed work or supply efficiently and of his sound financial position. If he is unable to produce this evidence, and it is proposed to pass over his tender and consider the next higher one, the fact of the lowest tenderer having failed to produce necessary evidence of his capacity and sound financial position should invariably be placed on record.

618. In all cases when a lower offer has been rejected, full reasons should be recorded on the file for any future reference.

619. In cases where specifications in a tender have undergone any major change before the tenders are finalised, fresh tenders should be called for giving sufficient notice to the tenderers.

620. Earnest Money and Security Deposits -(i) In the case of works contracts, as distinct from Stores contracts, tenders un-accompanied by the requisite earnest money should, under no circumstances, be entertained and should be summarily rejected.

(ii) As regards Stores contracts, when unregistered firms are unwilling to pay Earnest Money and Security Deposits and registered firms are required to pay Security Deposit in respect of items for which they are not registered, the Controller of Stores may, in consultation with the Financial Adviser and Chief Accounts Officer, in specific cases where considered justified in the public interest, relax the conditions of Earnest Money and Security Deposit.

621 Contract Agreements-The basic principles to be always kept in view by those, who are authorized to enter into contracts or agreements are given below.-

(i) The terms of contract must be precise and definite, and there must be no room for ambiguity or misconstruction, and the matters to be agreed upon should include in detail, the following. -

- (a) What the contractor is to do; when, where, and to whose satisfaction it is to be done.
 - (b) What the Railway Administration is to do; and on what terms.
 - (c) What payment is to be made; what it is to cover, to whom it is to be made; and the method and basis of making it.
 - (d) The responsibility of the contractor in respect of adequate supervision, care of government property, and the protection of outside interests and those of his staff and workmen.
 - (e) The terms on which variations and modifications, if any, are to be permitted, the authority competent to order and to assess them, and the occasion and basis of such assessment.
 - (f) The measures to be adopted in the event of a breach of the contract by either party thereto ; and the method of and grounds for the determination thereof.
 - (g) The method of settling disputes.
- (ii) As far as possible, legal and financial advice should be taken in the drafting of contracts before they are finally entered into.
- (iii) Standard forms of contracts should be adopted wherever possible, the terms to be subject to adequate prior scrutiny.
- (iv) The terms of contract once entered into should not be materially varied except in consultation with the competent legal and financial authority.
- (v) No contract involving an uncertain or indefinite liability or any condition of an unusual character should be entered into without the previous consent of the competent legal and financial authority.
- (vi) Provision must be made in contracts for safeguarding Government property entrusted to a contractor.
- (vii) In entering into long term agreements or contracts, consideration should be given to the desirability of reserving for the Railway Administration unconditional power to cancel the agreement at any time after the expiry of six months' notice to that effect.
- (viii) The power to retain and "set off" all claims, whether arising out of the particular contract or out of any other transaction or claim whatever against the contractor should be secured for the Railway Administration.

622. Execution of contract prior to commencement of works or supplies.-

(i) No contractor should be permitted to commence work or supply materials until the relevant contract has been signed by the parties competent to do so.

(ii) Exceptions to this rule are permissible only in cases of extreme urgency such as works or supplies necessary to safeguard life or property or to repair damage to the track caused by flood, accident or other unforeseen contingency, so as to restore and maintain through communication. Even in such cases, if circumstances permit, some form of written contract, or at least an agreed statement of rates to be paid, should be prepared before commencement of works or supplies; the intention being that the conditions, specifications, etc., with sufficient items and rates to carry on with, should be agreed upon beforehand.

(iii) In other exceptional but less emergent cases, in which the commencement of work or supply cannot be postponed till the preparation and sanction of the contract documents, prior consultation with the Financial Adviser shall be necessary.

(iv) In all cases of departure from sub-para (i) above, the completion and execution of the main contract should be proceeded with expeditiously.

623. No authority shall execute a contract.-

(i) Which is beyond its powers as to either "class" or "amount";

(ii) Which relates to a work, the incurrence of expenditure or liability on which is not authorized under current rules and orders regarding control of expenditure;

(iii) Which involves, in respect of the work to which it relates, an excess over the estimate greater than is within such authority's competence to sanction; and.

(iv) Any provision of which contravenes any standing rule or order of higher authority; provided always that an authority may sign any contract within its powers as to "class", with the approval of the authority competent to execute it.

Note. In cases where materials are supplied by the railways to the contractor for the execution of a work, the amount of the contract shall for the purpose of determining the authority competent to execute it, be taken to be the net amount to be paid to the contractor, exclusive of the cost or value of the materials so supplied.

624. On behalf of the contractor the signature of only such person or persons as are competent to bind him legally shall be accepted on a contract.

625 Contract Documents -The documents forming integral parts of a 'works' contract are the Conditions of Contract, Standard or Special; the Specification, Standard or Special (and any plans necessary) ; the schedule of Items, Quantities and Rates; the Agreement

Forms; Instructions to Tenderers, and Tender Forms (if any). The documents constituting a contract or the supply of stores consist of the following.-

- (i) The tender;
- (ii) Supplier's offer;
- (iii) Advance Acceptance of Tender, including telegraphic acceptances, if any;
- (iv) Formal Acceptance of Tender;
- (v) Conditions of Contract (Standard and/or Special), specifications, drawings, etc.
- (vi) Any document making any change or deviation in any of the contract terms as embodied in the Advance Acceptance of Tender or the formal Acceptance of Tender. This includes a letter cancelling the contract.

626. Conditions of Contract -The Conditions of Contract may be either Standard or Special. Standard Conditions for stores and works contracts should preferably be embodied in all contracts to which they are applicable. In the event of such conditions proving defective in any way, it will be the duty of the General Manager to report the fact to the Railway Board, if such conditions were prescribed by them, and in all other cases to arrange, in consultation with his Legal and Financial Advisers, to amend or amplify them suitably.

627. Any unusual conditions of Contract should before they are imposed, be approved by the General Manager, acting in consultation with his Legal and Financial Adviser; or if the contract to which they relate is beyond his powers to execute by the Railway Board.

628. Variation of Contract Conditions -The power to vary the terms of a contract lies only with the actual parties thereto. The contractor and his sureties, if any, must, therefore, be consenting parties to all variations, which should be the subject of a Subsidiary Agreement stating what is to be varied and what will remain unchanged in the original contract. The drafting of this agreement should be the subject of very careful scrutiny, to ensure that the conditions, specifications etc., of the main contract are adequate for and applicable to the variation or that the latter is made self sufficient in these respects. Such subsidiary agreements should be regarded as fresh contracts and entered into before effect is given to the variation. The Contract Conditions may be varied by various authorities competent to do so to the extent shown below: -

- (a) (i) Variation of the Standard I. R. S. Conditions of Contract and Specifications. - These may be varied only with the sanction of the General Manager, in exceptional cases within his powers of placing contracts in consultation with his Financial Adviser and after taking legal advice, if necessary, in accordance with the extant orders of the Railway Board.
- (ii) Variation of the conditions of contract other than the I. R.S. Conditions.-These may be varied with the sanction of the authority that approved the original contract acting in consultation with his Financial Adviser and after taking legal advice if necessary.

*(b) Variation of the Rates of Items.-Contracts in which a price variation clause is included.-*The rates may be varied by the authority which approved the original contract with the concurrence of his Financial Adviser. If the total value of the contract after allowing for the variation is beyond the powers of the authority which approved the original contract, the sanction of the higher authority within whose competence as to amount it lies should be obtained.

*(c) Variation of the Quantities of any item.-*These may be varied by the authority which approved the original contract to the extent deemed necessary provided that the Indian Railway Code Rules relating to control over expenditure are not contravened thereby, and provided also that the total value of the amended Contract shall not exceed the powers of the authority that approved the original.

Where materials are required during a contract period in excess of the quantities contracted for, and such excess is not sufficiently large to justify the invitation of fresh tenders, there is no objection to the quantities under the existing contract being increased suitably. Effort should, however, be made to secure more favourable terms for the increased quantity.

*(d) Variation of the items.-*These may be varied at discretion by the authorities which approved the original Contract to the following extent, namely; existing items may be deleted or additional items inserted at rates, which, agreeable to any general or specific orders at the time being in force, may be decided by the authority making the variation ; subject only to the two provisos of the Rule in sub-paragraph (c) above.

*(e) Extension of delivery period.-*The authority within whose powers the value of the contract falls, is competent to consider requests for extension of delivery period. Such extensions where granted will, however, be subject to government's right to levy liquidated damages in terms of the contract being specifically reserved and likewise. Where higher prices have been paid for earlier deliveries, government's right to recover the amount paid by way of the price difference on this account shall also be reserved.

629. Settlement of Disputes -The standard conditions of contract lay down the procedure for settlement of disputes by arbitration under the Indian Arbitration Act, 1940 and the rules made thereunder. Officers concerned with the operation of contracts and arbitration proceedings should carefully study the provisions of the Indian Arbitration Act, 1940 to ensure speedy disposal of claims and disputes arising in connection with the operation of contracts.