

TENDERS & CONTRACTS[©]

Important Aspects in a Nutshell

- Introduction to Contracts and Contract Documents
- Calling of tenders
- Dispensing with Tenders : quotation system
- Classes of tenders
- Earnest money and security deposit for works contract
- Opening of tenders and scrutiny, briefing note, etc.
- Formation of tender committee
- Consideration of tenders, negotiations, etc.
- Acceptance of tenders
- Price variation clause
- Services/Revenue contracts

Introduction to Contracts

Definition of Contract :

When two or more persons have a common intention communicated to each other to create some obligation between them, there is said to be an agreement. " An agreement" which is enforceable by law is a contract. According to section 10 of the Indian Contract act 1972, 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. The contract should be in writing and attested by witnesses.

Type of Contracts

- –Works contracts
- –Stores contracts
- –Consultancy contracts
- –Revenue/ service licences
- –Contract : legally enforceable agreement.
- –Licence : official or legal permission to do or own anything.

FORMS OF WORKS CONTRACTS – LUMP SUM CONTRACT

The Lumpsum contract is a contract under which the contractor is engaged to carry out a work or effect supply as specified and within a given period for a fixed total sum; his receipt of this sum being dependent on his completing the work or supply to specification and time; irrespective of the actual quantities and kinds of work done or materials supplied in achieving his results.

In the case of such contracts a scale of rates or prices may be agreed upon by which enhancement or reduction from the Lumpsum may be regulated in the event of any departure 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

SCHEDULE CONTRACT

The schedule contract is a contract under which the contractor is engaged to carry out a work or effect supply as specified within a given period, at fixed unit rates or prices for each of the various items comprising such work or supply, the sum to be received depending on the actual quantities and kinds of work done or materials supplied in completing the work or supply to specification and time. It is not repugnant to the above definition to show in such contracts the approximate amount of the contract, based on approximate quantities and the fixed unit rates

PIECE WORK CONTRACT

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 material supplied; within a given period. The zonal contract adopted on the Railways fall under this category.

CONTRACT DOCUMENTS

- Every contract shall be so framed as to place beyond all reasonable doubt all the matters upon which parties intend to agree, and the matters to be agreed upon shall include in detail, the following :
 - What the contractor is to do; when, where, and to whose satisfaction it is to be done.
 - What government is to do; and on what terms.
 - What payment is to be made; what is to cover, to whom it is to be made; and the method & basis of making it.
 - 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 workman.
 - The terms of 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.
 - The measures to be adopted in the event of breach of the contract by either party thereto and the method of and grounds for the determination thereof.
 - The method of settling disputes
- The documents forming integral part of a contract are the conditions of contract, standard or special; the specification, standard or special (and any plans as necessary); the schedule of items, quantities & Rates; the Agreement form; Instructions to tenderers; and Tender form.
- The fundamental principles for the guidance of authorities who have to enter into contract, or to sign the agreements
 - (i) The terms of contract must be precise and definite. There must be no room for ambiguity or misconstruction therein.
 - (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 materially varied except in consultation with the competent 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 financial authority.

–(vi) Whenever practicable and advantageous, contracts should be placed only after tenders have been openly invited and in cases where the lowest tender is not accepted, reasons should be recorded.

–(vii) In selecting the tender to be accepted, the financial status of the individuals and firms tendering must be taken into consideration in addition to all other relevant factors.

–(viii) Even in cases where a formal written contract is not made, no order for supplied, etc, should be placed without at least a written agreement to price.

–(ix) Provision must be made in contracts for safeguarding government property entrusted to a contractor.

–(x) In entering into long-term agreements or contracts, consideration should be given to the desirability of providing for the Railways conditional power to cancel the agreement at any time after the expiry of six month's notice to that effect.

–(xi) The Auditor General and under his direction, other Audit authorities have power to examine contracts and to bring before the Public Accounts Committee any cases where competitive tenders have not been sought or where high tenders have been accepted or where other irregularities in procedure have come to light.

TENDER SYSTEM:

- It is the primary duty of the Executive to obtain the best value possible for the money spent and the tender system should be given a very careful and serious consideration in all cases as one of the most effective methods of securing competitive rates. The exception made to the general rule, that the tenders should be called for, in all cases are based only on practical consideration in order to avoid delay and unnecessary work in the cases of works of comparatively small value

CIRCUMSTANCES WHEN TENDERS NEED NOT BE CALLED FOR

- Except where for reasons which should be in public interest the General Manager decides that it is not practically advantageous to call for tenders, all contracts over Rs. 25,000/- in value should be placed after tenders have been called for in most open and public manner possible and with adequate notice. For works contracts based on schedule of Rates in force on the Railway, calling of tenders up to Rs. 50,000/- can be dispensed with by the General Manager without recording reasons for doing so. In all other cases, where it is decided not to call for tenders, the reasons should be recorded and financial concurrence obtained
- It has been decided by Board vide their letter No. 94/CE-I//CT/4, dated 17.10.2002, that the power to dispense with calling of tenders and acceptance of quotations shall be exercised by SS/JA and SA Grade officers only and with Finance concurrence as per following schedule: -

Rank of Officers	Financial Limit	Total Financial limit within a financial year	Revised Financial Limit	Revised Total Financial limit within a financial year
Sr. Scale (holding independent charge)	50,000	2,00,000	1,00,000	5,00,000
JA Grade	1,00,000	5,00,000	2,00,000	20,00,000
SAG/DRM	2,00,000	10,00,000	4,00,000	40,00,000

Procedure of work done by quotations

While accepting quotations as now empowered, the following guidelines may be strictly followed:-

- (i) Quotations should not be for items which can be executed through the existing contracts including zonal contracts.
- (ii) Quotations should not be for fancy (expensive but of low utility) items.
- (iii) Quotations should only be for works, which are urgent in nature.
- (iv) Quotations should normally be invited from at least 3 contractors working in that area. At least two of them should be from the approved list of the Division.
- (v) Accepting authority must take precautions to see that the quotations are from genuine firms (and not from fictitious firms) and
- (vi) A register showing full particulars of works authorised will be maintained by each officer and this should be open to verification by Accounts while passing the bills. DRM/ADRM should have a monthly review as a matter of control.

Accepting Authority should also ensure : –

- (i) The rate/s accepted is/are reasonable.
- (ii) Adequate funds are available.
- (iii) Calling of tender was not justified.–Adequate number of quotations (normally not less than 3 has been called as per procedure in vogue. Under no circumstances should a single quotation be accepted without prior financial concurrence & acceptance of competent authority.

POINTS TO REMEMBER

- (i) Normally powers to dispense with calling of tender should be exercised sparingly.
- (ii) The work should not be split up for the purpose of bringing it within ambit of this dispensation.

(iii) Sealed quotations for the work should normally be invited with a minimum notice of 7 days. For lesser period reasons should be recorded in writing.

(iv) The quotations so obtained should be deposited in a sealed cover and kept for the purpose in the office of the officer calling for quotations.

(v) The box should be opened at the appointed time and date and quotations read out before parties who have quoted and are present.

(vi) The quotations should be numbered and initialled by the officer opening them after which they should be properly evaluated and tabulated.

(vii) An accounts representative or Divisional Accountant also be associated in the above process.

Conditions to be fulfilled before Calling for Tenders

- Before calling tenders, the following conditions should be fulfilled :
 - (i) The Railway is in a position to hand over the site of work and plan to the contractor.
 - (ii) The Railway should be ready with full knowledge of character and scope of work.
 - (iii) The Railway is ready with design, detailed drawing, schedule of quantities.
 - (iv) Tender documents for sale is ready from the date of notification of tender notice
- In case of tenders involving foreign exchange for expenditure in excess of Rs. 50,000/- prior reference to the Rly. Board shall be made for their approval before tenders are called for.
- In contracts where the foreign currency component is estimated to be in excess of Rs. 2 lakhs, special procedure prescribed for invitation of tenders etc. should be followed
- Sanction of detailed estimate necessary before calling for tenders : dispensation only in "extremely urgent" cases.
- Value of tender forms based on contract value

TENDER NOTICE

- The tender notice should in all cases state: -
 - (i) Name and place of work
 - (ii) Approximate cost of work
 - (iii) Amount of earnest money and the form in which it can be deposited.
 - (iv) Period of completion.
 - (v) Place and time where tender documents can be seen.
 - (vi) Place and time where tender documents can be obtained.
 - (vii) Date and time up to which tender documents will be sold.

- (viii) The amount, if any, to be paid for such documents.
- (ix) The place where the date on which and the time when tender are to be submitted and are to be opened.
- (x) Any other information relevant in tender notice.

- How to invite Tenders ?
 - Notices in Railway offices.
 - Advertisements in vernacular/local newspapers
 - Advertisement in National/International newspaper
 - Registered letters to approved contractors
- Time frame
 - Normally, Tender notice should be published at least a month in advance of the date of opening. Extremely urgent works ,three weeks notice.
 - Tender paper for sale should be available three weeks before opening of tender.

TENDER DOCUMENTS

- The tender documents consist of: -
 - (i) Instructions to tenderers and conditions of tenders,
 - (ii) Regulations for tenders & contracts, GCC & standard specifications.
 - (iii) Special conditions of contract, if any.
 - (iv) Special specification, if any.
 - (v) Tender schedule.
 - (vi) The form of agreement, which the successful tenders, is required to execute
- Approximate quantities/value item wise should always be indicated in the tender papers while calling for the tender for works.

Cost of Tender Forms

1	For works costing upto Rs. 5 lakhs	Rs. 1000
2	For works costing above Rs. 5 lakhs and upto 20 lakhs	Rs. 2000
3	For works costing above Rs. 20 lakhs and upto Rs. 50 lakhs	Rs. 3000
4	For works costing above Rs. 50 lakhs and upto Rs. 2 Crores	Rs. 5000
5	For works costing above Rs. 2 Crores and upto Rs. 50 Crores	Rs. 10,000
6	For works costing above Rs. 50 Crores (i) If any plan/drawing is attached with Tender form, Rs. 200/- per plan/drawing will be levied extra. (ii) If any Tender form is to be sent by Registered Post, additional Postal expenses @ Rs. 500/- per tender form will be charged.	Rs. 25,000

Classes of Tenders

OPEN TENDER

- The system of invitation of tenders by public advertisements in the most open public manner possible should be used as a general rule and must be adopted with certain exceptions
- Wide publicity may be given to the call of tenders by :-
 - (a) Notices in Railway offices,
 - (b) Notices in other Govt. Offices,
 - (c) Advertisement in vernacular/local news papers,
 - (d) Advertisement in National/International newspapers, if work is very important. •

LIMITED TENDER:

- 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 approval of the competent authority. The reasons for inviting Limited tenders from firm/contractors should be kept on record while approaching finance for concurrence.
- Board vide their letter No. 2007/C-1/CT/18 dated 28.09.2007) have decided that Civil Engineering works up to Rs. 5 Crore for both open line and construction project may be awarded on the basis of limited tenders. For this purpose, a list of approved contractors should be properly maintained and tenders called only from amongst the contractors borne on the approved list.
- The schedule of power will be as under :-

OFFICER	POWERS FOR LIMITED TENDERS
SAG, PHOD/CHOD	Over Rs. 1 Cr. & up to Rs. 5 Cr.
DRM/SAG	Over Rs. 25 lakhs & up to Rs. 1 Cr.
JAG/SG	Up to Rs. 25 lakhs

- While exercising powers above, the following conditions should be fulfilled.–
 - (a) The minimum number of contractors to be borne on the approved list should not be less than 10 (Ten).
 - (b) The approved list of contractors should be up-dated annually, without fail.
 - (c) Notwithstanding the provisions above, the Railway may invite open tenders in the following circumstances:-
 - (i) In the event of in-sufficient response to the tender from the contractors borne on the approved list.●
 - (ii) When the work is of special nature and contractors with requisite experience are not available on the approved list, and
 - (iii) When ring formation is suspected.●
- Limited tenders may be invited from all the contractors borne on the approved list and not restricted to 10 numbers of contractors.● The tender notices should be sent by registered post or under certificate of posting or handed over to the parties concerned and their clear acknowledgement obtained.●Special Limited Tenders :
 - Limited Tenders called from contractors not in approved list
 - Finance concurrence& GM’s approval.

SINGLE TENDER

- Calling of single tender should be resorted to only in exceptional circumstances after recording necessary certificates that:

1. It is not in the public interest to call for tenders.

2. The demand is urgent.

3. No other suitable contractor is available to execute the work.

4. It should also be recorded as to why single tender is being resorted to in preference to limited tenders.

- It should be ensured that prior financial concurrence is invariably obtained before obtaining single tender, which should not be below the level of SAG Officers. The offer should as usual be considered by the Tender committee before acceptance by the competent authority viz. GM.

- As per the guidelines of Railway Board (para 1214A added to Indian Railway Code for the Engineering Department 1993 vide letter no. 97/CE.I/CT/32 dated 19.01.2000) Single tender can be awarded in following situation such as:--

(1) EMERGENT SITUATION.

(a) Accidents, breaches involving dislocation of traffic.

(b) Works of specialised nature to be personally approved by the GM/CAO(C) with prior concurrence of FA&CAO. This powers can not be delegated to any other authority.

(c) Any other situation where General Manager personally considers it inescapable to call for single tenders subject to this powers can be exercised by GM only with prior concurrence of Finance

(2) Annual Maintenance Contract for equipment can be placed on single tender basis on authorised dealers with the approval of Additional General Manager of Railways.

NOTE: This power may be delegated by the General Managers in consultation with FA&CAO to PHODs/DRMs upto a maximum of Rs. 5 lakhs per item per annum. On redelegation, these powers would be exercised by PHODs/DRMs in consultation with associate finance.

Earnest money and security deposit

EARNEST MONEY:

The amount of earnest money to be deposited should be sufficiently large to be a security against loss, in the event of contractor failing to under take the work or to furnish the required security within the stipulated time after acceptance of his tender or until such time as the sums due to him for a sufficient guarantee, as the case may be.

-For works estimated to cost upto Rs. 1 Crore – 2% of the Estimated cost of the work.

-For works estimated to cost more than Rs. 1 Crore – Rs. 2 lakh + ½ % of the excess of estimated cost of work beyond Rs. 1 Crore subject to a maximum of Rs. 1 Crore.

- The cost of work for computing earnest money will be calculated based on current prevalent rates (and not at par with schedule of rates) .
- The amount indicated above should be notified and collected as a security deposit for the due performance of the stipulation to keep the offer open till such date as may be specified in the tender. The tenderer after submitting his tender will not resile from his offer or modify the terms and conditions. If the tendered fails to observe or comply with the stipulation, the amount indicated aforesaid shall be forfeited by the Railway. If the tender is accepted this earnest money will be retained by the Railway as a part of security for due and faithful fulfilment of contract
- The earnest money deposited by successful tenderer will be retained by the Railway as part of the security deposit for due and faith fulfilment of the contract. The earnest money of the unsuccessful tenderers will be refunded as expeditiously as possible
- Tender unaccompanied by the requisite amount of earnest money should under no circumstances be entertained and should be summarily rejected in respect of works contract.
- The earnest money can be accepted in any of the following forms:-
 - (i) Cash
 - (ii) Deposit Receipts
 - (iii) Pay order
 - (IV) Demand Draft by a Nationalised Bank or a Schedule Bank

Security deposit:

- Security deposit is to be paid by contractor in token for the due fulfilment of a contract. The amount of security deposit required will be as under :--
 - (a) Security deposit for each work would be 5% of the contract value.
 - (b) The rate of recovery will be @10% of the bill amount till the full security deposit is recovered.
 - (c) Security deposit will be recovered from the running bill of the contractor and no other mode of collecting security deposit such as BG/FD etc. will be accepted towards security deposit.

Performance Guarantee

On the acceptance of the Tender, the successful bidder shall submit Performance guarantee amounting to 5% of the contract value before signing of agreement.

Opening & Scrutiny of Tenders

TENDERS RECEIVED BY POST:

Tenders received by post should be entered in the Tender register and the time of receipt should be recorded on the cover of the tender and deposited before the closing time in the tender box.

OPENING OF TENDERS:

Tenders should be opened at the specified time, date and place by the Officer nominated for the purpose. The presence of Accounts representative at the time of opening of tenders is required, if the tender value is over Rs. 10,000/- in the presence of the intending tenderers . The sale of tender papers should be stopped four hours before opening of tenders .

PRECAUTIONS TO BE OBSERVED WITH OPENING THE TENDERS: -

•The officer, who opens the tenders and the Accounts representative witnessing the tender opening, should: -

(i) Initial (with date) the cover containing the tender, front cover page of the tender 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 specification and other essential parts of the contract documents.

(iii) Mark and initial all over writing in red ink. The corrections, over writing 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 paper and attested with date.–

(iv) Clearly indicate on each page of schedule attached to the tender, any ambiguities in rates quoted by the tenderers in words or figures.

(v) Should specifically record whether samples have been supplied or not along with tender .

TENDER REGISTER:

•Particulars of tenders should be noted in a register which should include the following information: —

- (a) Name of work
- (b) Tender notice no.,
- (c) Nature of tender
- (d) Date of opening of tender
- (e) Earnest money required.
- (f) Serial number

- (g) Name of tenderers
- (h) Date of application
- (i) Cash received
- (j) Cash remitted (money receipt No. & CR note no. with date)
- (k) Tender forms no.
- (l) Signature of issuing officer
- (m) Signature of tenderer
- (n) Remarks.

- The tender register should be signed by the representative of the Executive and Accounts who open the tenders. The original tenders should always be kept in the custody of a Gazetted Officer till tabulation chart is prepared and got signed by the

Tender opening Committee.

COMPARATIVE STATEMENT

- After the tenders are opened, the tender documents should be in the custody of a Gazetted Officer till the tender is finalised. A comparative Statement of rates, amounts, quantities and other important tender conditions should be prepared by a responsible staff in presence of the executive Officer who opens the tenders for which necessary office order fixing responsibility of the staff concerned should be issued prior to giving the work to him.
- Each and every page of the comparative statement must be signed by the staff preparing it and checked and signed by the section in charge.
- The Executive Officer and the Accounts Officer associated with Opening of tender should carry out 100% check of the comparative statement and sign each and every page thereof and not the last page only.
- The comparative statement should also show the following information: --
 - (a) Position regarding submission of current and valid ITCC.
 - (b) Position regarding deposit of earnest money.
 - (c) Late & delayed tenders should be entered prominently in red ink.
- It must be ensured that all tenders received are tabulated in the comparative statement and put up to the Tender Committee for their consideration without any creening by any other official.
- The Briefing note shall contain the following information in detail:-
 - (i) The name of tenders, their tendered rates and value of work.
 - (ii) Particulars of earnest money deposits.
 - (iii) Position of plans and sanctioned estimate.
 - (iv) Whether N. S. Rates included in the Tender Schedule.

- (v) Latest accepted rates for similar nature of work in the same or contiguous area, prevailing zonal rates and market rates in the area
- (vi) In case of tenders for residential building, the comparison of rates with ceiling cost.
- (vii) Comments on tenderers special conditions/variations from standard specification and special conditions to the tenders particularly in regard to their financial implications on the rates and value of the work.
- (viii) Comments, if any, on working conditions prevailing in the area.
- (ix) Any special circumstances, which may affect the rates in the area.
- (x) Comparison of rates offered with the estimated cost of the work/with last accepted rates.
- (xi) Comments on financial standing, technical competence and capacity of tenderers.
- The briefing notes shall be prepared under the direction of the concerned Executive Officer. He will ensure that all aspects enumerated above are included in the briefing note and sign each page of the briefing notes.
 - The financial evaluation will be done by the Estimator assigned for the job and shall be checked by Head of Chief Estimator. They will be responsible to the correctness of the comparative statement and the briefing note and sign each page of the same.
 - The section in charge dealing with the tenders shall ensure that all special conditions have been accounted for and that comparison has been made with prevailing rates of the area and sign on each page of the briefing note.
 - SO (A) of finance branch will be responsible for the verification of the financial data etc. in the briefing notes and put up the same to the Accounts Officer in finance wing along with the relevant records for his vetting and signature on each page.
 - Only the signed and vetted copies of briefing note shall be circulated amongst the T. C. members in advance preferably along with T. C. Meeting notice.

DELAYED/LATE TENDERS:

- Tenders received before the time of opening but after due date and time of receipt of tenders are delayed tenders.
- Tenders received after the specified time of opening of the tenders are late tenders.
- Late/Delayed/Post tender offers are to be treated as invalid. Exceptional cases, Board's approval.

Tender Committee

CONSTITUTION OF TENDER COMMITTEE

- Tender Committee should be generally constituted by the authority competent to accept the tenders when the tender value involves more than Rs. 25,000/-. When the G. M. is authority competent to accept the tender, the HOD concerned should arrange/constitute the Tender Committee.
- The Tender Committee should consist of a minimum 3 members of whom one should be from the Accounts department and one from the concerned executive department. The third member should be from another department, which also deals with such contract matters.
- On basis of value of tender following authorities are decided Tender inviting authority, Tender Opening Committee, Members of Tender Committee, Tender accepting authority, Contract Signing authority
- The tender Committee should be so constituted that an officer recommending acceptance of a tender in his capacity as a member of Tender Committee shall not be also the accepting authority of the same tender.
- In such cases, the officer concerned should put up the T. C's proceedings to the next higher authority for acceptance, not with under standing the fact that the Tender Committee's recommendations are within his own powers of acceptance.
- It is general practice that the constitution of Tender Committee should be determined by the value of lowest tender. However, if the tender Committee, so constituted recommends to by passing the lowest tender for certain reasons, and the next offer is beyond its competence than a higher-level committee should be constituted to deal with the case further.
- The proceedings of the Tender Committee will be put up by convenor member of tender Committee direct to the accepting authority. •

CONSIDERATION OF TENDERS

- RESPONSIBILITY OF TENDER COMMITTEE:
- Tender should be considered without delay.
- Tenders should be finalised within the period of validity of offers.
- Clarification should not be sought in piece meal from the tenderers. All the information necessary for consideration of offers should be called for at one time, leaving no occasion for seeking further extension of time.
- In case of 'Open' tenders, if the lowest tenderer is not on approved contractor, he should be asked to produce evidence of his capacity of execution and financial position. If he fails to produce such credentials this fact should be kept place on record while considering the next higher tender.
- Undue emphasis should not, however, be placed on previous experience of contractors, as it would cut across the very principle of inviting open tenders and by shutting of all new comers, it would tend to create monopolistic tendencies .
- In all cases where the lowest or lower tenders are rejected, full reasons for the rejection should be recorded, so that reasons for such rejection would be available on files.

- The capacity, credentials and financial status of the tenderer should be investigated and only if these are found satisfactory the contract should be awarded .
- Tender committee should examine, while making their recommendation all relevant factors such as the existing work load on the lowest two or three tenderers, their capacities to execute further work and also whether the rates quoted are reasonable and workable.
- Tender committee, while examining the credentials and partnership deed etc. of the tenders, should see whether a group of persons or firms having different names but controlled by same management have submitted separate tenders and should ensure that real and fair competition exist in response to the tender notice before they recommend acceptance of one of the tenders.
- Tender committee while accepting condition stipulated by the tenderers particularly conditions involving extra payment should make a realistic and practical assessment of the full utilisation of the benefit which should be adhered to
- After submission of the proper tender documents in the tender box by the tenderers, subsequent modified offers on slip/letter dropped in the tender box will not be considered valid
- Tender committee and accepting authority are competent to consider tender from contractor with adverse report & judge his suitability/unsuitability for a particular work.
- Particular care should be taken by the Tender Committee to ensure that the rates quoted for individual items are a realistic and are not abnormal and unworkable in respect of any item of work.
- Every Tender Committee constituted must go through the tenders, comparative statement and briefing notes and consider the tenders and frame their recommendations. It should be ensured that there is no delay in finalising the minutes of tender committee and as far as possible the draft of minutes should be finalised by the Tender Committee at the meeting itself. Under no circumstances any of the members of the Tender Committee should refer the tender case to any officers/staff under him or to any one else for scrutiny and/or comments. The proceeding of the Tender Committee should be signed by the members of the Tender Committee on each and every page. The recommendations of Tender Committee are to be put up direct to the accepting authority, without further recommendations or comments from any one.
- In addition to the generally known responsibility of the Tender Committee, they have a special responsibility to scrutinise carefully the rates.
- In the evaluation and consideration of Tenders, the Tender documents should be carefully scrutinised particularly in regard to the reasonableness of the rates and specially when change have been made in the form of invitation of tenders
- When single offer is received in response to the 'Open' or a 'Limited' tender, this should not be treated as 'Single' tender, but as 'Open' or 'Limited' tender only, as the case may be and processed accordingly.
- When in response to a call of 'Limited tender' (as distinct from single or open tenders under the rules in force) only one tender is received fresh tenders should be invited, except in very urgent cases. The discretion to class a work 'very urgent' for this purpose should rest in an officer not lower in status than a Divisional Railway

Manager and full reasons should be recorded justifying such a course of action .Even in case of open tender when only one tender is received, the Tender Committee should examine interalia, whether the rate quoted is reasonable as the only tender received need not necessary be accepted straightway merely, because it is in response to a call of open tenders.

- In case where specifications in a tender have undergone any major change before the tender is furnished, fresh tenders should be called for, giving sufficient notice to the tenderers
- When the work is spread over various places on the Rly., it should be advantageous if the Rly. Administration, while inviting tenders for such work, invites quotations for the work at all places collectively as well as for the work at each place or group of places fairly close to each other
- Not withstanding the general ban, late tenders received from established/reliable suppliers conferring a substantial advantage can be considered by the railway after obtaining Board's approval in each case. Such cases should be recommended for consideration of the Board with the personal approval of the G.M. duly concurred in by the FA&CAOI. The Railways should not enter into any dialogue with the agency submitting a delayed tender without obtaining Board's prior clearance.

NEGOTIATIONS

- The selection of contractors by negotiation is an exception rather than rule and may be resorted to:—

(a) Where all the tenders are considered to be unreasonably high in value and it is felt that re-tendering would not secure better advantage to the Railway and/or

(b) Where the lowest tender is technically not acceptable or is rejected because of unsatisfactory credentials, inadequacy of capacity or unworkable rates and next higher offer to be considered in accordance with the established procedure is found to be unreasonably high.

(c) Where in the case of proprietary items of stores, the price quoted is considered to be unreasonably high.

- The decision whether to invite fresh tenders or to negotiation should be taken by the competent authority after obtaining the recommendations of the Tender Committee.

- In the light of instructions from CVC communicated vide Railway Board's letter No 99/CE-1/CT/1 dated 15.1.99 post tender negotiations are banned with immediate effect except in the case of negotiations with L1 (i.e. lowest tenderer.) Thus negotiation, if inescapable, may be held only with the lowest tenderer.

- After the competent authority has decided to call specific tenderer for negotiation, the following procedure should be adopted: —(a) The lowest tenderer to be called in for negotiations should be addressed as laid down by Board, so that the rates originally quoted by them shall remain open for acceptance in the event of failure of negotiation .

(b) In case, however, the selected tenderer prefers to send a revised bid instead of being present at the negotiation, the offer should be taken into account.

(c) In no case, including where a ring is suspected, should negotiation be extended to those who had either not tendered originally or whose tender was rejected because of unsatisfactory credentials, inadequacy of capacity or unworkable rates or (in the case of other than stores tenders only) whose tender was not accompanied by requisite earnest money.

(d) While conducting negotiations with tenderer and obtaining revised rates and recommending the same for acceptance, the tender committee should ensure that the fundamental requirements of safeguarding Railway's financial interest have been fully observed.

NOTE:

1. The above instructions regarding negotiations should be followed in respect of all contracts- works, stores commercial etc.

2. The above instructions may not be applied rigidly to tenders for specialised works or equipment where tenderers may quote according to their own specifications and design for various reasons such as improvement in technology etc. and it may become necessary to discuss technical and other details with them to select the most suitable offer. Such cases should necessarily be very few and far between and the procedure of conducting negotiations should be decided on the merits of each case in consultation with the FA&CAO.

ACCEPTANCE OF TENDERS

- An unqualified acceptance of a tender constitutes a binding contract until a formal agreement is constituted and in order to ensure this fact, the acceptance letter should be suitably worded. However, if the acceptance of the tender by the Railway is a conditional acceptance, it requires the consent of the tenderer before binding contract takes place .

- In case the terms & conditions incorporated in the letter of acceptance/purchase orders are different from those originally offered and modified by the tenderer subsequently during the course of negotiations, discussions or otherwise, the contractor should be asked to return one copy of the letter of acceptance/purchase order duly signed by the same person who signed the original offer against the tender in token of his acceptance of contract to revised conditions .

- The letter of acceptance and the agreement should be signed for and on behalf of President of India by the competent authority of the Railway, as delegated in this respect.

- The recommendations of Tender Committee should be put up to the original accepting authority even though the value of the tender after negotiations comes in the competence of the lower accepting authority .

- The acceptance or rejections of tenders is left entirely to the discretion of the authority empowered to do so. The reasons for departing from the recommendations of the Tender Committee should be recorded by the accepting authority. If the Finance member finds some financial impropriety in the award of contract, he can report the matter to FA&CAO. Though the final decision would rest with the accepting authority, he may obtain the opinion of Associate Finance at the appropriate level if necessary before making final decision.

- Where for any reasons the accepting authority does not consider justifiable to accept the recommendations of the Tender Committee he may, if so desires, refer the matter to the Tender Committee for re-consideration setting out reasons for not accepting the recommendation of the Committee.
- As the tender accepting authority has to take final decision on the Tender Committee's recommendations after considering the viewpoints of all members of the committee including the Finance Member, the accepting authority should invariably record his reasons in writing for not accepting the recommendations of any member
- If the Finance as an internal check authority feels that some gross financial impropriety is involved in the award of the work, he can report the matter to FA&CAO and seek higher Financial advice before giving his orders. This shall be obtained as per following procedure :-
 - (a) In case of tenders in which DRM or Head of Department is the accepting authority; the request for financial advice should be routed to FA&CAO with the personal approval of G.M.
 - (b) In case where the accepting authority is less than DRM or Head of Department, the higher financial advice should be sought for from the FA&CAO(EB) with the approval of DRM/HOD as the case may be.
 - (c) The seeking of higher financial advice should be restricted to in exceptional cases involving a major policy deviation or monetary implication.
 - (d) While making the reference for a higher financial advice, the points, on which this advice is required, should be specifically indicated and reference should not be made in a general way.
 - (e) The higher financial advice in reply to the specific points should also be given for each question raised and should be made general.

PRICE VARIATION CLAUSE

- Price variation clause will not apply if the price variation is up to 5%. Reimbursement/recovery due to variation in prices shall continue to be made only for the amount in excess of 5% of the amount payable to the contractor, as hither to (in other words price variation up to 5% is to be absorbed by the contractor). The escalation is to be worked out as per given formula taking into consideration the price index prevalent at the time of calculating the price variation.
- No maximum value for the price variation is to be prescribed.
- Before calling for tenders, approval of an officer not below the rank of SA grade should be obtained who will satisfy himself about all the pre-requisitions (date of readiness, likelihood of delay in execution of the work, exercise of discretion to provide price variation clause in contracts of value between Rs. 10 lakhs and Rs. 25 lakhs) required for calling tenders have been fulfilled. He will particularly look into the reasonableness of the period provided for the completion of the work.
- Price variation will be calculated once every quarter for the on account payments made in that quarter if more than one on account payment is made, calculation for payment towards price variation will be made in each bill.

- Calculation of payment, on account of price variation should be based on the average price index of the three months of the quarter.
- If the rates quoted in negotiated tender are accepted it is logical that the base month for price variation clause is the month in which negotiation are held. This may, however, is required to be clarified on the tender conditions or in negotiation.
- The fixed cost of the contract value on which no price variation would be permissible may be kept at 15% of the value of the contract.
- The demand for escalation of the cost may be allowed on the basis of provisional indices made available by Reserve Bank of India. Any adjustment needed to be done based on jointly published indices is to be made as and when they become available.
- For all extensions of time granted to the stipulated date of completion of work, the price variation clause will be applicable except extension/s granted under clause 17(4) of G.C.C., in respect of the contracts where time was the essence of the contract.

REVENUE/SERVICES CONTRACTS

- A' Type Licenses
 - Earning Licenses
 - Basic objective maximisation of earning
 - May or may not be any restriction for quality
 - Example leasing of coach
- B' Type Licenses
 - One time license fee together regular commission on sale.
 - Prices are not controlled by the railway administration.
 - Services cannot be classified as essential passenger amenities.
 - Example shops in station complex
- 'C' Type Licenses
 - Prescribed license fee is paid by the licensee. There may be revenue sharing as well.
 - Price of goods/services are regulated by railways
 - Example Vending & Catering contract
- 'D' Type Licences
 - Railways some periodic service charges
 - Relation of company and distributor
 - Long term relationship

Methodology of Entering into Contract

- Offers should generally be based on open offers through press notification.
- Limited Tender with permission of competent authority.
- 'A' Type Licences only financial bid should be called through open bidding.

- 'B' & 'C' Type Licences two packet offer should be sought.
 - First packet should be technical bid for judging technical capability of the bidder.
 - Second packet should consist of licence fee and commission on sale etc.

- 'D' Type Licences two packet offer should be sought.
 - First packet should be technical bid for judging technical capability of the bidder.
 - Second packet should consist of minimum service charges to be paid by the railways for services to be rendered.

- Screening Committee
- Accepting authority
- Duration of licences
 - Renewal & Termination Clauses should incorporated in the agreement.

- Quality of service and penalties
 - In licences where Railways regulate the prices of the goods /services overcharging shall be considered as a grave offence.

- Legal provision
- Approved list
- Miscellaneous
 - Register for all type of licences with due date of expiry.
 - Annual Confidential Performance Report of licensee should be maintained.
 - Minimum reserve price fixed in consultation with finance.
 - Annual fee enhancement in percentage or otherwise should be done uniformly.
 - Method and procedure of inspection should be clearly laid down
 - Provision of security money and earnest money.
 - Performance guarantee if required can be incorporated.