

CHAPTER-VI

Contracts General Principles

Types of contracts, Departments responsible for awarding them	601
Tender System	602-603
Invitation to tender	604 -606
Opening of Tenders (Deleted)	607-610
Tabulation statement (Deleted)	611-613
Constitution of Tender Committees	614-619
Earnest Money and Security Deposits	620
Contract Agreements	621
Execution of contract prior to Commencement of Works or supplies	622-624
Contract Documents	625
Conditions of Contract	626-627
Variation of contract Conditions	628
Settlement of Disputes	629

Ministry of Railways (Railway Board)

CHAPTER VI

Contracts-General Principles

601. Within the powers 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, services and works as per extant delegation of powers. These contracts are broadly categorized as below unless otherwise specified by Railway Board instructions:-

	Contracts	Department responsible for awarding contract
1	Supplies of stores of all description except those which may form part of a work contract.	Headquarters Stores/Railway Board
2	Fabrication and supply of clothing and uniforms, printing and supply of books and forms etc.	Headquarters Stores
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	Commercial
7	Cycle/Scooter/moped stands at Railway stations	Commercial
8	Book stalls and weighing machines at Railway Stations	Commercial
9	Out-agency and City Booking Offices	Commercial
10	Lease of plots of land to Railway users	Commercial
11	Contracts with siding owners (whether private siding or assisted siding)	Engineering and Commercial
12	Lease of Railways' surplus land for 'grow more food' campaign, etc	Engineering
13	Zonal contracts for civil maintenance and other	Engineering

	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
17	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
19	Sanitation contracts	Commercial/Mechanical/Medical

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. Procurement of common use Goods and Services through GeM is mandatory for Goods and Services available in GeM.

604. Deleted.

605.

- 1) **Invitation of tenders** -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 for the submission of tenders, which in case of large works should

not be less than 21 days. The above prescribed tender period may be reduced from 21 days in the exceptional circumstances in consultation with the Financial Adviser and Chief Accounts Officer. This shall be applicable to Works, Earnings and Service Contracts with following modification:

For tenders valued upto and including Rs 2 crore (or as modified from time to time), invited through e-tendering, the tender notice period can be reduced upto 14 days in consultation with associate finance.

- 2) For works in remote locations or of specialized nature or amount higher than Rs.50 crore (or as modified from time to time) adequate tender notice period (not less than 21 days) should be given for preparation to the potential bidders in order to ensure competitive and well informed bidding.
- 3) The minimum tender notice period shall be reckoned from the date the tender is published on e-tendering website. The publication in newspaper will continue as per the present practice the effective date of tender notice will be the date of uploading on e-tendering website.
- 4) The tender validity period shall be kept three times the tender notice period.
- 5) In case of Supply Contracts the minimum time limit for tender opening is 21 days and the corresponding time limit for global tender is 30 days from the date the tender is published on e-procurement website.
- 6) For GeM procurement, extant instructions should be followed.

606. Standard tender forms are uploaded on IREPS by the concerned Departments for tendering.

607. Deleted.

608. Deleted.

609. Deleted.

610. Deleted.

611. Deleted.

612. Deleted.

613. Deleted.

614. Constitution of Tender Committees -Tender committees should be constituted by General Manager in consultation with the Financial Advisor and Chief Accounts Officer unless otherwise specified by Railway Board.

615. For Open tenders for Works invited through e-tendering:

1. Tenders having value up to and including Rs.50 lakh (or as modified from time to time) can be directly accepted by concerned executive in Selection Grade/JAG level or Sr.Scale level holding independent charge. However, in case the tender notice period is less than 21 days or accepting authority intend to accept offer other than lowest financial offer; direct acceptance of tender is not allowed in the tender upto and including Rs 50 lakh (or as modified from time to time).
2. For e-tenders above Rs 50 lakh (or as modified from time to time) and upto

and including Rs.5 crore (or as modified from time to time), the Tender Committee shall be constituted with two members out of which, one should essentially be from the Finance Department and the other from the concerned Executive Department.

3. For works e-tender of value more than Rs 5 crore (or as modified from time to time), three members Tender Committee shall be applicable, except for Composite Tenders, where Tender Committee can be constituted with four members.

In case of Supply contracts:

1. For tenders having value upto and including Rs.50 lakh (or as modified from time to time), can be directly accepted by Depot/Divisional SG/JAG Stores Officers as per powers delegated.
2. For tenders having value above Rs.50 lakhs (or as modified from time to time) and upto Rs.1 crore (or as modified from time to time), the tender committee will consist of two members in Sr.Scale, of whom one will be from the Accounts Department and one from Stores Department.
3. For tenders having value above Rs.1 crore (or as modified from time to time), the tender committee will consist of three members one from the Stores Department, one from the Accounts Department and one from the indenting Department, as per powers delegated.

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 under gone 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 -Tenders un-accompanied by the requisite earnest money should, under no circumstances, be entertained and should be summarily rejected.

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 or supply cannot be postponed till the preparation and sanction of the contract documents, prior consultation with the Financial Adviser & Chief Accounts Officer 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 Adviser & Chief Accounts Officers, 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 & Chief Accounts Officer; 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 & Chief Accounts Officer 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 & Chief Accounts Officer 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 & Chief Accounts Officer. 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 and Conciliation Act, 1996' and the rules made there under. Officers concerned with the operation of contracts and arbitration proceedings should carefully study the provisions of the 'Indian Arbitration and Conciliation Act, 1996' to ensure speedy disposal of claims and disputes arising in connection with the operation of contracts.
