

**Government of India
Ministry of Railways
(Railway Board)**

No. 99/RS(G)/779/2

New Delhi, dated : 15-10-2007

The General Manager, All Indian Railways & PUs including NF(Const.).
 The General Manager, CORE, Allahabad.
 The General Manager, Metro Railway, Kolkata.
 The Director General, RDSO, Lucknow.
 The Director General, Railway Staff College, Vadodara.
 CAO/DCW, Patiala and COFMOW, New Delhi.
 CAO/MTP, Mumbai & Chennai,
 CAO/MTP, NBCC Place, Bhishma Pitamah Marg, Pragati Vihar, New Delhi.
 The MD, RITES, RITES Bhavan, Sector-29, Gurgaon.
 The MD, Konkan Railway Corporation Ltd., Raigad Bhavan, 8th Floor,
 Sector-11, CBD, Belapur, Navi Mumbai.
 The MD, Mumbai Rail Vikas Corporation, 2nd Floor, Church Gate station
 Building, Mumbai-400020.
 MD, CRIS, Chanakyapuri, New Delhi.

Sub: Tendering process - Negotiation with L-1

The instructions issued by CVC, vide their Order No.005/CRD/012 dated 03-03-2007, on the above matter have been examined in detail by a Committee of Additional Members consisting of AM/CE, AM/RS, AM/F & AM/ME as nominated by Board. Accepted recommendation of the Committee on the guidelines contained in CVC's letter dated 03-03-2007 are detailed below.

- (i) There should normally be no negotiations. Negotiations will strictly be an exception rather than rule and only where rates received are unjustifiably higher and also in situation of cartel formation with unreasonable rates.

Before resorting to negotiations, adequate care should be taken scrutinize the rates received to avoid infructuous instances negotiations as such negotiations may cause unnecessary delay & procurement without any appreciable reduction in rates.

- (ii) Negotiations, wherever held, should only be with the L-1 tenderer as explained in Board's letter of even no. dated 01-03-2000.
- (iii) There shall be no compromise to transparency, equity or fair treatment in acceptance of tenders. Prescribed time frame of settling tenders is to be strictly adhered to.

Contd.2/-



(iv)(a) As regards the splitting of quantities, some organizations have expressed apprehensions that pre-disclosing the distribution of quantities in the bid document may not be feasible, as the capacity of L-1 firm may not be known in advance. It may be stated that if, after due processing, it is discovered that the quantity to be ordered is far more than what L-1 alone is capable of supplying and there was no prior decision to split the quantities, then the quantity being finally ordered should be distributed among the other bidders in a manner that is fair, transparent and equitable.

(b) While deciding in advance to have more than one source of supply, Railway should keep in view the various extant guidelines issued by Railway Board from time to time on the matter of splitting of the tender quantity and with specific reference to

- (i) Past Performance
- (ii) Capacity
- (iii) Delivery requirements in the tender
- (iv) Quantity under procurement
- (v) Vital / critical nature of the items.

In all cases of pre-decided split ordering, the following shall be stipulated as tender conditions:

- (i) The Purchaser reserves the right to distribute the procurable quantity on one or more of the eligible tenderers. Zone of consideration of such eligible tenderers will be the right of the Purchaser.
- (ii) Whenever such distribution/ splitting of the tendered/ procurable quantity is made, the quantity distribution will depend upon the differential of rates quoted by the tenderers (other aspects i.e. adequate capacity-cum-capability, satisfactory past performance of the tenderers, outstanding orders load for the Railway making the procurement etc. being same/similar). For example: if the differential of rates between the L-1 and L-2 eligible vendors is 5%, then the distribution of quantity will be approximately in the ratio 55:45 (55% for the L-1 tenderer). If the price differential is 3%, then the distribution of quantity will be approximately in the ratio 53:47 (53% for the L-1 tenderer) and so on.



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- (iii) The rate of the highest eligible tenderer within the zone of consideration has to be, per-se, reasonable to the Purchaser.
- (iv) In the cases of inadequate capacity-cum-capability, dissatisfactory past performance, large quantity of outstanding orders (liquidation of which will take very long time) etc., the Purchaser shall have the right to distribute the procurable quantity amongst tenderers with due consideration to these constraints and in such a manner as would ensure timely supply of materials in requisite quantity to meet the needs of operation, maintenance, safety etc. of the Railways, regardless of inter-se ranking of the tenderers and in a fair and transparent manner with due conformity to the Principle of natural Justice and Equity.
- (v) Counter offer to L-1, in order to arrive at an acceptable price, shall amount to negotiation. However, any counter-offer thereafter to L-2, L-3. etc., (at the rates accepted by L-1) in case of splitting of quantities, as pre-disclosed in the tender, shall not be deemed to be a negotiation. However, in the cases where the rate of highest tenderer within the zone of consideration, per-se, is reasonable, and a counter offer is made only to economise the purchase, then the same may be done simultaneously to all the tenderers within the zone of consideration.

However, it may be noted that ordering on Part-II approved vendors, as per extant directives of Board, shall not construe splitting of the procurable quantity.

The above instructions should be followed by Railways scrupulously.

This issues with the concurrence of Finance Directorate of Ministry of Railways.

Aruna Jain
(Aruna Jain)
DDRS(G)-II
Railway Board

Arundhanee
No:99/RS(G)/779/2

New Delhi, dated : 15 -10-21

Copy to:

1. FA&CAO, all Indian Railways & Production Units.