

भारत सरकार Government of India
रेल मंत्रालय Ministry of Railways
(रेलवे बोर्ड Railway Board)

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

New Delhi, Dated: 22-10-2008

The General Managers,
 All Indian Railways & Production Units including NF(Const.),
 CORE, Allahabad.
 Metro Railway, Kolkata.

The Director General, RDSO/Lucknow and RSC/Vadodara.

The MD, RITES, RITES Bhavan, Sector-29, Gurgaon.
 The MD, KRCL, Belapur Bhavan, 4th Floor, Sector-11, CBD, Belapur, Navi Mumbai.
 The MD, MRVC, 2nd Floor, Church Gate Station Building, Mumbai.
 The MD, CRIS, Chanakyapuri, New Delhi.
 The MD/MTP, NBCC Place, Bhishma Pitamah Marg, Pragati Vihar, New Delhi.

CAO/Workshop Projects Organisation, 1st Floor, Chamber Bhawan, J.C. Road,
 Patna – 800001.
 CAO, DMW/Patiala and COFMOW/New Delhi.
 CAO/MTP, Mumbai & Chennai

Sub:- Counter Offers.

**Ref:- (i) Board's Letter No.76/RS(G)/779/36 dt. 29-11-96 &
 (ii) Board's Letter No.76/RS(G)/779/36 dt. 6-11-97.**

1.0 The concept of counter offering was enunciated in Board's letter No.76/RS(G)/ 779/36 dt. 29-11-96 [reference (i) above] and the same is the first step in the effort to secure a uniform rate at the lowest level for multiple source ordering. Later on, Board vide their letter dt. 6-11-97 [reference (ii) above] clarified *inter alia* that counter offering as a procedure is not to be regarded as mandatory but may be kept in view whenever it is decided to split the quantity on more than one firm. Still later, it was advised vide Board's letter No.99/RS(G)/779/2 dt.15-10-2007 that for split ordering among more than one source, the highest rate within the zone of consideration has to be per se reasonable.

2.0 It has come to the notice of the Board that there have been flexible use of the above mentioned directives of the Board in certain tender cases, leading to very complex problems towards finalisation of tenders. Accordingly, the entire gamut of counter offering has been examined and reviewed by Board and it has been decided to issue the following clarifications and instructions:

2.1 Counter offering on Split Orderings

Existing instructions of Board as contained in letter No. 76/RS(G)/779/36 dated 29.11.1996 and 76/RS(G)/779/36 dated 6th November 1997 should continue with the condition that the rate of the highest eligible tenderer within the zone of




Contd....2/-

consideration has to be, *per se*, reasonable to the Purchaser, as legislated in Board's letter No. 99/RS(G)/779/2 dated 15.10.2007. On this, conditions as laid down in Para 4.3 and 5.1 (which relates to TOT/JV partners quoting against a tender) of Board's letter No. 99/RS(G)/779/2 dated 15.2.2008 shall also apply.

2.2 Counter offering as a substitute to/in lieu of negotiation

The procedure of counter offering as a substitute to/in lieu of negotiation (dispensing with it altogether) is totally prohibited. If price negotiation becomes warranted then the same should be held following extant rules and procedure and with due conformity to the directives contained in Para (i) and (ii) in Page 1 of Board's letter No. 99/RS(G)/779/2 dated 15.10.2007. Furthermore, it should be ensured, particularly in high valued tenders that the tenderer is represented by their authorized representative who is competent and empowered to take meaningful and active part in the price negotiation. The tender committee also must ensure that the negotiation is held in an objective, meaningful and analytical manner.

2.3 Counter offering after failure of price negotiation

Instructions on this as contained in Para (v), page 3 of Board's letter No. 99/RS(G)/779/2 dated 15.10.2007 are to be followed. However, if the L1 tenderer refuses to accept the counter offer, the tender is to be discharged. In exceptional situations, particularly in the cases where there is only one or limited or dedicated vendors available, the TC may go in for a second round of negotiations, after the rejection of counter offer, provided some new/additional facts (which were not known to the TC earlier) come to light subsequently. This will be, however, subject to the condition that the L1 tenderer agrees to revalidate their offer when asked to do so by the Purchaser or suo-moto. In the event of failure of 2nd round of negotiation, the tender is to be discharged.

2.4 Counter offering an extraneous rate, lower than L₁ within the zone of consideration (after considering the rates within the zone of consideration as reasonable)

If the Purchaser opts to resort to Counter offering an extraneous rate lower than L₁, even though the rates within the zone of consideration are reasonable, either for multiple source ordering or single source ordering, then that should be done with utmost care, clear rationale and application of mind.

2.5 Counter offering on commercial terms and conditions

No counter offering on commercial terms and conditions should be made. Before finalization of the tender, the tenderer(s) within the zone of consideration who have quoted with deviations from the commercial terms and conditions as stipulated in the tender enquiry or are silent about compliance of certain stipulated commercial terms and conditions or have quoted with any unusual/non-standard commercial terms and conditions may be asked (without any commitment from the Purchaser) to agree to commercial terms and conditions as per tender enquiry or confirm compliance of those commercial terms and conditions of the tender enquiry, for which their offer is silent or withdraw the unusual/ non-standard

Contd....3/-

conditions, as the case may be, provided asking for such agreements/ compliance/withdrawal will not lead to any of the following :

- (i) Vitiation of tender
- (ii) Extension of any undue advantage or benefit to the tenderer(s)
- (iii) Seeking clarifications on issues having financial implications

If any of the aspects mentioned in Para (i), (ii) and (iii) above gets involved then no reference can be made to the tenderer(s) and the offer(s) should be dealt with as per extant rules and procedure.

2.5.1 The above procedure will fall in the ambit of the Tender Committee.

This issues with the concurrence of the Finance Dte. of the Railway Board.

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

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

New Delhi, Dated: 22-10-2008

Copy to:

1. FA&CAOs, All Indian Railways & Production Units.
2. FA&CAO/Workshop Projects Organisation, 1st Floor, Chamber Bhawan, J.C. Raod, Patna - 800001
3. PCEs, All Indian Railways and Production Units.
4. The ADAI(Railways), New Delhi (with 10 spares copies)
5. The Director of Audit, All Indian Railways.

[Signature]
for Financial Commissioner / Railways

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

New Delhi, Dated: 22-10-2008

Copy to:

1. The COSs, All Indian Railways & PUs including NF(C).
2. The COS, Metro Railway, Kolkata.
3. The COS, COFMOW, New Delhi.
4. The COS, CORE, Allahabad.
5. The COS, KRCL, Belapur Bhavan, 4th Floor, Sector-11, CBD, Belapur, Navi Mumbai-400614.
6. The COS, MRVC, 2nd Floor, Church Gate station Building, Mumbai-400020.

Contd....4/-