

भारत सरकार **BHARAT SARKAR**
रेल मंत्रालय **MINISTRY OF RAILWAYS**
रेलवे बोर्ड **RAILWAY BOARD**

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

New Delhi, dated: 11.2.2016

The General Manager, All Indian Railways/PUs, NF(C), CORE
The DG/RDSO/Lucknow & NAIR/Vadodara
CAOs, DMW/Patiala, WPO/Patna, COFMOW/NDLS, RWP/Bela

Sub: Procurement process- splitting of quantity, negotiation and counter offer.

Ref: Railway Board's letter No. 99/RS(G)/779/2 dated 15.10.2007, 15.2.2008, 22.10.2008, 06.1.2009 and 30.06.2009

1. In order to simplify the procedure of splitting and counter offer, a need has been felt to review and consolidate the instructions. Thus following instructions are issued in supersession of above referred instructions on the issue:-

2. Splitting of tendered quantity

2.1 Case of no prior decision to split the order –

2.1.1 Normally full order should be placed on L-1 firm. However, if after due processing, it is discovered that the quantity to be ordered is more than what L-1 alone is capable of supplying and there was no prior decision to split the quantities, then this aspect should be recorded in TC minutes/ acceptance in direct acceptance cases. The quantity being finally ordered will be distributed among the other bidders in a manner that will be fair, transparent and equitable. The manner of splitting will take specific note of the following parameters

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

2.1.2 In the absence of any differentiation on the above parameters, the manner of splitting will be based on the stipulation given in para 2.2.2 below.

2.2 Case of pre-decided split ordering –

2.2.1 Railway may decide in advance to have more than one source of supply on account of delivery requirement in tender, past performance and capability of bidders, quantity under procurement and vital/safety nature of items.

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2.2.2 Following provisions {2.2.2 (A) to 2.6} shall be applicable in all such cases of pre-decided split ordering:-

(A) The purchaser reserves the right to distribute the procurable quantity on one or more than one of the eligible tenderers. Zone of consideration of such eligible tenderers will be the right of the Purchaser. The zone of consideration will be a dynamic mix of inter-se position of firms, supply performance of the firms, quantity being procured, criticality of and lead time of supply of the item, number of established suppliers, their capacity etc.

(B) Whenever such splitting of the procurable quantity is made, the quantity distribution will depend (in an inverse manner) upon the differential of rates quoted by the tenderers (other aspects i.e. adequate capacity – cum-capability, satisfactory past performance of the tenderers, outstanding order load for the Railway making the procurement, quoted delivery schedule vis-à-vis the delivery schedule incorporated in the tender enquiry etc. being same / similar) in the manner detailed in the table below:

Price differential between L1 and L2	Quantity distribution ratio between L1 and L2
Upto 3%	60 : 40
More than 3% and upto 5%	65 : 35
More than 5%	At least 65% on the L1 tenderer. For the quantity to be ordered on the L-2 tenderer, TC/TAA shall decide

In the phrase '*differential rates quoted by the tenderers*', the quoted rate would mean

(i) When no price negotiation has been called for, the original rates as obtained at the time of tender opening. However, the rate of the highest eligible tenderer within the zone of consideration has to be per se reasonable.

(ii) When price negotiation has been called for, the reference L1 rate for assessment of ratio will be the original rate of L1 firm (suitable for bulk quantity) – say firm "A" – as obtained at the time of tender opening.

B(I) If splitting of quantity is required to be done by ordering on tenderers higher than the L2 tenderer, then the quantity distribution proportion amongst the tenderers will be

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decided by transparent/logical/equity based extrapolation of the model as indicated in the above para.

B(II) There could be situation when between the lowest firm considered suitable for bulk qty (L1 firm "A") and another firm considered suitable for bulk quantity order, there are firms who are considered suitable only for part quantity. For example, say L1 firm "A" is Pt I firm, L4 is Pt I firm (and both considered suitable for bulk quantity order) and splitting is to be done between these two Pt I firms. But there are two Pt II firms in between who are suitable for part quantity. In such cases, L1 should be given its proportion based on its rate differential with respect to L4, (say by this, L1 gets 65% of NPQ). The balance quantity (say 35% of NPQ) is to be distributed among other firms. The balance quantity is to be distributed as follows:

- (a) Allocate the Pt II L2 and Pt. II L3 within the overall ceiling of 15%/25% (of 35% of NPQ)
- (b) Allocate the balance quantity to L4 firm.

Since the Pt II firms are being given the order in relation to its lower position w.r.t. L4 (Pt I firm), it will not attract the provision of 'order on Pt II firm should not be at a higher rate than Pt I firm' as the reference rate for comparison of L2 Pt II and L3 Pt II rate is the L4 Pt I rate.

2.2.3 In cases of pre-decided splitting, if the purchaser decides not to split the ordered quantity, the reason for the same should be recorded in TC minutes/acceptance in direct acceptance cases.

2.3 Ordering on part II approved vendors and developmental order shall not construe splitting of procurable quantity.

2.3.1 Considering that overall quantity limit from Pt II vendor is 25%, and the fact that Pt II firms can fall anywhere in the inter-se position, specifying a precise situation independent distribution among Pt II firms is not possible. Suffice it to say that the tender committee/TAA will bring out the rational of quantity distribution among Pt II firms.

2.4 (i) If the lowest rate quoted by the tenderer (suitable for bulk ordering) (say firm "A") is not reasonable, purchaser may go for negotiation with the L1 firm "A". However, counter offer in lieu of aforesaid negotiation is not permitted. After negotiation(s), if the negotiated rate is still considered unreasonable, then counter offer may be given to the L1 firm "A". The rate to be counter offered to the firm will be a rate which the TC/purchase officer considers reasonable. If counter offer is not accepted by the firm, the tender will normally be discharged. Only in exceptional situation, where the

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requirement is urgent and a re-tender for the entire requirement would delay the availability of the item, purchase officer/TC may take a view to buy the bare minimum quantity. The balance quantity should be re-tendered.

(ii) Once the rate of L 1 firm "A" (whether original, negotiated or counter offered and subsequently accepted) is reasonable, the purchaser may (in case of splitting of quantities) simultaneously counter offer to L-2, L-3 etc (whose rates are not per-se reasonable), the rate of L1 firm "A". Such counter offer(s) to L2, L3 will not be deemed to be negotiation. In the event of rejection of such counter offer(s), the purchaser will reserve their right to decide on the quantity distribution ratio / proportion.

- 2.5** For cases where the Rlys/PUs had entered into ToT/JV agreements, the following clause should be stipulated as tender conditions:

As the Rly has entered into ToT/JV agreement withno. of firms, they reserve the right to place orders on all such ToT/JV agreement partners. However, for ratio/proportion of quantity distribution among such agreement partners, conditions as detailed in Para 2.2.2 (B) shall apply with the exception that the aspect of 'per-se reasonability' will not be applicable.

- 2.6** 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 that would ensure timely supply of material 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 Principles of Natural Justice and Equity.

3. Counter offering on terms and conditions

No counter offering on terms and conditions (which are in qualifying criteria of bid document) should be done. Before finalization of the tender, the tenderer(s) within the zone of consideration who have quoted with deviations from the terms and conditions as stipulated in the tender enquiry or have quoted with any unusual/non-standard commercial terms and conditions may be asked (without any commitment from the purchaser) to agree to terms and conditions as per tender enquiry or withdraw the unusual/ non-standard conditions, as the case may be, provided asking for such agreements/ compliance/withdrawal will not lead to any of the following:

- (i) Vitiating of tender

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(ii) Extension of any undue advantage or benefit to the tenderer(s)

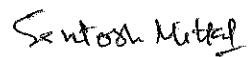
(iii) Seeking clarifications on issues having financial implications

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 extent rules and procedure.

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

4. Para 2 upto Para 2.2.3, para 2.5 and para 2.6 will be incorporated in the tender documents.

This is issued with the concurrence of Finance Directorate of Ministry of Railways.


(Santosh Mittal)
Dy. Director. Rly. Stores(G)
Railway Board

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

New Delhi, dated: 11.2.2016

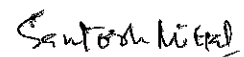
1. FA&CAOs, All Indian Railways & Production Units
2. PCEs, All Indian Railways & PUs, WPO/Patna, RCF/RBL, COFMOW, DMW
3. The ADAI(Railways), New Delhi (with 10 spares copies)
4. The Director of Audit, All Indian Railways


for Financial Commissioner / Railways

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

New Delhi, dated: 11.2.2016

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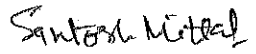

(Santosh Mittal)
Dy. Director. Rly. Stores(G)
Railway Board

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Copy to :

1. The Genl. Secy., AIRF, Room No. 248, & NFIR Room No. 256-C, Rail Bhavan
2. The Secy. Genl., IRPOF, Room No. 268, FROA, Room No. 256-D & AIRPFA, Room No. 256-D Rail Bhavan


(Santosh Mittal)
Dy. Director. Rly. Stores(G)/
Railway Board)

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