

Stores Procurement Policy



ANKUR SRIVASTAVA
DY.CVO/S

Legal Definition: Tender & Contract



- **What is a Contract?**
 - An Offer
 - An acceptance (free consent)
 - A valid Consideration
 - Participants competent to contract
 - Not expressly forbidden by Law

- **What is a tender?**
 - An invitation to offer

Tenders and Contracts in Railways



- **Why Purchase through tenders**
 - Time tested way to obtain competitive bids
 - Transparency and equal opportunity

Types of Tenders



- Open/Advertised Tender
- Bulletin Tender?
- Limited Tender
- Special Limited Tender
- Single Tender
- No Tender!!

Schedule of Powers for Stores Matters



- For approval of AAC
- For approval of floating tender (Tender Schedule Approval)
- For acceptance of Offers (Direct Acceptance/TC)
- Signing of Contracts (Purchase Order Signing)
- Accepting Deviations
- Approval of modifications to contracts

AAC



- Annual Anticipated Consumption
- Different Rules as per value based Category(A/B/C)
- Role of Accounts:
 - Vetting of SAFs
 - Vetting of AACs for A category items(and B category in some cases)

Approval of Tender



- Mode of Tender
- Tender Description and technical Specifications
- Commercial conditions
- Eligibility Criteria
- Panel of Sources (if Limited or Single Tender)

Power to approve based on estimated value

Acceptance of Offers



- Acceptance level based on value of accepted offer
- Total Value
- Accepted Offer
- What is de-novo consideration by HLTC
- Special Cases (single tender in emergencies, some purchases from PSUs etc)

Acceptance of Offers (Contd...)



- Technical suitability and commercial responsiveness of offer
- Compliance with eligibility criteria
- Reasonability of rates
- Inter-se ranking and quantity distribution as per tender conditions
- Negotiation if required/re-tender

Acceptance of Offers



- **Role Of accounts**
 - Part of Tender Committee
 - Vetting of POs

Acceptance of Offer



- **Procedurally correct purchase**
 - Order to be placed on only such firm that meets all conditions
 - No lower offer that complies with all conditions should be ignored
 - No deviations from specifications or commercial conditions should be accepted particularly if they have financial implications
 - Order to be placed only if the rates are **reasonable**.
- **Effective purchase**
 - Right Quantity, Right Price, Right Quality, Right Source, Right Time

Accepting Deviations



- **Very Limited Powers**
 - Deviation in warranty
 - Deviation from IRS conditions of Contract
 - Deviation/Modification in inspection clause
- **Post-facto Single Tender??**

Modification of Contracts



- **Delivery period extension**
 - Liquidated damages for delayed supply
 - Rates received in other tenders/POs to be considered
- **Clarifications/Amendments: No modifications that have financial implications to be ordinarily allowed**
- **Cancellation of PO**
 - On firm's default
 - For other reasons

Standard Conditions in a Stores Tender



- Instructions to Tenderers
- General Tender Conditions
- IRS Conditions

Important Tender Specific Conditions



- Technical Specifications
- Commercial Conditions
- Eligibility Criteria

Instruction to Tenderers



- **Instruction on how to submit the offers**
- **Important Conditions incorporated**
 - Conditions regarding EMD
 - Conditions regarding SD
 - Documents to be submitted with offer
 - Access to Drawing and specifications
 - Conditions regarding Taxes and Duties
 - Quoting for Price Variation clauses

General Tender Conditions



- How the offers will be evaluated

- Important Conditions
 - Retention of right to dispose tender
 - Splitting of quantity
 - Purchase restriction from Approved sources
 - Quantity Option Clause
 - Consideration of delivery schedule quoted
 - Case of Cartel Formation
 - Preference clauses(for MSEs, for Indegenous supplies)
 - Statutory Variation Clause

IRS Conditions of Contract



- Conditions for performance of Contract

- Important Conditions:
 - Delivery Terms
 - Failure and termination
 - Consequences of Rejection of supplies
 - Risk in the Stores
 - Inspection and Marking of Stores
 - Notification of Delivery
 - Withholding sums by railways against claims
 - Arbitration
 - Warranty

Some Important Conditions



- Pre-determined Splitting Clause
- Liquidated Damages (LD)
- Denial Clause (DC)
- General Damages (GD)
- Risk Purchase (RP)
- Quantity Option Clause
- Statutory Variation Clause
- Price Variation Clause
- Preferential Purchase from MSEs
- Preferential Purchase of Indigenous supplies

Pre-determined Splitting Clause



- Split between two eligible sources to ensure availability
- 60:40 if L2 rate is within 3% of L1 rate. Otherwise 65:35
- What if splitting to be done among more than 2 firms
- When Splitting Clause included: Is splitting necessary
- When Splitting Clause not included: Is splitting Possible

Liquidated Damages



In Railway parlance, damages for delayed supply

*“Recover from the contractor as agreed liquidated damages and not by way of penalty a sum equivalent to **1/2 percent** of the price of any stores (including elements of taxes, duties, freight, etc.) which the Contractor has failed to deliver within the period fixed for delivery in the contract or as extended **for each week** or part of a month during which the delivery of such stores may be in arrears where delivery thereof is accepted after expiry of the aforesaid period”*

(702(a) IRS)

Denial Clause



For shifting burden of price variation upwards to the supplier in case of DP extension

- “ (b) That no increase in price on account of any statutory increase in or fresh imposition of Customs Duty, Excise Duty, Sales Tax or on account of any other tax or duty leviable in respect of the stores specified in the contract which takes place after the date of the delivery period stipulated in the contract shall be admissible on such of the said stores as are delivered after the date of the delivery stipulated in the contract.*
- (c) That notwithstanding any stipulation in the contract for increase in price on any other ground no such increase which takes place after the date of the delivery stipulated in the contract shall be admissible on such of the said stores as are delivered after the expiry of the delivery period stipulated in the contract.*
- (d) But nevertheless, the Purchaser shall be entitled to the benefit of any decrease in price on account of reduction in or remission of Custom Duty, Excise Duty, Sales Tax or on account of any other Tax or Duty or on other ground as stipulated in the price variation clause which takes place after the expiry of the date of delivery period stipulated in the contract.”*

(Para 3400 (b),(c) & (d) IRS)

Denial Clause



Also

“Supplier will not be entitled to any benefit of upward statutory variations in GST rates announced after expiry of the original Delivery Period as per purchase order & in Case of reduction in GST rates if any, benefit will be passed on to Railways at any stage Of the contract.”

(Para 22.3 ITT of SCR)

General Damages



Damages for failure to supply

(for vendors that are exempt from submission of SD)

“ Purchaser shall have the right to levy damages from the supplier for failing to comply with the contractual conditions, not by way of penalty, an amount equal to the SD amount as would have been applicable in case of non exempted vendor”

(Rly bd. Circular dtd 23.12.19)

Quantity Option Clause



For reserving right to quantity variation

“For tenders valuing Rs.75 lakhs and above, the purchaser shall have the right to increase or decrease the ordered quantity by a quantity not exceeding 30% of the ordered quantity on the same price and terms and conditions during the currency of the contract, with suitable delivery schedule for the enhanced quantity. The purchaser can vary the order quantity by exercising the option clause during the currency of the contract giving reasonable time / notice for executing such increase or decrease. Option clause can be exercised up to last date of scheduled DP Mentioned in purchase order, even if the supply of original ordered quantity is completed before the last date of scheduled delivery.”

(Para 2.7 GTC of SCR)

Statutory Variation Clause



Handling change of Tax rates during currency of Contract

“The offers will be evaluated based on the GST rate quoted by bidders. While quoting it is the responsibility of the bidders to ensure that they are quoting correct GST rate and HSN No. If they quote erroneous GST rate and HSN No. then the liability for payment of the difference in GST amount if any, at a later date will lie with the bidders only and no increase in rate of GST rate will be allowed subsequently unless or until the same is changed by statute after the opening of tender and within the original delivery period.”

(Para 22.7 ITT of SCR)

Purchase through GeM



- Purchase through GeM is made under S.149 of General Financial Rules 2017
- Mandatory to procure through GeM if item is available on GeM
- Rate reasonability is the responsibility of the procuring officer

Purchase Through GeM



- **Financial Limits**

- Upto Rs 25,000: Any suitable product on GeM can be purchased (Direct Purchase)
- Upto Rs.5 lakhs: User to select category and standard specifications available for that category. Based on these selections, the system filters The results for acceptable offers. Lowest acceptable offer can be accepted directly (L1 Purchase). The limit is Rs.30 lakhs in case of Automobiles
- Above Rs. 5 lakhs (Rs. 30 lakhs for automobiles): Bidding/Reverse Auction is mandatory

Bidding/RA is recommended even for purchases below Rs. 5 lakhs for better competition

Procurement through GeM



- Strict timelines for acceptance/payment after supply
- The whole process from purchase to payment is online
- All technical specifications and commercial conditions are managed by GeM SPV. To add any new product/specification or commercial condition, a request has to be made to GeM authorities

Contract Act (Important Provisions)



- When is acceptance complete?
- Acceptance by Conduct
- Rescission of Contract
- Damages under a Contract:
Liquidated/General/Special/Penalty

Sale of Goods Act



- Agreement to Sell vs Sale
- Property in Goods
- Statutory Variation
- Risk in Goods

A Well Considered Tender...



- **Correct Technical Specification**
 - Not Vague
 - Not too restrictive
- **Correct Eligibility Criteria**
 - Not too restrictive
 - Better to have a standard and transparent criteria
- **Correct Commercial Conditions**
 - Not ask for too much (Very short DP, delivery of uneconomical quantities).
 - Anticipate relevant conditions (Case in example: Purchase of Industrial Gases)



...Leads to an Effective Contract



THANK YOU