

Government of India  
Ministry of Railways  
(Railway Board)

No. 2018/Trans. Cell/Mech./Service Contracts

New Delhi Dated: 20.03.2018

The General Managers,  
All Zonal Railways & Production Units  
DG/RDSO, DG/NAIR, CAO/DMW, CAO/RWP  
Dir./CTIs

**Sub: The General Conditions of Contract for Service.**

**Ref: Letter of even No. Dated 02.02.2018.**

There have been some typographical mistakes in the Board's letter of even no. issued on 02.02.2018.

Now, typographical mistakes have been corrected. The corrected copy of General Conditions of Contract for Service in PDF format is enclosed.

Zonal Railways may follow this corrected PDF version of General Conditions of Contract for Services.



(A.K. Chandra)

Executive Director/Mech./Trans.

Railway Board

Tel. No. (M) 9717646228

No. 2018/Trans. Cell/Mech./ Service Contracts

New Delhi Dated: 20.03.2018

1. PFAs, All Indian Railways & Production Units
2. The ADAI (Railways), New Delhi.
3. The Director of Audit, All Indian Railways

(Sanjeeb Kumar)

Executive Director/Accounts/Transformation



# **General Conditions of Contract for Services**

**January, 2018**

**Ministry of Railways  
Government of India**

*(Signature)*

Sanjeeb Kumar

*(Signature)*

**PREAMBLE**

In recent years, Indian Railways has seen a rise in the number of service contracts in non-operational areas such as cleaning, facilities management, consultancy etc. which continue to be governed by the General Conditions of Contract (GCC) for Works at present.

Given the diverse nature of works and services contracts and the problems in managing service contracts using a GCC developed for works, a need was felt to formulate a simplified, outcome focused GCC catering specifically to services to improve contract management, delivery of services and to reduce government litigation.

In this regard, a committee of Executive Directors/Railway Board was formed with a mandate for 'simplification and improvement of service contracts with a view to improve the quality of services and service contract management.'

The new GCC is a result of wide ranging consultations, profound erudition and of immensely valuable contributions from all the directorates which examined its provisions and connotations thereof, both evident and implicit.

The recommendations of the committee after approval of the Civil Engineering, Transformation, and Legal directorates, concurrence of Finance and approval of the Railway Board are presented in the form of the new document titled as **"The General Conditions of Contract for Services"**.

**Amit Garg,**  
**Convener of the Committee on GCC for Services,**  
*and*  
**Executive Director/ EnHM/CE,**  
**Railway Board**





## LIST OF CONTENTS

### I MEANING OF TERMS

1.1	Interpretation	1
1.2	Definition	1
1.3	Singular and Plural	3
1.4	Headings and Marginal Headings	3

### II ELIGIBILITY OF BIDDERS AND EVALUTATION OF BIDS

2.1	Elements of Service Contracts and Procedural Thereof	4
2.2	Qualification Criteria	4
2.3	Lead Partner/Non Substantial Partners/Change in JV/Consortium	5
2.4	Joint Venture (JV) Firms in Bids	5
2.5	Disqualification of Bidders	9
2.6	Bid Evaluation System	11
2.7	Application for Registration for Approved List of Vendors	14
2.8	Right of Railway to Deal with Bids	14

### III BID DOCUMENTATION

3.1	Bid (Tender) Form	16
3.2	Omissions & Discrepancies	16
3.3	Earnest Money	16
3.4	Care in Submission of Bids	17
3.5	Execution of Contract Document	18
3.6	Form of Contract Document	18



#### IV GENERAL OBLIGATIONS

4.1	Execution Co-Relation And Intent of Contract Documents	19
4.2	Law Governing The Contract	19
4.3	Service of Notices on Contractors	20
4.4	Occupation and Use of Land	20
4.5	Assignment or Subletting of Contract	20
4.6	Railway Passes	20
4.7	Carriage of Materials	21
4.8	Representation on Works	21
4.9	Relics, Treasures, Lost and Found	21
4.10	Indemnity By Contractors	21
4.11	Performance Guarantee	21
4.12	Force Majeure Clause	23
4.13	Illegal Gratification	24
4.14	Contractor's Understanding	24
4.15	Commencement of Works	24
4.16	Accepted Programme	24
4.17	Compliance to Managers Instructions	24
4.18	Alterations to be Authorized	25
4.19	Extra Works	25
4.20	Separate Contract in Connection With Works	25
4.21	Instruction of Manager's Representative	25
4.22	Adherence to Specifications and Drawings	25
4.23	Working During Night	26
4.24	Damage to Railway Property or Private Life and Property	26
4.25	Sheds and Stores Houses	27
4.26	Provision of Efficient and Competent Staff at Sites By The Contractor	27
4.27	Workmanship and Testing	28
4.28	Removal of Improper Materials/tools and Plant	28
4.29	Facilities for Inspection	28
4.30	Temporary Works	28
4.31	Contractor to Supply Water for Works	29
4.32	Contractor to Arrange Supply of Electric Power for Services	29
4.33	Property in Materials and Plant	29
4.34	Tools, Plant and Material Supplied by Railway	30
4.35	Hire of Railways' Plant	30
4.36	Precaution During Progress of Services	30
4.37	Roads and Water Courses	30



4.38	Provision of Access to Premises	30
4.39	Safety of Public	30
4.40	Use of Explosives	31
4.41	Suspension of Services	31
4.42	Rates for Items of Work	31
4.43	Clearance of Site on Completion	32
4.44	Digital Contract Labour Management System	32
4.45	Environmental Requirements	33
4.46	Data Protection	33
4.47	Intellectual Property Rights	34

## **V VARIATIONS, MEASUREMENT AND PAYMENTS**

5.1	Extension of Time	37
5.2	Extension of Time for Delay Due to contractor	38
5.3	Modification to Contract to be in writing	38
5.4	Claims	40
5.5	Measurement	41
5.6	Payments	42
5.7	Price Variation Clause (PVC)	43
5.8	Price Variation During Extended Period of Contract	45
5.9	Maintenance of Works, if applicable	45
5.10	Certificate of Completion of Services	46
5.11	Final Payment	47

## **VI LABOUR LAWS AND RELATED OBLIGATIONS**

6.1	Independent Contractor	49
6.2	Legal Obligations	50
6.3	Labour Law Awareness	50
6.4	Provisions of Contract Labour (Regulation and Abolition) Act, 1970/Rule 1950	50
6.5	Minimum Wages Act, 1948/Rules 1950	53
6.6	Provisions of Payments of Wages Act	54
6.7	Provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952	54
6.8	Provisions of Workmen's Compensation Act	57
6.9	The Maternity Benefit Act, 1961	57
6.10	The Sexual Harassment of Women at the Workplace	58
6.11	Safai Karamchari Act, 1993	58
6.12	Child Labour (Prohibition and Regulation) Act, 1986	59

*(Signature)*

*Sanjeeb Kumar*

*(Signature)*

6.13	Apprentices Act, 1961	59
6.14	Miscellaneous Provisions	59
6.15	Medical Certificate of Fitness for Labour	61
6.16	Police Verification of Labour Employed by Contractor	61
6.17	Mandatory Compliance of Government Schemes	62

## **VII DETERMINATION OF CONTRACT**

7.1	Right of Railway to Determine the Contract	63
7.2	Payment on Determination of Contract	63
7.3	No Claim on Compensation	63
7.4	Determination of Contract Owing to Default of Contractor	63
7.5	Right of Railway After Rescission of Contract Owing to Default of Contractor	65

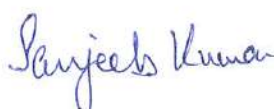
## **VIII SETTLEMENT OF DISPUTES- INDIAN RAILWAY ARBITRATION RULES**

8.1	Matters Finally Determined by the Railways	67
8.2	Demand for Arbitration	67
8.3	Obligation During Pendency of Arbitration	68
8.4	Appointment of Arbitrator	68

## **ANNEXURES**

I	Bid Evaluation-Technical Criteria (sample)	71
II	Bid Form (First Sheet)	74
II	Bid Form (Second Sheet)-Instructions to Bidders	75
II	Bid Form (Third Sheet)- Schedule of Rates and Quantities	80
III	Contract Agreement of Services	81
IV	Employment Card (Form XIV)	82
V	Service Certificate (Form XV)	83
VI	Register of Wages (Form XVII)	84
VII	Wage Slip (Form XIX)	85
VIII	Return to be sent by the Contractor to the Licensing Officer (Form XXIV)	86









IX	Annual Return of Principal Employer to be sent to the Registering Officer (Form XXV)	88
X	Certificate of Medical Examination	89
XI	Certificate of Police Verification	90
XII	Performance Notice	91
XIII	Revocation of Performance Notice	92
XIV	7 Days Notice	93
XV	Termination Notice	94
XVI	First Aid Facilities	95
XVI	Register for Correction Slips	96









## I. MEANING OF TERMS

**1.1 Interpretation:** These shall be subject to modifications additions or suppression by special conditions of contract and/or special specifications, if any, annexed to the Bid Forms.

**1.2 Definition:** In these General Conditions of Contract, the following terms shall have the meanings assigned hereunder except where the context otherwise requires.

Examples of earning contracts are running (operating) 4-wheeler / 2-wheeler stands; publicity on platforms / trains etc.; running (operating) various type of stalls on platforms including reservation centers, book-stalls, restaurants, fast-food stalls, tea-stalls etc.

**1.2.1 Railway** shall mean the President of the Republic of India or the Administrative Officers of the Railway or of the Successor Railway authorized to deal with any matters, which these presents are concerned on her behalf.

**1.2.2 General Manager (GM)** shall mean the Officer-in-Charge of the general superintendence and control of the Zonal Railway/Production Units and shall also include the General Manager (Construction) and shall mean and include their successors, of the Successor Railway.

**1.2.3 Chief Manager** shall mean the Officer in charge of the user department i.e. Mechanical/ Commercial/ Operations/ Safety/ Finance/ Health/ Engineering including S & T and Electrical of both Open line and Construction department including production units etc. (for e.g. COM, CCM, CE, CMD etc.) and shall mean and include their successors of the Successor Railway.

**1.2.4 Divisional Railway Manager (DRM)** shall mean the Officer in charge of a Division of the Zonal Railway and shall mean and include the Divisional Railway Manager of the Successor Railway.

**1.2.5 Manager** shall mean the Divisional officers or equivalent officers of the user department i.e. Mechanical, Commercial/ Operations/ Safety/ Finance/ Health/ Engineering including S & T and Electrical of both Open line and Construction department including production units etc. in executive charge of the works (e.g. Sr DME, Sr DOM, Sr DCM, CMS, Sr DEN etc.) and



shall include the superior officers of the same departments and shall mean & include the successors of the Successor Railway

**1.2.6 Bidder** shall mean the person/ the firm/ co-operative or company whether incorporated or not who Bids for the services with a view to execute the works on contract with the Railway and shall include their personal representatives, successors and permitted assignees.

**1.2.7 Limited Bids** shall mean bids invited from all or some contractors on the approved or select list of Contractors with the Railway.

**1.2.8 Open Bids** shall mean the bids invited in open and public manner and with adequate notice.

**1.2.9 Works** shall mean the works contemplated for delivery of services as per drawings and schedules set forth in the Bid forms and required to be executed according to the specifications.

**1.2.10 Service** means any subject matter of procurement other than goods or works, except those incidental or consequential to the service, and includes physical, maintenance, housekeeping, professional, intellectual, training, consultancy and advisory services or any other service classified or declared as such by a procuring entity but does not include appointment of an individual made under any law, rules, regulations or order issued in this behalf.

**1.2.11 Earning Contract** means a contract in which the contractor makes payment to Railway for some notified activity, i.e. where Railway gets some earning by awarding the contract. Examples of earning contracts are running (operating) 4-wheeler / 2-wheeler stands; publicity on platforms / trains etc.; running (operating) various type of stalls on platforms including reservation centers, book-stalls, restaurants, fast-food stalls, tea-stalls etc."

**1.2.12 Specifications** shall mean the Standard Specifications for Materials & Services of Railway as specified by Railway under the authority of the Ministry of Railways or the Chief Manager or as amplified, added to or superseded by Special Specifications, if any or as specified in the Bid document.

**1.2.13 Schedule of Rates of the Railway (SOR)** shall mean the Schedule of Rates issued under the competent authority from time to time.

**1.2.14 Drawings** shall mean the maps, drawings, plans, tracings or prints thereof annexed to the contract and shall include any modifications of such drawings and further drawings as may be issued by the Manager from time to time.

**1.2.15 Contractor** shall mean the Person/Firm/Co-operative Society or Company whether incorporated or not who enters into the contract with the Railway and shall include their executors, administrators, successors and permitted assignees.

**1.2.16 Contract** shall mean and include the Agreement of Work Order, the accepted Schedule of Rates or the Schedule or Rates of Railway modified by the Bid percentage for items of works quantified, or not quantified, the General Conditions of



Contract, the Special Conditions of Contracts, if any; the Drawings, the Specifications, the Special Specifications, if any and Bid Forms, if any.

**1.2.17 Tools and plants** shall mean all appliances or things of whatsoever nature required for the execution, completion or maintenance of the services.

**1.2.18 "Temporary Works"** shall mean all temporary works of every kind required for the execution completion and/or maintenance of the services.

**1.2.19 Site** shall mean the lands, spaces, trains and other places on, under, in or through which the services are to be carried out and any other lands or places provided by the Railway for the purpose of the contract.

**1.2.20 Period of Maintenance** shall mean the specified period of maintenance from the date of completion of the works, as certified by the Manager.

**1.2.21 Two Bid System / Two Packet System** shall mean a system of bid evaluation where there is simultaneous receipt of separate technical and financial bids. The technical evaluation of bids is completed first and the financial bids of only the technically responsive bids are opened, for further evaluation. This is the standard method to be adopted.

**1.2.22 Quality and Cost Based Selection** shall mean a system of bid evaluation where weightages are assigned to technical and financial criteria, wherein higher weightage is assigned to technical criteria based on the importance of quality of consultancy services sought. The evaluation is made on the basis of combining the weighted scores for technical and financial criteria.

**1.3 Singular and Plural:** Words importing the singular number shall also include the plural and vice versa, where the context requires.

**1.4 Headings and Marginal Headings:** The headings and marginal headings in these general conditions are solely for the purpose of facilitating reference and shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction thereof or the contract.

**1.5 Use of Personal Pronouns:** The form of personal pronouns adopted in this document in relation to bidders is 'she', 'her' etc. It shall be deemed to signify/include all persons (and objects) irrespective of the gender/sex.



## II. ELIGIBILITY OF BIDDERS AND BID EVALUATION

### 2.1 Elements of Service Contracts and Procedures thereof

**2.1.1 Essential elements of a Service Contract:** Service contracts are generally defined by scope, (e.g., services expressed in terms of functions, processes, activities, or projects), governance (e.g., decision powers, roles and responsibilities), operations (e.g., day-to-day operating procedures), financial arrangements (e.g., fee structures, settlement arrangements), performance (e.g., expected outputs, levels of service, reporting) and implementation (e.g., activities, timelines, level of effort). Quality of services and timely availability of services is essential for the satisfactory performance of a Service Contract. Bids/ Tenders have to be framed in such a manner in which these basic elements are ensured.

**2.1.2** For Service Contracts valuing Rs. 50 lakhs and above (the cost of Bid as decided by Railway Board from time to time), at present, two-packet system of bidding for evaluation would be adopted based on Clause 2.6 B.

**2.1.3** Service contracts valuing less than Rs. 50 lakhs (as decided by Railway Board from time to time) shall be decided on the basis of financial bids as per procedures laid down by Railway Board.

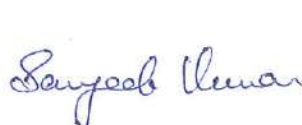
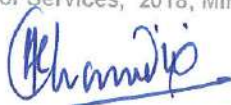
### 2.2 Qualification Criteria

#### 2.2.1 Eligible Applicant

**2.2.1.1** The Bids for this contract will be considered only from those Bidders [proprietorship firms, partnership firms, companies, corporations, consortia or joint ventures (JV hereinafter) etc.] who meet requisite eligibility criteria. In the case of a JV or Consortium, all members of the Group shall be jointly and severally liable for the performance of whole contract.

#### 2.2.1.2

a) A Bidder shall submit only one bid in the particular Bidding process, either individually as a Bidder or as a partner of a J.V. A Bidder who submits or participates in, more than one bid will cause all of the proposals in which the Bidder has participated to be disqualified. No Bidder can be a sub-contractor while submitting a bid individually or as a partner of a JV in the same bidding process.





- b) Any Central government department/ Ministry of Railways must not have banned business with the Bidder (any member in case of JV) as on the date of Bid submission.
- c) If the bidder (any member in case of JV/consortium) must not have suffered bankruptcy/ insolvency during the last 5 years. The Bidder should submit an undertaking to this effect as part of the bid.
- d) Bidders must not have a conflict of interest. Following shall be considered as conflict of interest in this bidding process :
  - (i) If a Bidder or her associates/affiliates (inclusive of parent firms) has been engaged by the Employer (Railways) to provide consulting services for the preparation related to procurement or on implementation of the project;
  - (ii) If a Bidder lends, or temporarily seconds its personnel to firms or organizations which are engaged in consulting services for the preparation related to procurement for an implementation of the project, if the personnel would be involved in any capacity on the same project."
- e) If the bidder or any of its constituents has changed its name or created a new business entity as covered by the definition of "Allied Firm" under para 1102 (iii) of Chapter XI of Indian Railways Vigilance Manual, consequent to having been banned business dealings or suspended business dealings

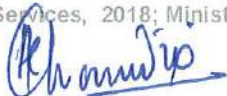
## 2.3 Lead Partner/ Non - Substantial Partners/ Change In JV/ Consortium

**2.3.1** One of the members of the JV Firm shall be its Lead Member who shall have majority (at least 51%) share of interest in the JV Firm .The other members shall have a share of not less than 20% each in case of JV Firms with upto three members and not less than 10% each in case of JV Firms with more than three members. In case of JV Firm with foreign member(s), the Lead Member has to be an Indian Firm.

**2.3.2** Once the Bid is submitted, the MoU shall not be modified/ altered/ terminated during the validity of the Bid. In case the Bidder fails to observe/comply with this stipulation, the full Earnest Money Deposit (EMD) shall be liable to be forfeited.

**2.3.3** Approval for change of constitution of JV Firm shall be at the sole discretion of the Employer (Railways). The constitution of the JV Firm shall not be allowed to be modified after submission of the bid by the JV Firm, except when modification becomes inevitable due to succession laws etc. and in any case the minimum eligibility criteria should not get vitiated. However, the Lead Member shall continue to be the Lead Member of the JV Firm. Failure to observe this requirement would render the offer invalid.

**2.3.4** Similarly, after the contract is awarded, the constitution of JV Firm shall not be allowed to be altered during the currency of contract except when modification become inevitable due to succession laws etc. and in any case the minimum eligibility criteria should not get vitiated. Failure to observe this stipulation shall be





deemed to be breach of contract with all consequential penal action as per contract conditions.

## 2.4 Joint Venture (JV) Firms in Bids

**2.4.1 Participation of Joint Venture (JV) Firms in Service Bids:** This Clause shall be applicable in the Bids, where participation of JV has been allowed as per bid document.

2.4.1.1 Separate identity/name shall be given to the Joint Venture Firm.

2.4.1.2 Number of members in a JV Firm shall not be more than three, if the service involves only one department (say Mechanical or commercial or Medical) and shall not be more than five, if the work involves more than one department.

2.4.1.3 A member of JV Firm shall not be permitted to participate either in individual capacity or as a member of another JV Firm in the same Bid.

2.4.1.4 The Bid form shall be purchased and submitted only in the name of the JV Firm and not in the name of any constituent member.

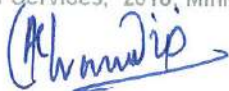
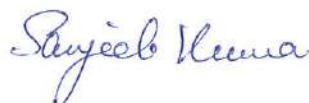
2.4.1.5 Normally Earnest Money Deposit (EMD) shall be submitted only in the name of the JV Firm and not in the name of constituent member. However, in exceptional cases, EMD in the name of Lead Member can be accepted subject to submission of specific request letter from Lead Member stating the reasons for not submitting EMD in the name of JV Firm and giving written confirmation from JV members to the effect that EMD submitted by the Lead Member may be deemed as EMD submitted by JV Firm.

2.4.1.6 A copy of Memorandum of Understanding (MoU) executed by the JV members shall be submitted by the JV Firm along with the Bid. The complete details of the members of the JV Firm, their share and responsibility in the JV Firm etc. particularly with reference to financial, technical and other obligations shall be furnished in the MoU.

2.4.1.7 On award of contract to a JV Firm, Performance Guarantees shall be submitted by the JV Firm as per clause 4.11. All the Guarantees like Performance Guarantee, Bank Guarantee for Mobilization Advance, Machinery Advance etc. shall be accepted only in the name of the JV Firm and no splitting of guarantees amongst the members of the JV Firm shall be permitted.

2.4.1.8 On issue of LOA (Letter of Acceptance), an agreement among the members of the JV Firm (to whom the work has been awarded) shall be executed and got registered before the Registrar of the Companies under Companies Act or before the Registrar/Sub-Registrar under the Registration Act, 1908. This JV Agreement shall be submitted by the JV Firm to the Railways before signing the contract agreement for the service. In case the Bidder fails to observe/comply with this stipulation, the full Earnest Money Deposit (EMD) shall be forfeited and other penal actions due shall be taken against partners of the JV and the JV. This Joint Venture Agreement shall have, inter-alia, following Clauses:

**(a) Joint and Several Liability** - Members of the JV Firm to which the contract is awarded, shall be jointly and severally liable to the Employer (Railways) for delivery of service in accordance with General and Special Conditions of Contract. The JV members shall also be liable jointly and severally for the loss, damages caused to the Railways




during the course of execution of the contract or due to non-execution of the contract or part thereof.

**(b) Duration of the Joint Venture Agreement** - It shall be valid during the entire currency of the contract including the period of extension, if any and the maintenance period after the service is completed.

**(c) Governing Laws** - The Joint Venture Agreement shall in all respect be governed by and interpreted in accordance with Indian laws.

**2.4.1.9 Authorized Member** - Joint Venture members shall authorize one of the members on behalf of the Joint Venture Firm to deal with the Bid, sign the agreement or enter into contract in respect of the said Bid, to receive payment, to witness joint measurement of work done, to sign measurement books and similar such action in respect of the said Bid/contract. All notices/correspondences with respect to the contract would be sent only to this authorised member of the JV Firm.

**2.4.1.10** No member of the Joint Venture Firm shall have the right to assign or transfer the interest right or liability in the contract without the written consent of the other members and that of the employer (Railways) in respect of the said bid/ contract.

**2.4.1.11 Documents to be enclosed by the JV Firm along with the Bid:**

**2.4.1.11.1** In case one or more of the members of the JV Firm is/are partnership firm(s), following documents shall be submitted:

- (a) Notary certified copy of the Partnership Deed,
- (b) Consent of all the partners to enter into the Joint Venture Agreement on a stamp paper of appropriate value (in original).
- (c) Power of Attorney (duly registered as per prevailing law) in favour of one of the partners of the partnership firm to sign the JV Agreement on behalf of the partnership firm and create liability against the firm.

**2.4.1.11.2** In case one or more members is/are Proprietary Firm or HUF, the following documents shall be enclosed:

- (a) Affidavit on Stamp Paper of appropriate value declaring that his/her Concern is a Proprietary Concern and he/she is sole proprietor of the Concern OR he/she is in position of "KARTA" of Hindu Undivided Family (HUF) and he/she has the authority, power and consent given by other partners to act on behalf of HUF.

**2.4.1.11.3** In case one or more members is/ are limited companies, the following documents shall be submitted:

- (a) Notary certified copy of resolutions of the Directors of the Company, permitting the company to enter into a JV agreement, authorizing MD or one of the Directors or Managers of the Company to sign JV Agreement, such other documents required to be signed on behalf of the Company and enter into liability against the company and/or do any other act on behalf of the company.
- (b) Copy of Memorandum and Articles of Association of the Company.
- (c) Power of Attorney (duly registered as per prevailing law) by the Company authorizing the person to do/act mentioned in the para (a) above.

2.4.1.11.4 All the Members of JV shall certify that they are not blacklisted or debarred by Railways or any other Ministry / Department / PSU (Public Sector Undertaking) of the Govt. of India/ State Govt. from participation in Bids/contract on the date of opening of bids either in their individual capacity or as a member of the JV Firm in which they were/are members.

## 2.5 Disqualification of Bidders

### 2.5.1 Employment / Partnership etc. of Retired Railway Employees

#### 2.5.1.1

(a) Should a Bidder be a retired Manager of the Gazetted rank or any other Gazetted Officer working before her retirement, whether in the executive or administrative capacity or whether holding a pensionable post or not, in any department of any of the railways owned and administered by the President of India for the time being, or

(b) Should a Bidder being partnership firm have as one of its partners a retired Manager or retired Gazetted Officer as aforesaid, or

(c) Should a Bidder being an incorporated company have any such retired Manager or retired officer as one of its Directors or

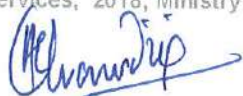

(d) Should a Bidder have in her employment any retired Manager or retired Gazetted Officer as aforesaid, then

the full information as to the date of retirement of such Manager or Gazetted Officer from the said service and in case where such Manager or Officer had not retired from Government service at least one year prior to the date of submission of the Bid as to whether permission for taking such contract, or

if the contractor be a partnership firm or an incorporated company, to become a partner or Director as the case may be, or to take the employment under the contractor, has been obtained by the Bidder or the Manager or Officer, as the case may be from the President of India or any officer, duly authorised by her in this behalf, shall be clearly stated in writing at the time of submitting the Bid.

Bids without the information above referred to or a statement to the effect that no such retired Manager or retired Gazetted Officer is so associated with the Bidder, as the case may be, shall be rejected.

**2.5.2** Should a Bidder or contractor being an individual on the list of approved Contractors, have a relative(s) or in the case of partnership firm or company of contractors one or more of her shareholder(s) or a relative(s) of the shareholder(s) employed in gazette capacity in any department of Indian Railway, the authority inviting bids shall be informed of the fact at the time of submission of Bid, failing which the bid may be disqualified/rejected or if such fact subsequently comes to light, the contract may be rescinded in accordance with the provision in Clause 7.4 of the General Conditions of Contract.




2.5.2.1 If the bidder or any of its constituents has been levied with a penalty for violation of labour laws for three times in the last two years (from the date of opening of tender) by the appropriate enforcing agency like the Labour Commissioner etc.

2.5.2.2 The contractor shall be disqualified from participating in the bidding for services in a Railway division,

(i) If any previous contract of the bidder or any of its constituents had been terminated under clause 7.4 in that Railway division, with in the previous 2 years from date of submission of bids.

(ii) In that Railway division, the bidder or any of its constituents has been imposed a penalty equivalent to the maximum penalty that can be imposed under a previous contract, such a figure being specified, with in the previous 2 years from date of submission of bids. (Period of 2 years shall be reckoned from the date on which the total accrued amount of penalties has reached the maximum penalty that can be imposed under the contract, as specified by the Competent Authority)

The declaration to this effect shall be furnished by the contractor as a part of his bid document. A format in this regard shall be made a part of the tender document. In case this declaration is found to be false, process for 'banning of business' against the bidder/contractor shall be initiated as per extent rules.

## 2.6 Bid Evaluation System

Evaluation of the bids shall be done as per the following system –

For evaluation of bids, the technical criteria must be defined by the tender inviting authority in consultation with associate finance and approval of the tender accepting authority, as per the needs and specific requirements of the project in question.

Based on the type and specific requirements of the project the following methods of bid evaluation can be used, as considered appropriate.

**A. Single Packet System:** This method of evaluation shall be used for all service contracts having bid value upto and including Rs 50 Lakh. This shall be based on the eligibility criteria as per clause 2.6.1.1 and 2.6.1.2 below. **Clause 2.6.1.3 shall not be applicable here.**

**B. Two Bid System / Two Packet System:** This method of evaluation shall be used for all service contracts having bid value exceeding Rs 50 Lakh.

The procedure detailed below shall be adopted for dealing with 'Two Packets System' of Bidding:

With a view to assess the bids technically without being influenced by the financial bids, 'Two Packets System of Bidding' shall be adopted. In this system, the Bidders shall submit their quotations/ offers in two sealed envelopes; with one envelope containing the Technical bid (First packet) and the other envelope containing the Financial Bid (Second packet).

The first packet shall be with the objective of scrutinizing the capability, financial strength, experience etc. of the bidders. If the technical offers are found acceptable by meeting

the minimum qualifying marks as provided in the technical criteria, the second packet shall be opened and the bids shall be processed for finalization in the normal manner (eligible lowest bidder). Those bidders who do not meet this criterion shall not be considered for opening their financial bids.

However, if on the basis of information contained in the first packet, the Tender Committee needs clarification regarding processes, specifications etc.; communication can be initiated with the bidders. In seeking clarifications, all communications with bidders shall be properly recorded so that an audit trail is maintained. Clarifications shall be confined to the documents/information already submitted by the bidder.

**C. Quality and Cost Based System (QCBS):** This method of selection may be used for consulting services where quality of consultancy is of prime concern such as management consulting, feasibility studies etc. This method of evaluation shall be used for all consultancy service contracts having bid value exceeding Rs 50 Lakh. Under QCBS, weightages are assigned to technical and financial bid.

The bid document shall specify the minimum qualifying score for the quality of technical bid and also the relative weightages to be given to the quality and cost (determined for each case depending on the relative importance of quality vis-a-vis cost aspects in the assignment, e.g. 70:30, 60:40, 50:50 etc.). The bid with the highest weighted combined score (quality and cost) shall be selected. The weightage of the technical parameters i.e. non- financial parameters in no case should exceed 80 percent.

### 2.6.1 Minimum Eligibility Criteria

**2.6.1.1 Work Experience** The bidder should have satisfactorily completed\* in the last three previous financial years and the current financial year upto the date of opening of the tender, one similar single service contract\*\* for a minimum of 35% of advertised value of the bid.

\*Completed service contract includes on-going service contract subject to payment of bills amounting to at least 35% of the advertised value of the bid.

\*\* Similar service contract means any contract that is so specified by the competent authority.


Work experience certificate from private individual shall not be accepted. Certificate from public listed company/private company/Trusts having annual turnover of Rs 500 crore and above subject to the same being issued from their Head office by a person of the company duly enclosing his authorisation by the Management for issuing such credentials.

#### Notes:

The bidder shall submit details of work executed by them in the prescribed format alongwith bid for the service contracts to be considered for qualification of work experience criteria clearly indicating the nature/scope of contract, actual completion cost and actual date of completion for such contract.

**2.6.1.2 Financial Standing:** The Bidders will be qualified only if they have minimum financial capabilities as below –

**(i) T1- Financial Turnover:** The bidder should have an aggregate financial turnover not less than 1.5 times the advertised Bid value during the last three previous financial years




and in the current financial year upto the date of opening of the tender. The audited balance sheet reflecting financial turnover certified by chartered accountant with her stamp, signature and membership number shall be considered.

(ii) **T2-Liquidity:** The bidder should have access to or has available liquid assets, lines of credit and other financial means to meet cash flow that is valued at 5% of the estimated bid value net of applicant's commitments for other contracts. The audited balance sheet and/or banking reference certified by chartered accountant with her stamp, signature and membership number shall be submitted by the bidder along with bid.

Banking reference should contain in clear terms the amount that bank will be in a position to lend for this work to the applicant/member of the Joint Venture/Consortium. In case the Net Current Assets (as seen from the Balance Sheets) are negative, only the Banking references will be considered. Otherwise the aggregate of the Net Current Assets and submitted Banking references will be considered for working out the Liquidity.

The banking reference should be from a Scheduled Bank in India and it should not be more than 3 months old as on date of submission of bids.

In Case of JV firms overall liquidity of JV firm shall be assessed by arithmetic sum of liquidity of all members of JV.

**2.6.1.3 Other Criteria:** Based on the nature of services required, type of contract and other such considerations, the competent authority may include any other criteria as it deems fit in the minimum eligibility criteria for the qualification of bidders. A sample of technical criteria has been attached in Annexure – I for illustrative purposes.

## 2.6.2 Evaluation of Technical Bid

### 2.6.2.1 Bidder's Credentials:

2.6.2.1.1 The bidder shall submit along with the Bid document, documents in support of their claim to fulfil the minimum eligibility criteria as mentioned in the bid. In two packet system of bidding, each bidder shall be assigned score for their technical bid. The score of technical bid should be more than or equal to minimum qualifying marks as mentioned in bid document. The system of assigning score shall be as per the bid document.

2.6.2.1.2 Each page of the copy of documents / certificates in support of credentials, submitted by the bidder, shall be self-attested by the bidder or authorized representative of the bidding firm. Self-attestation shall include signature, stamp and date (on each page). Only, those documents will be considered for evaluating bid, which are duly self-attested as above.

2.6.2.1.3 The bidders shall submit an affidavit on a stamp paper to the effect that all the documents submitted by her along with her bid are true. This shall be mandatory in all bids. The bid shall be summarily rejected if the bidder fails to submit this undertaking along with the bid.

After opening the financial bid, the tender committee shall verify the credentials of the bidder who is declared as the lowest bidder (L1) for their authenticity. In case the credentials of L1 are not found to be in order, her bid shall be treated as technically

unresponsive and thus invalid. The process shall be repeated for the next higher bidder till the valid L1 is established. If any document (or copy thereof) submitted by a bidder is found to be false / forged:

- (a) The bidder / each partner / member of the bidding firm shall be liable to legal actions apart from punitive actions, as decided by competent authority of Railways. In such an eventuality, the bid (bid) shall also be summarily rejected.
- (b) If the contract has already been awarded, or Letter of Acceptance (LOA) has been issued and any, the contract shall be terminated, irrespective of the stage of progress in execution of the work. In such an eventuality, Security Deposit (SD), Performance Guarantee (PG) and partial / full payments otherwise due to the contractor, in respect of the partial / full work executed by the contractor, shall be forfeited by the Railways.
- (c) Other punitive actions, like banning the bidder and partners / members of the bidding firm for future dealings with Indian Railways and / or the Government of India may also be taken by the Railway / Govt. of India authorities.

#### 2.6.4 Evaluation of Financial Bid

The financial proposal shall be evaluated to determine the lowest bidder. In case, the evaluated financial offers of two or more technically qualified bidders are Lowest and same, then the Bid of the bidder who is technically more sound (having scored higher marks in evaluation of technical bid as per clause 2.6.1.3) shall be considered as the lowest. If the marks in the evaluation of technical bids of the lowest bidders are also found to be equal, then the bid of the bidder with the higher cumulative annual financial turnover over the last three years and the current financial year shall be considered as the lowest.

### 2.7 Application for Registration for Approved List of Vendors

2.7.1. Contracts for provision of services shall be entrusted for execution to contractors whose capabilities and financial status have been investigated and approved to the satisfaction of the Railway. For this purpose, a list of approved contractors for each category of services may be maintained in the Railway. The said list is to be revised periodically once in a year or so by giving wide publicity through advertisements etc.

A Contractor including a contractor who is already on the approved list shall apply to the competent authority furnishing particulars regarding:

- (a) her position as an independent contractor specifying the organization available with details or Partners / Staff employed with qualifications and experience;
- (b) her capacity to undertake and carry out services satisfactorily as vouched for by a responsible official or firm, with details about the transport equipment, tools and plants etc., required for the work maintained by her;
- (c) her previous experience of services rendered similar to that to be contracted for, in proof of which original certificates or testimonials may be called for and their genuineness verified, if needs be, by reference to the signatories thereof;
- (f) her financial position;

2.7.2 An applicant shall clearly state the categories of services and the Area / Zone / Division(s) / District(s) in which she desires registration in the list of approved contractors.



Sanjeeb Kumar





**2.7.3** The selection of contractors for enlistment in the approved list would be done by a committee for different value slabs as notified by Railway. The term for this approved list to be in force will also be determined by the competent authority in Indian Railways.

**2.7.4** An annual fee as prescribed by the Railway from time to time would be charged from such approved contractors to cover the cost of sending notices to them and clerage for bids etc.

## **2.8 Right of Railway to Deal with Bids**

The Railway reserves the right of not to invite bids for any of railway service/s and when Bids are called to accept a Bid in whole or in part or reject any Bid or all Bids without assigning reasons for any such action. The authority for the acceptance of the Bid will rest with the Railway. It shall not be obligatory on the said authority to accept the lowest Bid or any other Bid and no Bidders(s) shall demand any explanation for the cause of rejection of their Bid nor the Railway to assign reasons for declining to consider or reject any particular Bid/s.

**2.8.1** If the bidder(s) deliberately gives / give wrong information in her / their tender or creates / create circumstances for the acceptance of her / their tender, the Railway reserves the right to reject such tender at any stage.

**2.8.2** If the bidder(s) expire(s) after the submission of her / their tender or after the acceptance of her / their tender, the Railway shall deem such tender cancelled. If a partner of a firm expires after the submission of their tender or after the acceptance of their tender, the Railway shall deem such tender as cancelled, unless the firm retains its character.

**2.8.3** If the bidder, whose bid has been found to be the lowest evaluated bid withdraws or whose bid has been accepted, falls to sign the procurement contract as may be required, or falls to provide the security as may be required for the performance of the contract or otherwise withdraws from the procurement process, the Procuring Entity shall cancel the procurement process. Provided that the Procuring Entity, on being satisfied that it is not a case of cartelization and the integrity of the procurement process has been maintained, may, for cogent reasons to be recorded in writing, offer the next successful bidder an opportunity to match the financial bid of the first successful bidder, and if the offer is accepted, award the contract to the next successful bidder at the price bid of the first successful bidder. This clause shall not be applicable for Consultancy contracts.

Sanjeet Kumar

### III. BID DOCUMENTATION

#### 3.1 Bid (Tender) Form

Bid (Tender) Forms shall embody the contents of the contract documents either directly or by reference and shall be as per specimen form, **Annexure – II**. Bid Forms shall be issued on payment of the prescribed fee to the appropriate contractors on the list of approved contractors. Contractors not on the list of approved contractors, will on payment of the prescribed fees, be furnished with Bid forms and they shall be required to submit evidence regarding their financial status, previous experience and ability to execute the works.

MSEs registered with District Industries Centres, Khadi and Village Industries Commission, Khadi and Village Industries Board, Coir Board, National Small Industries Corporation, Directorate of Handicraft and Handloom, any other body specified by Ministry of MSME or Startups as recognised by Department of Industrial policy & Promotion shall be supplied such Bid documents free of cost on confirmation (photocopy/ Xerox copy) of their evidence to this effect.

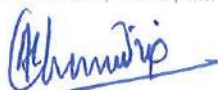
#### 3.2 Omissions & Discrepancies

Should a Bidder find discrepancies in or omissions from the drawings or any of the Bid Forms or should she be in doubt as to their meaning, she should at once notify the authority inviting Bidders who may send a written instruction to all the Bidders. It shall be understood that every endeavour has been made to avoid any error which can materially affect the basis of tender and successful Bidder shall take upon herself and provide for the risk of any error which may subsequently be discovered and shall make no subsequent claim on account thereof.

#### 3.3 Earnest Money

3.3.1 The Bidder shall be required to deposit earnest money with the Bid for the due performance with the stipulation to keep the offer open till such date as specified in the Bid, under the conditions of Bid. The earnest money shall be as under –

Value of the Work	Earnest Money Deposit (EMD)
a) For works / services estimated to cost up to Rs. 1 crore	2% of the estimated cost of the work







- b) For works/ services estimated to cost more than Rs. 1 crore Rs. 2 lakh plus ½% (half percent) of the excess of the estimated cost of work beyond Rs.1 crore subject to a maximum of Rs. 1 crore

**Note:**

- The earnest money shall be rounded to the nearest Rs.10. This earnest money shall be applicable for all modes of Bidding.
- MSEs registered with District Industries Centres, Khadi and Village Industries Commission, Khadi and Village Industries Board, Coir Board, National Small Industries Corporation, Directorate of Handicraft and Handloom, any other body specified by Ministry of MSME or Startups as recognised by Department of Industrial policy & Promotion shall be exempted from payment of minimum EMD detailed in the bid.

**3.3.2** It shall be understood that the Bid documents have been sold/issued to the Bidder and the Bidder is permitted to bid in consideration of stipulation on their part, that after submitting her Bid she will not resile from her/ their offer or modify the terms and conditions thereof in a manner not acceptable to the Manager. Should the Bidder fail to observe or comply with the said stipulation, the aforesaid amount shall be liable to be forfeited to the Railway.

**3.3.3** If her Bid is accepted, this earnest money mentioned in sub clause 3.3.1 above will be returned to the successful bidder after the submission and verification of the Performance Guarantees as per clause 4.11 of this General Conditions of Contract. The Earnest Money of other Bidders shall, save as herein before provided, be returned to them, but the Railway shall not be responsible for any loss or depreciation that may happen thereto while in their possession, nor be liable to pay interest thereon.

**3.3.4** The Earnest Money should be demanded in the form and manner as per the latest instructions issued by the Railway Board from time to time.

### 3.4 Care in Submission of Bids

**3.4.1** Before submitting a Bid, the Bidder shall be deemed to have satisfied herself by actual inspection of the site and locality of the services, that all conditions liable to be encountered during the delivery of the services are taken into account and that the rates she enters in the Bid forms are adequate and all-inclusive to accord with the provisions in **Clause – 4.42** of the General Conditions of Contract for the delivery of services to the entire satisfaction of the Manager.

**3.4.2** When the service is bidden for, by a firm or a company of contractors, the Bid shall be signed by the individual legally authorized to enter into commitments on their behalf.

**3.4.3** Railway shall not be bound by any power of attorney granted by the Bidder or by changes in the composition of the firm made subsequent to the execution of the contract. It may, however, recognize such power of attorney and changes after obtaining proper legal advice, the cost of which will be chargeable to the contractor.

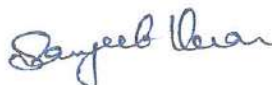
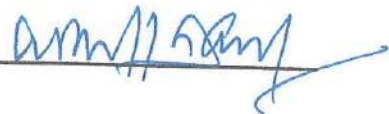
### 3.5 Execution of Contract Document

The Bidder whose bid is accepted shall be required to appear in person at the office of concerned Manager, as the case may be, or if a firm or corporation, a duly authorized representative shall so appear and execute the contract document within 7 days after receipt of notice issued by the Railway that such documents are ready; and failure to do so shall constitute a breach of the agreement affected by the acceptance of the bid in which case the Railway may determine that such Bidder has abandoned the contract and there upon her bid and acceptance thereof shall be treated as cancelled and the Railway shall be entitled to forfeit the full amount of the Earnest Money of the bid and performance guarantees for the bid available with the Railway.

### 3.6 Form of Contract Document

Every contract shall be complete in respect of the document it shall so constitute. Not less than 3 copies of the contract document shall be signed by the competent authority and the contractor – one copy given to the contractor, one copy for the finance department and one copy for the contract manager. The form of contract document shall be provided in the tender/bid documents for every individual work.

**Specimen Bid and Agreement forms are placed as Annexures II and III**





## IV. GENERAL OBLIGATIONS

### 4.1 Execution Co-Relation and Intent of Contract Documents

The contract documents shall be signed in triplicate by the Railway and the Contractor. The contract documents are complementary and what is called for by anyone shall be as binding as if called for by all, the intention of the documents is to include all labour and materials, equipment and transportation necessary for proper execution of the services. Materials or works/services not covered by or properly inferable from any heading or class of the specifications shall not be supplied by the Railway to the contractors unless distinctly specified in the contract documents. Materials or works/services described in words which so applied have a well-known technical or trade meaning shall be held to refer to such recognized standards.

**4.1.1** If a service is transferred from the jurisdiction of one Railway to another Railway or to a Project authority or vice versa while contract is in subsistence, the contract shall be binding on the Contractor and the Successor Railway/Project in the same manner & take effect in all respects as if the Contractor and the Successor Railway/Project were parties thereto from the inception and the corresponding officer or the Competent Authority in the Successor Railway/Project will exercise the same powers and enjoy the same authority as conferred to the Predecessor Railway/Project under the original contract/agreement entered into.

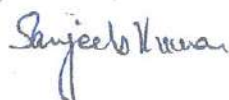
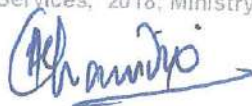
**4.1.2** If for administrative or other reasons the contract is transferred to the Successor Railway, the contract shall, notwithstanding any things contained herein contrary there to, be binding on the Contractor and the Successor Railway in the same manner and take effect in all respects as if the Contractor and the Successor Railway had been parties thereto from the date of this contract.

### 4.2 Law Governing the Contract

The contract shall be governed by the law for the time being in force in the Republic of India.

#### 4.2.1 Compliance to Regulations and Bye-Laws

The Contractor shall conform to the provision of any statute relating to the services and regulations and bye-laws of any local authority and of any water, drainage and lighting companies or undertakings, with whose system the services are proposed to be provided and shall before making any variation from the drawings or the specifications



that may be necessitated by so confirming give to the Manager notice specifying the variation proposed to be made and the reason for making the variation and shall not carry out such variation until she has received instructions from the Manager in respect thereof. The Contractor shall be bound to give all notices required by statute, regulations or bye-laws as aforesaid and to pay all fees and taxes payable to any authority in respect thereof.

#### 4.2.2 Communications to be in Writing

All notices, communication, reference and complaints made by the Railway or the Manager or the Manager's Representative or the Contractor *inter se* concerning the works/ services shall be in writing and no notice, communication, reference or complaint not in writing shall be recognized.

#### 4.3 Service of Notices on Contractors

The Contractor shall furnish to the Manager the name, designation and address of her authorized agent and all complaints, notices, communications and references shall be deemed to have been duly given to the Contractor, if delivered to the Contractor or her authorised agent or left at or posted to the address so given and shall be deemed to have been so given in the case of posting on day on which they would have reached such address in the ordinary course of post or on the day on which they were so delivered or left. In the case of contract by partners, any change in the constitution of the firm shall be forthwith notified by the Contractor to the Manager.

#### 4.4 Occupation and Use of Land

No land belonging to or in the possession of the Railway shall be occupied by the Contractor without the permission of the Railway. The Contractor shall not use, or allow to be used, the site for any purposes other than that of executing, or in relation to the execution of the services.

#### 4.5 Assignment or Subletting of Contract

The Contractor shall not assign or sublet the contract or any part thereof or allow any person to become interested therein in any manner whatsoever without the special permission in writing of the Railway. Any breach of this condition shall entitle the Railway to rescind the contract under Clause 7.4 of these Conditions and also render the contractor liable for payment to the Railway in respect of any loss or damage arising or ensuing from such cancellation. The permitted subletting of services by the Contractor shall not establish any contractual relationship between the sub-contractor and the Railway and shall not relieve the Contractor of any responsibility under the Contract.

#### 4.6 Railway Passes

No free Railway passes shall be issued by the Railway to the Contractor or any of her employees/ workers. Wherever required 'authority for entering restricted area' or 'authority for on board services' shall be provided.



## 4.7 Carriage of Materials

No forwarding orders shall be issued by the Railway for the conveyance of Contractor's materials, tools and plant by Rail which may be required for use in the services and the contractor shall pay full freight charges at public tariff rates therefor.

## 4.8 Representation on Site

The Contractor shall, when she is not personally present on the site of the work place, keep a responsible agent during working hours who shall on receiving reasonable notice, present herself to the Manager, and orders given by the Manager or the Manager's representative to the agent shall be deemed to have the same force as if they had been given to the Contractor. Before absenting herself, the Contractor shall furnish the name and address of her agent for the purpose of this clause and failure on the part of the Contractor to comply with this provision at any time will entitle the Railway to rescind the contract under Clause 7.4 of these Conditions.

## 4.9 Relics, Treasures, Lost and Found

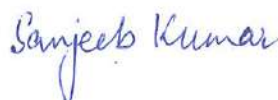
All gold, silver, oil and other minerals of any description and all precious stones, coins, treasures, relics antiquities, lost and found etc. which shall be found in or upon the site shall be the property of the Railway and the Contractor shall duly preserve the same to the satisfaction of the Railway and shall from time to time deliver the same to such person or persons as the Railway may appoint to receive the same.

## 4.10 Indemnity by Contractors

The Contractor shall indemnify and save harmless the Railway, from and against, all actions, suit proceedings, losses, costs, damages, charges, claims and demands of every nature and description brought or recovered against the Railways by reason of any act or omission of the Contractor, her agents or employees, in the execution of the services/works wherever applicable or in her guarding of the same. All sums payable by way of compensation under any of these conditions shall be considered as reasonable compensation to be applied to the actual loss or damage sustained, and whether or not any damage shall have been sustained.

## 4.11 Performance Guarantee

4.11.1 Performance guarantee at a rate of 10% of the contractual value shall be deposited by the successful bidder. The successful bidder shall have to submit a Performance Guarantee (PG) valuing 10% of the contract value in four separate parts of 2.5 % each of the contract value, within 30 (thirty) days from the date of issue of Letter of Acceptance (LOA). Extension of time for submission of PG beyond 30 (thirty) days and upto the date of submission of PG from the date of issue of LOA may be given by the Authority who is competent to sign the contract agreement. However, a penal interest of 15% per annum shall be charged for the delay beyond 30 (thirty) days, i.e. from 31<sup>st</sup> day after the date of issue of LOA. In case the contractor fails to submit the requisite PG after 60 days from the date of issue of LOA, a notice shall be served to the contractor to deposit the PG immediately however not exceeding 90 days from the date of issue of LOA). In case the contractor fails to submit the requisite PG even after 90 days from the date of issue of LOA, the contract shall be terminated duly forfeiting EMD and other dues, if any payable against that contract. The failed contractor shall be debarred from participating in re-tender for that work. In case 60<sup>th</sup> day is a bank holiday or office closure next working day



should be considered as the last day for submission of the PGs. Decision of Authority competent to sign the Contract Agreement would be final in case of any dispute.

**4.11.2** The value of PG to be submitted by the contractor will not change for variation upto 25% (either increase or decrease). In case during the course of execution, value of the contract increases by more than 25% of the original contract value, an additional Performance Guarantee amounting to 10% (five percent) for the excess value over the original contract value shall be deposited in four equal parts by the contractor. On the other hand, if the value of Contract decreases by more than 25% of the original contract value, Performance guarantee amounting to 10% of the decrease in the contract value shall be returned to contractor. The PG amount in excess of required PG for decreased contract value, available with railways shall be returned to the contractor duly safeguarding the interest of Railways.

**4.11.3** The applicable Performance Guarantee shall be calculated as per the revised value of the contract covering all variations upto the determination of the contract

**4.11.4** If the penalty imposed exceeds 50% of the applicable maximum penalty (as per the revised value of the contract), a PG equivalent to 25% of the applicable PG shall be forfeited. If the penalty imposed exceeds 75% of the applicable maximum penalty, a PG equivalent to 50% of the applicable PG shall be forfeited. The PGs shall be encashed after the completion of the contract.

**4.11.5** The successful bidder shall submit the Performance Guarantees (PG) in any of the following forms, amounting to 10% of the contract value –

- (a) A deposit of cash;
  - (b) Irrevocable Bank Guarantee;
  - (c) Government Securities including State Loan Bonds at 5% below the market value;
  - (d) Deposit Receipts, Pay Orders, Demand Drafts and Guarantee Bonds. These forms of Performance Guarantee could be either of the State Bank of India or of any of the Nationalized Banks;
  - (e) Guarantee Bonds executed or Deposits Receipts tendered by all Scheduled Banks;
  - (f) A Deposit in the Post Office Saving Bank;
  - (g) A Deposit in the National Savings Certificates;
  - (h) Twelve years National Defence Certificates;
  - (i) Ten years Defence Deposits;
  - (j) National Defence Bonds and
  - (k) Unit Trust Certificates at 5% below market value or at the face value whichever is less.
- Also, FDR in favour of FA&CAO (free from any encumbrance) may be accepted.

**Note** - The instruments as listed above will also be acceptable for Guarantees in case of Mobilization Advance.

**4.11.6** The Performance Guarantees shall be submitted by the successful bidder after the Letter of Acceptance (LOA) has been issued, but before signing of the contract agreement. These PGs shall be initially valid upto the stipulated date of completion and maintenance period, if any plus 60 days beyond that. In case, the time for completion of service gets extended, the contractor shall get the validity of PGs extended to cover such extended time for completion and maintenance period, if any of service plus 60 days.



4.11.7 The Performance Guarantees (PGs) shall be released after physical completion of the work/ service delivery based on 'Completion Certificate' issued by the competent authority stating that the contractor has completed the assigned services in all respects satisfactorily and passing of final bill based on "No Claims Certificate" from the contractor. In case any contract provides for warranty/ maintenance clause then 25 % of the Performance Guarantee would be retained till the warranty/ maintenance period is over and a certificate to that effect is issued by the Manager.

4.11.8 Whenever the contract is rescinded, the Performance Guarantees shall be encashed/ forfeited. The balance work or services for the same shall be got done independently without risk & cost of the failed contractor. The failed contractor shall be debarred for a period of 2 years from the date of such rescindment from participating in the bid which includes delivery of balance services of failed contract. If the failed contractor is a Partnership firm, then every member/ partner of such a firm shall be debarred for a period of 2 years from the date of such rescindment from participating in the bid which includes delivery of balance services of failed contract in his/her individual capacity.

4.11.9 The Manager shall not make a claim under the Performance Guarantee except for amounts to which the President of India is entitled under the contract (not withstanding and/or without prejudice to any other provisions in the contract agreement) in the event of –

(a) Failure by the contractor to extend the validity of the Performance Guarantee as described herein above, in which event the Manager may claim the full amount of the Performance Guarantee.

(b) Failure by the contractor to pay President of India any amount due, either as agreed by the contractor or determined under any of the Clauses/Conditions of the Agreement, within 30 days of the service of notice to this effect by Manager.

(c) The Contract being determined or rescinded under provision of the GCC, the Performance Guarantee shall be forfeited in full and shall be absolutely at the disposal of the President of India.

## 4.12 Force Majeure

If at any time, during the continuance of this contract, the performance in whole or in part by either party of any obligation under this contract shall be prevented or delayed by reason of any war, hostility, acts of public enemy, civil commotion, sabotage, serious loss or damage by fire, explosions, epidemics, strikes, lockouts or acts of God (hereinafter, referred to events) provided, notice of the happening of any such event is given by either party to the other within 7 days from the date of occurrence thereof, neither party shall by reason of such event, be entitled to terminate this contract nor shall either party have any claim for damages against the other in respect of such non-performance or delay in performance, and works/ services under the contract shall be resumed as soon as practicable after such event has come to an end or ceased to exist, and the decision of the Manager as to whether the works/ services have been so resumed or not shall be final and conclusive, PROVIDED FURTHER that if the performance in whole or in part of any obligation under this contract is prevented or delayed by reason of any such event for a period exceeding 120 days, either party may at its option terminate the contract by giving notice to the other party.

### 4.13 Illegal Gratification

**4.13.1** Any bribe, commission, gift or advantage given, promised or offered by or on behalf to the Contractor or her partner, agent or servant or, anyone on her behalf, to any officer or employee of the Railway, or to any person on her behalf in relation to obtaining or execution of this or any other contract with the Railway shall, in addition to any criminal liability which she may incur, subject contractor to the rescission of the contract and all other contracts with the Railway and to the payment of any loss or damage resulting from such decision and the Railway shall be entitled to deduct the amounts so payable from any moneys due to the Contractor(s) under this contract or any other contracts with the Railway.

**4.13.2** The Contractor shall not lend or borrow from or have or enter into any monetary dealings or transactions either directly or indirectly with any employee of the Railway and if she shall do so, the Railway shall be entitled forthwith to rescind the contract and all other contracts with the Railway. Any question or dispute as to the commission or any such offence or compensation payable to the Railway under this Clause shall be settled by the General Manager of the Railway, in such a manner as she shall consider fit & sufficient and her decision shall be final & conclusive. In the event of rescission of the contract under this Clause, the Contractor will not be paid any compensation whatsoever except payments for the work/ services rendered upto the date of rescission.

### 4.14 Contractor's Understanding

It is understood and agreed that the Contractor has, by careful examination, satisfied herself as to the nature, scope and location of the services, the type / character of equipment and facilities needed preliminary to, and during the progress of the services, the general and local conditions, the labour conditions prevailing therein and all other matters which can in any way affect the services under the contract.

### 4.15 Commencement of Services

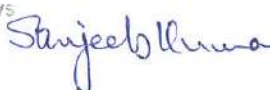
The Contractor shall commence the services within 15 days (unless specified otherwise) after the receipt by her of an order in writing to this effect from the Manager or as directed by the Manager and shall proceed with the same with due expedition and without delay.

### 4.16 Accepted Programme

The Contractor shall submit schedule of delivery of services, the details of organisation (in terms of labour and supervisors) plant and machinery that she intends to utilize (from time to time) for execution of the services. The programme of delivery of services amended as necessary by discussions with the Manager, shall be treated as the agreed programme of the delivery of services for the purpose of this contract and the contractor shall endeavour to fulfill this programme of delivery of services. The progress of delivery of services shall be watched accordingly.

### 4.17 Compliance to Manager's Instructions

The Manager shall direct the order in which the several components of the services shall be provided and the Contractor shall execute without delay all orders given by the





Manager from time to time; but the Contractor shall not be relieved thereby from responsibility for the due performance of the services in all respects.

**4.17.1** In cases, where performance or/and quality of services is/are found to be dissatisfactory, Manager or his representatives shall impose penalty as mentioned in bid document, subject to cumulative penalty for such dissatisfactory performance or/and quality of services does not exceeds 10% of original contract value or as prescribed in the bid document.

#### **4.18 Alterations to be Authorized**

No alterations in or additions to or omissions or abandonment of any part of the services shall be deemed authorised, except under instructions from the Manager, and the Contractor shall be responsible to obtain such instructions in each and every case in writing from the Manager.

#### **4.19 Extra Services**

Should services over and above those included in the contract require to be provided at the site, the contractor shall have no right to be entrusted with the execution of such works/services which may be carried out by another contractor or contractors or by other means at the option of the Railway.

#### **4.20 Separate Contracts in Connection with Services**

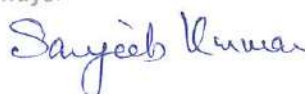

The Railway shall have the right to let other contracts in connection with the works/services. The Contractor shall afford other contractors reasonable opportunity for the storage of their materials and the execution of their works/services and shall properly connect and coordinate her work/services with theirs. If any part of the Contractors works/services depends for proper execution or result upon the works/services of another contractor(s), the Contractor shall inspect and promptly report to the Manager any defects in such works/ services that render it unsuitable for such proper execution and results. The Contractor's failure so to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of her services, except as to defects which may develop in the other contractor's work after the execution of her work.

#### **4.21 Instructions of Manager's Representative**

Any instructions or approval given by the Manager's representative to Contractor in connection with the services shall bind the Contractor as though it had been given by the Manager provided always as follows –

(a) Failure of the Manager's representative to disapprove any work/ services or materials shall not prejudice the power of the Manager thereafter to disapprove such services or material and to order the rectification thereof.

(b) If the Contractor shall be dissatisfied by reason of any decision of the Manager's representative, she shall be entitled to refer the matter to the Manager who shall there upon confirm or vary such decision.



## 4.22 Adherence to Specifications and Drawings

The whole of the works/ services shall be executed in perfect conformity with the specifications and procedures (and drawings, wherever applicable) of the contract. If Contractor performs any act in a manner contrary to the specifications or drawings or any of them and without such reference to the Manager, she shall bear all the costs arising or ensuing there from and shall be responsible for all loss to the Railway.

**4.22.1 Drawings and Specifications of the Works:** The Contractor shall keep one copy of procedures and Specifications at the site, in good order, and such contract documents as may be necessary, available to the Manager or the Manager's Representative.

**4.22.2 Ownership of Proprietary Information and Specifications:** All procedures, documents, drawings, processes and specifications and copies thereof furnished by the Railway to the Contractor are deemed to be the property/ proprietary information of the Railway. They shall not be copied, distributed, published, used in any form or on other services. With the exception of the signed contract set, all such documentation in hard copy or soft copy format and other material, shall be returned by the Contractor to the Railway, on completion/ termination of the Contract.

**4.22.3 Compliance with Contractor's Request for Details:** The Manager shall furnish with reasonable promptness, after receipt by her of the Contractor's request for the same, additional instructions by means of procedures, specifications or otherwise, necessary for the proper execution of the services or any part thereof. All such procedures, specifications and instructions shall be consistent with the Contract Documents and reasonably inferable therefrom.

**4.22.4 Meaning and Intent of Specification and Drawings:** If any ambiguity arises as to the meaning and intent of any portion of the procedures, specifications and drawings or as to execution or quality of any services or material, or as to the measurements of the services the decision of the Manager thereon shall be final subject to the appeal (within 7 days of such decision being intimated to the Contractor) to the Chief Manager who shall have the power to correct any errors, omissions, or discrepancies in aforementioned items and whose decision in the matter in dispute or doubt shall be final and conclusive.

## 4.23 Working Timings

The Contractor shall have to carry out any required services round the clock as per directions of the Manager/ Manager's representative.

## 4.24 Damage to Railway Property or Private Life and Property

The Contractor shall be responsible for all risk involved in the services rendered and for trespass and shall make good at her own expense all loss or damage whether to the works/services themselves or to any other property of the Railway or the lives, persons or property of others from whatsoever cause in connection with the and this although all reasonable and proper precautions may have been taken by the Contractor, and in case the Railway shall be called upon to make good any costs, loss or damages, or to pay any compensation, including that payable under the provisions of the **Workmen's Compensation Act** or any statutory amendments thereof



to any person or persons sustaining damages as aforesaid by reason of any act, or any negligence or omissions on the part of the Contractor; the amount of any costs or charges including costs and charges in connection with legal proceedings, which the Railway may incur in reference thereto, shall be charged to the Contractor. The Railway shall have the power and right to pay or to defend or compromise any claim of threatened legal proceedings or in anticipation of legal proceedings being instituted consequent on the action or default of the Contractor, to take such steps as may be considered necessary or desirable to ward off or mitigate the effect of such proceedings, charging to Contractor, as aforesaid, any sum or sums of money which may be paid and any expenses whether for reinstatement or otherwise which may be incurred and the propriety of any such payment, defense or compromise, and the incurring of any such expenses shall not be called in question by the Contractor.

#### **4.25 Sheds, yards and Store Houses**

The Contractor shall at her own expense provide herself with sheds, yards and storehouses in such situations and in such numbers as in the opinion of the Manager is requisite for carrying on the services and the Contractor shall keep at each such sheds, yards and store-houses a sufficient quantity of materials / plant in stock as not to delay the carrying out of the services with due expedition and the Manager and the Manager's representative shall have free access to the said sheds/yards/ store houses at any time for the purpose of inspecting the stock of materials or plant so kept in hand, and any materials or plant which the Manager may object to shall not be brought upon or used in the services, but shall be forthwith removed from the sheds/yards/store houses by the Contractor.

#### **4.26 Provision of Efficient and Competent Staff at Sites by the Contractor**

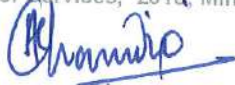
**4.26.1** The Contractor shall maintain efficient and competent staff to give the necessary directions to her workers and to see that they provide their services in proper and desirable manner and shall employ only such supervisors, workers & labour in or about the execution of any of these services as are careful and skilled in the various trades. Daily record of such supervisors and labour shall be maintained.

**4.26.2** The Contractor shall at once remove from the site any agents, permitted sub-contractor, supervisor, worker or labour who shall be objected to by the Manager. If and whenever required by the Manager, she shall submit a correct return showing the names of all staff and workers employed by her.

**4.26.3** In the event of the Manager being of the opinion that the Contractor is not employing on the services a sufficient number of staff and workers as is specified or otherwise for proper execution of the services within the prescribed procedure and time, the Contractor shall forthwith on receiving intimation to this effect deploy the additional number of staff and labour as specified by the Manager immediately and failure on the part of the Contractor to comply with such instructions will entitle the Railway to rescind/ penalize the contract under suitable clauses of these/special conditions.

##### **4.26.4 Deployment of Qualified Supervisors by the Contractor**

(a) The contractor shall also employ qualified supervisors based on value of the contract and the extent of services as prescribed in the Bid documents as 'Special Conditions of Contract' by the Tender Inviting Authority.



Sanjeeb Kumar



(b) In case the contractor fails to employ the supervisor, as aforesaid in the above paragraph, she shall be liable to pay penalty at the rates, as may be prescribed by the Ministry of Railways through separate instructions from time to time for the default period for the provisions, as contained in this section or as provided for in the bid document.

(c) Number of qualified supervisors required to be deployed by the Contractor for various activities contained in the service contract shall be specified in the tender documents by the tender inviting authority.

#### **4.27 Skilled Labour/ Expertise and Testing**

The whole of the services and/or supply of materials specified and provided in the contract or that may be necessary to be done in order to form and complete any part thereof shall be executed in the best and most substantial workers with expertise and in a workman like manner with materials of the best and most approved quality of their respective kinds, agreeable to the particulars contained in or implied by the specifications and as referred to in and represented by the drawings or in such other additional particulars, instructions and drawings may be found requisite to be given during the carrying on of the services and to the entire satisfaction of the Manager according to the instructions and directions which the Contractors may from time to time receive from the Manager. The materials may be subjected to tests by means of such machines, instruments and appliances as the Manager may direct and wholly at the expense of the Contractor.

#### **4.28 Removal of Improper Materials/ Tools and Plant**

The Manager or the Manager's Representative shall be entitled to order from time to time:

- (a) The removal from the site within the time specified in the order of any materials which in their opinion are not in accordance with the procedures/ specifications.
- (b) The substitution of proper and suitable materials/ tools and plants, and
- (c) In case of default on the part of the Contractor in carrying out such order, the Railway shall be entitled to rescind the contract under Clause 7.4 of these conditions.

#### **4.29 Facilities for Inspection**

The Contractor shall afford the Manager and the Manager's Representative every facility for entering in and upon every portion of the site at all hours for the purpose of inspection or otherwise and shall provide all facilities of every kind required for the purpose and the Manager and the Manager's Representative shall at all times have free access to every part of the site and to all places at which materials / tools and plant for the services are stored or being prepared.

#### **4.30 Temporary Works**

All temporary works necessary for the proper execution of the services shall be provided and maintained by the Contractor and subject to the consent of the Manager shall be