

MODULE-4

CONTRACT MANAGEMENT-TENDER AND ITS PROCESS

Contents:

Invitation to tender, Prequalification, administrative approval and technical sanction. Bid submission and evaluation process. Contract formulation: covering award of contracts, letter of intent, letter of acceptance and notice to proceed. Features / elements of standard tender document (source: CPWD/ PWD/ International Competitive Bidding – NHAI/NHEPC/NPC). Laws of contract as per Indian contract Act 1872, Types of contract, Lump sum contract, Item rate, % rate, Cost plus with Target Labour, EPC and BOT, Sub contracting. Contract Forms: FIDIC contract Forms, CPWD, NHAI, NTPC, NHEPC

Tender

The tender is an offer in writing to execute some specified work or to supply the materials at certain rates within a fixed time under the certain conditions of agreements between the contractor and department or owner of any party.

Where where a lot of contractors are expected to quote, sealed tender in a prescribed form are invited from the approved list of contractors.

Necessity for tenders:

Entrusting work by calling tender is advantages because of

1. lower bids that may be obtained due to competition among the contractors.
2. selection of contractors can be made based upon their experience in their line.
3. personal interests, prejudices, preferences, partially etc. can be avoided by calling for tenders.

Tender document:

Before inviting tenders the tender documents have to be prepared and issued to the interested tenderers. These documents generally consists of the following:

1. detailed specifications of the work and material should be used.
2. a complete set of Drawings with details of various parts.
3. general conditions of contract.
4. special conditions.
5. schedule quantities of various items of the work. Approximate quantity of work under each item of work.
6. the location of the work.
7. the name of the division in which the work is situated.
8. the rates of Steel and cement if they are supplied by the department.
9. hire charges for lorries, tools and plants to be levied when issued from the department.
10. condition regarding employment of Technical personals.
11. location of water. And supply. For power and rates.
12. the period of completion of work and the time and completion of each stage of work.

13. the amount of earnest money deposit and the form in which it is to be deposited.
14. the name of authority who is accepting or rejecting the tender.
15. conditions of penalty for slow progress and non fulfillment of the condition of the contract.
16. In case of dispute the procedure to be followed for arbitration and designation of the arbitrator to whom the reference is to be made.

Tender notice

After the tender documents have been prepared and approved by the authority, a notice inviting tenders has to be published on the notice board of all unit offices of the department. For works of Greater magnitude, wide publicity should be given to the notice inviting tenders. Tenders must be invited in the most open and public manner possible, buy advertisement in the press and by the notice in the English/ Hindi and the written language of the district, posted in the public place.

The following particulars are written in the tender notice.

1. name of the authority inviting the tender.
2. name of the work and its location.
3. estimated cost of the work.
4. period of contract and type of contract.
5. when and where the tender document should be purchased.
6. the amount to be paid for the set of tender documents.
7. last date and time of submission of tender.
8. the amount of earnest money that should be accompanied with the tender and the amount of security deposit to be paid by the selected contractor.
9. the date and time of the opening of tender.
10. the designation of the officer who accepts the tender.

Specimen of tender notice

Office of Executive Engineer,
PWD, Bengaluru Division.

Tender notification dated

Tender notification number

The sealed tender is duplicate In a prescribed form with the name of the work is invited from register contractors of Karnataka II for the following works and will be received by Executive Engineer, Bengaluru division, Bengaluru up to 5:00 p.m. on 25th October 2010. the tender form with the complete set of contract can be had from office of Executive Engineer from 10 a.m. to 5:00 p.m. on all working days up to to 20th of October 2010 on the payment of Rs _____ tenders will be open at _____ a m or PM on date _____ by the Executive Engineer or is authorised agent in the office at _____ in the presence of contractor or representatives.

Details of estimates, terms of contract conditions etc., maybe see in the office of Executive Engineer, Bengaluru division, Bengaluru during the working hours at the office.

The Executive Engineer receives the tender. He has the rights to accept or reject any or all the tenders without assigning reasons.

Work details

Sl no	Name of the work	Estimated cost	Time of completion	Cost of tender	Class of contractor	EMD
1	Construction of Public Library near RajajiNagar 4th block bus stand	20,00,000	6 months	30% + sales tax	class 1 contractor	2% of estimated cost

Sale of tender documents:

Tender document should be prepared and kept ready for sale to the contractors before the notice is actually sent to the Press or is pasted on the notice board and every contractor desiring to tender shall be asked to make a written application. It is the responsibility of the Executive Engineer/ Assistant Executive Engineer/ Assistant Engineer to see the tender documents are made available to the contractors as soon as the application is made.

Receiving, opening and scrutiny of tenders:

Receiving:

After issue of the tender document to contractors the tender opening authority authorises an officer to receive the tenders and tender may be sent either by post or can put in the tender box kept for the purpose in the premises of the owner. Tenders placed in tender box is locked and kept under the safe custody of the officer. The closing time for receipt of tenders should be kept after the normal time of delivery of the post. Tender received after the due date and time are rejected.

Opening of tenders:

The sealed tenders received are to be opened in the presence of all the contractors for their representatives tendering for the work at the time and place already notified.

The officer opening the tenders has to be read out the rates offered in case of item rate and percentage rate tenders and amount in the case of lump sum tenders for information of all those present. All the tenders will be serial in number and signed by the officer opening the tender.

Preparing comparative statement of tenders:

After the tenders are opened, a comparative statement is made in the office of the tender opening authority. It serves to compare the rates of various tenderers in respect of each item against the estimated rates. The excess for Savings for each tender is worked out.

1. comparative statement of percentage rates and lump sum tenders contains information regarding the name of the contractor, date of receipt of tenders, above or below the rates entered in the tender documents, amount in case of lump sum tenders. The recommendation regarding acceptance or rejection of the tender is recorded on it.
2. Comparative statement of item rate tenders is more elaborate and comprehensive and is after thorough computation and check under supervision of Divisional accountant.

The comparative statement must correctly incorporate the rates and amount and their totals drawn up and checked on the individual tenders. A mistake in it may lead to the work being awarded it to a contractor who is not lowest.

Scrutiny of tenders:

After preparing comparative statement the tender opening authority shall verify whether the contractor has agreed to all the tender conditions or he has included any special condition and the consequent variation in the total amount has to be calculated.

If the acceptance of a particular tender does not rest with the Divisional officer to forward the tenders along with comparative statements and tender documents with his recommendations for observations to the next higher authorities for consideration.

Acceptance of tenders:

Based upon the comparative statement, usually the lowest tender is accepted except in the case where the work of the contractor who was quoted the lowest rate has not been satisfactory on previous occasions or there is doubt.

The tender whose rates are accepted is intimated to sign the contract documents. if he fails to sign within specified time, his offer may be cancelled and his security deposit forfeited and the work may be allotted to the next tender whose bid is lowest among others.

Execution of contract agreement:

After the acceptance of the tender the preparation of contract document, the contractor is required to pay a security deposit before the contract agreement is signed. The contract agreement should be executed in the prescribed form and signed by the contractor or his authorised representatives and the authority on the behalf of Government.

Earnest money deposit(EMD)

When the contractor submit the tender for a work, he has to deposit some amount usually at about 2% of the estimated cost to the department and a guarantee of the tender. If the contractor refuses to take up the work when his tender is accepted, his earnest money is forfeited. But the earnest money of all other contractors whose tenders have not been accepted will be returned to the respective contractors. The earnest money may be in cash or fixed deposit in bank, cash certificate, bank guarantee like saving certificate etc.

Security deposit:

Once the tender is accepted, the selected contractor should deposit 10% of the total cost of work as security deposit with the Department. This amount includes the earnest money

already deposited. The contractor may deposit the entire amount at the beginning of the work or it may be deducted from the running bill of the contractor.

The contractor should fulfill all the conditions of contract and carry out the work satisfactory according to the specification and complete the work in time. If the contractor fails to satisfy terms of agreement, then the part or complete amount of security money will be forfeited. If he complete the work as per the conditions of the agreement with in the specified time, the security deposit will be refunded to the contractor. This amount will be refunded 6 month after the completion of work. any defects noticed during this observation period is to be rectified by the contractor at his cost.

Power of accepting the tender:

When the tenders are accepted by different authorities according to the power of delegation. This differs from state to state generally the chief engineer and the Superintendent engineer has full power. Executive Engineer will have limited powers.

Work order:

This type of agreement is used for petty works. In this case No formal agreement is drawn up with the contractor as in the case of piece work, when the work is awarded by the work order. It can be used in situations where it is not possible to call tender for petty works. The money limit is different in different states. Sometimes in work order time limit with in which the work is to be completed can be specified. Contractors are usually selected by taking quotations. payment is made on the measurement of work and 10 percentage of total amount is deducted from the running account bill as security deposit and which will be refund date in the final payment on the satisfactory completion of work.

Site order book

The contractor shall within 10 days of the received of the return order to take up work, He has to supply one site order book to the sub divisional officer/ Assistant Executive Engineer concerned. The site order book shall have machine number pages in triplicate and will be initialed by the Assistant Engineer Incharge. This site order book shall be kept at the site of work under the custody of the Assistant Engineer or is authorised representative. important points related to site order book are:

- 1.Directions or instructions from departmental officers to be issued to the contractor, will be entered in the site order book(except when the directions or instructions are given by separate letters).
2. The contractor or his authorised representative shall regularly note the entries in the site order book and may take any of the duplicate page of the site order book for his own record.
- 3.In case of supplementary(extra climes) five terms of claim shall not be entertained unless supported by entries in this site order book or any written order.
4. The site order book shall be enclosed along with the Final bill to verify the Supplementary climes.

Work program:

The contractor shall have to submit within 3 days from the written order to commence the work to the the Engineer in charge a fully detailed program showing the proposed methods of construction, plant and Temporary works, sequence of operation and time schedule of each such operation. The work program shall be approved by the Engineer in charge. the contractor must maintain the progress of work with the work program.

Contractors ledger

Contractors ledger is a personal account of a contractor where all transaction regarding the particulars of contractor are entered. It is maintained in the Divisional Office in prescribed form. All payments, recoveries adjustments etc are taken in Ledger. For every contractor separate ledger is maintained and each contractors ledger is closed and balanced monthly.

Contract

When two or more persons have common intention communicated to each other to create some obligation between them there is said to be an agreement.

An agreement which is enforceable by law is a “contract”.

In civil engineering construction contract is an undertaking by a person or form to do any work under certain terms and conditions. the work maybe for construction for maintenance and repairs, for supply of materials or labours etc.,.

Contractor:

The contractor means a person or firm to do any type of contract.

Contract system of execution of work:

All departmental works except in special circumstances will be usually executed through the contractors. the following procedure is followed:

1. after the detailed plans and drawings are approved and all the sanctions obtained, contract for a work is arranged by inviting sealed tenders
2. tenders are opened at the specified date by officer inviting tender in the presence of the contractor and comparative statement is prepared. usually the lowest tender is accepted.
3. the contractor whose tender is accepted has to come to an agreement with the department to execute the work as per the conditions in the agreement. the contractor will be issued the work order to come in the work.
4. the contractor will start the work under the supervision of Section Officer in charge. for all day works executed, the contractor will be paid on running account bill which will be prepared by the Section Officer.

Types of contract:

There are 6 types of contract:

1. Piece work contract.
2. Item rate or unit price contract .

- 3.lump sum contract.
4. cost plus percentage contract.
5. combination of lump sum and Schedule of Rates contract.
- 6 Labour contract.

1. Piece work contract:

It is an agreement by which the worker agrees to execute the different items of work on mutually agreed rates. The agreement contains different items of work to be carried out with proper description and rates for unit quantity of work.

The contractors agrees to execute a specific work at stipulated rates, without reference to total quantity or time taken. Small works which do not required Engineering skills for execution like earth work excavation, maintenance work, Patchwork and whitewashing may be carried through piece work contract.

Merits

1. It is the best suited for small work and they work which will not require theEngineering skill
2. Work maybe completed very quickly.
3. It is the economical as the worker takes the small works with their wages a little margin over it.
4. Where the works for small and spread out, fees work contract works out to be cheaper and quicker.

Demerits:

1. The time is not considered so the workers can take their own time to complete the job so that rate of progress of work will reduce.
2. The department has to arrange dated and close supervision and checking the peace worker who does not have professional skills.

2. Item rate or unit price contract:

In this contract the contractor undertakes the execution of work at the unit rates agreed at the time of tender. The payment is made to the contractor by detail measurement of the work actually executed by the contractor.

This method of contract is used in most of the works in projects, maintenance of buildings, irrigation projects etc.,

Merits:

1. since the work is distributed as an item wise there will be no dispute between the owner and the contractor.
2. drawing and specifications can be changed at any instant at any time.
3. finalisation of bill is done by taking the measurement of work done by the contractor hence it is economical

Demerits:

1. the final cost cannot be determined before the completion of work

2. comparative statement of item rate tender is more elaborate and comprehensive and intelligent scrutiny is required.

3. lump sum contract:

In this contract the contractor agrees to execute a complete work in all aspect for a specific amount within a specified time. The plans, drawings and specifications of all items of the work are provided to the contractor but the details of quantities will not be given and the contractor will have to complete the work as per plan and specification within the contract period.

on completion off the work, ok no measurements will be taken by the department.

The contractor will be paid and fixed amount as agreed by checking the whole work in comparing with plan, drawing and specification.

Merits:

1. production and cost of construction due to competition of contractors.
2. the amount to be spent on the work is known accurately well in advance.
3. the contractor try to complete the work early as it is advantages for him.

Demerits:

1. it is very difficult to make changes in drawings and plans during construction.
2. if the specifications and drawings are not clear, may lead to difficulties and defective construction.

4. Cost plus percentage contract:

This contract the contractor is paid the actual cost of the building plus a fixed percentage for is overhead expenses, services and profit.

The contractor procures the materials and arranges the labour at his own cost keeping the proper account and he is paid by the department or owner the whole cost together with certain percentage, normally 10 percentage as his profit.

Merits:

1. there is no chance of dispute for carrying out any extra. Item
2. the contractor can take the dishum independently and the work can be completed quickly.
3. there is no major difference of opinion with the contractor and owner.

Demerits:

1. the final cost cannot be determined before the completion of the work.
2. the quality of work maybe poor.
3. it is very difficult to calculate actual cost incurred by the contractor. the department/ Warner as to keep a check over labour, material cost and Quality of work.

5. Labour contract:

In this contract the contractor undertakes only the labour portion of the work. All the necessary materials are supplied to the site by the department or owner and the contractor arranges his own labours and gets the work done as per the specification.

The contractor is paid for the labours only on the actual quantities of the work done measured under the item rate basis.

Merits:

1. the materials stored by the government for the utilised.
2. since materials are supplied by department, better progress and standard quality can be maintained.

Demerits:

1. there may be a delay in obtaining the materials by the department.
2. a large Storage Area is required to store the different kinds of materials a constant guarding etc are essential.
3. Theft from store, shortage of materials, accounting all the materials are constant worries for a department.

6. Negotiated contract:

When work is awarded it on contract by manual negotiation between the parties without call of tenders, it is said to be a negotiated contract. In PWD contractors are negotiated only in special circumstances such as:

1. to obtain reasonable rates
2. to meet this situation arises out of emergency e like construction of Shelters for displaced persons comer strengthening Runway for National Defence extra at short notice

General conditions of contract

The following are the general conditions of contract:

1. the rates A grade by the contractor should be for complete work including transportation of materials, labours, tools, plants and all other necessary arrangements.
2. the contractor should deposit 10% of the cost of the work as security deposit. play contractor May deposit the entire amount at the beginning of the work or it may be deducted from the running bill of the contractor.
3. a contractor should complete the work within the specified time, otherwise is liable for penalty
4. the time may be extended by the department for valid reasons requested by the contractor.
5. the cost of the material issued to the contractor or equipment given to the contractor shall be deducted from is running bill.
6. the work has to be done directly according to the drawing, plan and specifications and order issued by the authority.

7. the contractor may be terminated for his bad work or unsatisfactory progress and the part or full security deposit may be forfeited.
8. the work shall be open for inspection.
9. extra items which are not included in the contractor shall be paid as per current schedule of rates.
10. compensation to the workman shall be paid by the contractor for any accident or damage.
11. all taxes, royalties etc., shall have to be paid by the contractor which are included in the rates.

Contract agreement:

Contract agreement is a written document binding legally the contractor and the department to follow the rules and regulations and the conditions given, till the work entrusted to the contractor is completed. All pages of the agreement must be signed by both the parties.

The contract agreement must contain the following details:

1. title page with name of the work and contract number.
2. index page giving the contents of the agreement with page references.
3. tender notice with description of work, location, time, period of completion etc.,
4. Bill of quantities and total cost of works etc.,
5. schedule of issue of materials giving list of materials to be issued to the contractor with rate and place of issue.
6. general specifications giving the clauses and type of work.
7. detailed specifications for each item of work and materials.
8. complete drawing with plan, elevation, site plan and other relevant detail drawings, all fully dimensioned.
9. conditions of contract giving rate of labour, materials, tools and plants, progress rate etcetra.
10. special conditions regarding nature of work, Taxes, royalties, labour amenities etcetra

Law of contract as per Indian Contract Act 1872

The Contracts or agreements between various parties are framed and validated by the Indian Contract Act. Contract Act is one of the most central laws that regulates and oversees all the business wherever a deal or an agreement is to be reached at. The following section will tell us what a contract is.

We will see how a contract is defined by The Indian Contract Act, 1872. We will also define the terms as per the Act and see what that means. In these topics, we will decipher all the vivid aspects of the Contract Act. Let us begin by understanding the concept of a contract.

Contract Act

The Indian Contract Act, 1872 defines the term “Contract” under its section 2 (h) as “An agreement enforceable by law”. In other words, we can say that a contract is anything that is an agreement and enforceable by the law of the land.

This definition has two major elements in it viz – “agreement” and “enforceable by law”. So in order to understand a contract in the light of The Indian Contract Act, 1872 we need to define and explain these two pivots in the definition of a contract.

Agreement

The Indian Contract Act, 1872 defines what we mean by “Agreement”. In its section 2 (e), the Act defines the term agreement as “every promise and every set of promises, forming the consideration for each other”.

Now that we know how the Act defines the term “agreement”, there may be some ambiguity in the definition of the term promise.

Promise

This ambiguity is removed by the Act itself in its section 2(b) which defines the term “promise” here as: “when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. Proposal when accepted, becomes a promise”.

In other words, an agreement is an accepted promise, accepted by all the parties involved in the agreement or affected by it. This definition thus introduces a flow chart or a sequence of steps that need to be triggered in order to establish or draft a contract. The steps may be described as under:

- i. The definition requires a person to whom a certain proposal is made.
- ii. The person (parties) in step one have to be in a position to fully understand all the aspects of a proposal.
- iii. “signifies his assent thereto” – means that the person in point one accepts or agrees with the proposal after having fully understood it.
- iv. Once the “person” accepts the proposal, the status of the proposal changes to “accepted proposal”.
- v. “accepted proposal” becomes a promise. Note that the proposal is not a promise. For the proposal to become a promise, it has to be accepted first.

Thus, in other words, an agreement is obtained from a proposal once the proposal, made by one or more of the participants affected by the proposal, is accepted by all the parties addressed by the agreement. To sum up, we can represent the above information below:

Agreement = Offer + Acceptance.

Enforceable By Law

Now let us try to understand this aspect of the definition as is present in the Act. Suppose you agree to sell a unicorn for ten magic beans with a friend. Can you have a contract for this?

Well if you follow the steps in the previous section, you will argue that once you and your friend agree on the promise, it becomes an agreement. But in order to be a contract as per the definition of the Act, the agreement has to be legally enforceable.

Thus we can say that for an agreement to change into a Contract as per the Act, it must give rise to or lead to legal obligations or in other words must be within the scope of the law. Thus we can summarize it as Contract = Accepted Proposal (Agreement) + Enforceable by law (defined within the law)

THE INDIAN CONTRACT ACT, 1872

ARRANGEMENT OF SECTIONS

SECTIONS

PREAMBLE

PRELIMINARY

1. Short title.

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Commencement.

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2. Interpretation-clause.

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4. Communication when complete.

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8. Acceptance by performing conditions, or receiving consideration.

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18. "Misrepresentation" defined.

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19A. Power to set aside contract induced by undue influence.

20. Agreement void where both parties are under mistake as to matter of fact.

21. Effect of mistakes as to law.

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24. Agreement void, if considerations and objects unlawful in part.

25. Agreement without consideration, void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law.

26. Agreement in restraint of marriage, void.

27. Agreement in restraint of trade, void.

Saving of agreement not to carry on business of which good-will is sold.

28. Agreements in restraint of legal proceeding void.

Saving of contract to refer to arbitration dispute that may arise.

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35. When contracts become void which are contingent on happening of specified event within fixed time.

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41. Effect of accepting performance from third person.

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43. Any one of joint promisors may be compelled to perform.

Each promisor may compel contribution.

Sharing of loss by default in contribution.

44. Effect of release of one joint promisor.

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46. Time for performance of promise, when no application is to be made and no time is specified.

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49. Place for performance of promise, where no application to be made and no place fixed for performance.

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Performance of reciprocal promises

51. Promisor not bound to perform, unless reciprocal promisee ready and willing to perform.

52. Order of performance of reciprocal promises.

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55. Effect of failure to perform at fixed time, in contract in which time is essential.

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CHAPTER XI

OF PARTNERSHIP

239. —266. [Repealed.]

SCHEDULE—[Repealed.]

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