

CONTRACTS & TENDERS

Tender

Tender is an offer to do a job or a service based on certain terms and conditions in return for remuneration.

Tender Notice

A tender notice is an open invitation to participate in a tender process

Main objectives for calling tenders

- To get the work or service done at the most competitive rate
- To provide a legal cover for the contract through an agreement
- To ensure equal opportunities to all eligible contractors
- To ensure quality through the specifications given in the agreement
- It ensures transparency in public works it gives a realistic picture about the amount involved for a project
- The project cost does not get affected by price escalation
- It gives publicity for the project being carried out.
- Helps in public audit.
- To fulfill the statutory conditions in the financial code of practice

A tender notice essentially contains the following details.

- Name of the department or organisation inviting the tender
- Tender notice reference and date
- Name of the work
- PAC (probable amount of contract)
- EMD (earnest money deposit).
- A brief description of the work or service.
- Completion period
- Special conditions.
- Last date and time for the closure of selling tender form and accepting it.
- Date, time and venue of opening the tender.
- The details of the designated officer inviting and opening the tender

PAC (Probable amount of contract)

It is the expected total cost of the project as per the department rates based on the design and drawing. PAC is indicated in the tender notice to give preliminary information to the tenderer about the magnitude of work to be done. The actual cost of the project will be based on the rates agreed in the contract and the actual quantity of work done.

EMD (Earnest money deposit)

This amount collected along with the tender in order to ensure the earnestness of the contractor in participating in the tender process. EMD also helps to avoid unhealthy competition between contractors. Usually, EMD collected at a rate of 2.5% of the PAC. It is usually not collected in cash, but as DDs and Government Security bonds endorsed to the tendering officer. After opening the tender, the EMD of tenderers who are not likely to be selected is returned immediately. With the selected contractor, the EMD is later converted into a security deposit

on execution of the agreement.

Security deposit:

Security deposit is the amount withheld from the contractor as warranty for the works carried out it will be released to the contractor after the defect liability period (Warranty period). The normal security deposit is 10% of the bill amount.

Types of tender

Depending on the objective of tender

- Tender for execution of project works
- Tender for supplying of materials, goods or equipment
- Tender for executing services (Renting of vehicles, courier services etc.).

Depending on scope, nature and period

- Pre-qualification tender: conducted for shortlisting contractors who are eligible to participate in tender process
- Global tender: allow the participation of global contractors in large projects and those where foreign funds are involved
- Regular tender: Tenders with normal conditions and specified time durations for submission
- Short tender: Tenders involving lesser PAC and a short execution time are invited with a limited submission period
- Quotation: are similar to tenders, but are limited to PACS involving a certain limit

Procedure for opening a tender:

- A tender should be opened only by the designated officer at the venue and time specified in the tender notice.
- Before opening the tender, all tenders received must be serially numbered on the cover.
- The tender cover should be opened in the presence of contractor.
- It should be opened without damaging the seal of the cover and the cover containing the tender should be stitched to tender.
- After opening the tender the amount quoted by the contractor should be read aloud and all corrections should be endorsed at the bottom of each page
- After opening all tenders a tender tabulation statement is prepared.
- Negotiations are then held with the contractor
- The contractors have the liberty to reduce rates based on the negotiation, and such reduced rates arrived u are known as negotiated rates)
- Then the contractor who has quoted the lowest amount fulfilling the tender condition will be intimated writing by registered post about their selection, within the firm period.

Contract system

The system in which the work is executed by the contractors is called contract system. In this system, the work is done by the contractors, who arrange all the needs required for the work. It is necessary to attain specified objectives and goals by the contractor.

Contract

Contract is an undertaking by a person or a firm to do a task under certain terms and

conditions, which is invariable in writing. Also, contract is an agreement which directly creates an obligation made by a party or a person for legal consideration of the completion of work. An agreement is usually expressed in a written document. Any agreement without any obligation does not develop any legal relationship. It should be clear that every contract is an agreement, but every agreement is not necessarily a contract.

Contractor

The person or a firm who undertake to execute a work under certain terms and conditions is known as a contractor.

Contract document

Contract agreement is a legal agreement which legally binds the government as well as the contractor. Contract agreement is executed in the prescribed contract form between the contractor and executive engineer of the department.

Details of contract document:

- Title page: includes name work, name owner, name contractor, agreement number etc.
- Index page: includes contents with page reference
- NIT: includes brief description of work, completion period, date and time receiving tenders, estimated cost etc.
- Schedule of issue of materials: contains list of materials to be issued by the owner
- Drawings: includes plan, elevation, section, detailed plan, site plan etc.
- Specifications: includes general specification and detailed specification
- General conditions of contract
- Special conditions: includes miscellaneous details like taxes, royalties, labour camp, labour amenities etc.

General conditions of contract

- ❖ The rate agreed by the contractor is for complete work including materials, transport, labour and all other arrangements necessary
- ❖ The contractor should pay 10% of estimated cost as security deposit
- ❖ Contractor should complete the work in specified time. If he fails in completion, he is liable for compensation
- ❖ The time may be extended by the authority on valid reason
- ❖ Running account payment should be made on time
- ❖ The cost of materials issued to the contractor shall be deducted from his first running bill
- ❖ The work should be done in accordance with specification
- ❖ If the progress is not satisfactory, a separate agency may be engaged chargeable
- ❖ The contractor can alter the work as per the order of authority
- ❖ The contractor should arrange tools and plants
- ❖ The work is open for inspection at any time
- ❖ The contractor should pay the wages to the workers as per the local rates
- ❖ Compensation to the workers shall be paid by the contractor in the case accident
- ❖ The decision of Supdt. Engineer is final for any dispute
- ❖ All taxes have to be paid by the contractor

Legal considerations of contract

Legal considerations are mentioned in Indian contract act 10, 11 and 68. As per the law, the parties entering into contract should be under legal binding.

It includes:

- Right to the client to enforce fulfillment of terms and conditions.
- Freedom to the contractor to do work.

Some legal aspects:

- Recovery is possible only after completion of work
- Impracticability is not an excuse for the non-performance of work
- When a contract is formed, it is impossible to do work later stage, but it may adjust the rights of the parties
- The contractor who refuses to complete the work is subjected to breach of contract
- The penalties described in the penalty clause will not be applicable if it is delayed through the fault of employer
- The contractor can sue for the non-handling of employer
- In the case of contractors inability to complete the work, the employer can consider the contract as rescinded and take an action for damages
- When a contractor has finished part of a work and refuses to complete the entire work, and the employer without consent of the contractor takes the work in his own hands, the law implies that the employer has to pay for the work which was done by the contractor.

Types of contracts

- ✚ Piece work contract
- ✚ Lumpsum contract
- ✚ Item rate contract
- ✚ Percentage contract
- ✚ Departmental execution of works

Piece work contract (P.W. Agreement)

It is the agreement for doing the work at the agreed rates up to Rs. 2000/- for the piece work or small work done by the contractors. The agreement is independent of total quantity of work. Actually, it is not a contract, because there is no security deposit, no penalty clause and the department may stop the work at any time by giving a notice. It contains only description of work and its rate. It can be used for small urgent works without inviting tenders, while contractors are selected by taking quotations. It can be used for small works like urgent road repairs, canal filling, building repairs, patch works etc.

Lumpsum contract

In this type, the work executes and completes for a fixed amount of money. The detailed specification, plans and drawings are supplied by the authority to the contractor. The contractor work out the total cost for the work as lumpsum. The contractor has freedom to work, but approval from the authority is essential. In this, the quantities of different items are not provided. The contractor shall complete the work as per plan and specification within the fixed time. It is generally adopted in the construction field.

Advantages:

- ❖ Due to the competition among the contractor, the contractor tries to take the work in less profit, results in low cost work
- ❖ As the total cost is known earlier, the owner can arrange funds on time
- ❖ The profit of contractor directly depends on the time of completion, the contractor tries to complete the work as early as possible for getting maximum profit
- ❖ It enhance effective use of materials

Disadvantages:

- ❖ The contract tries to get maximum profit, whereas the owner tries to get maximum works from the contractor, which results in conflicting of interests
- ❖ The alterations in the specified work difficult
- ❖ If the plans and specifications are not clear, the contractor will ask higher cost

Item rate contract/ K-2 Form of agreement

It is also known as unit price contract. In this type, the work executes on item rate basis. The payments are done on the basis of quantities of items done and their respective rates. Quantities are worked out by detailed measurements. This is most common type of contract system which is widely used. This is more suitable when the work can be split into different items.

Advantages:

- ❖ The alterations are made easily
- ❖ This method is more economical
- ❖ As the rate is of item base, the contractor has no worry about the uncertainties in construction
- ❖ The work can be started on time by getting the specifications of current activity, without waiting for all the specification
- ❖ This is more useful in construction field

Disadvantages:

- ❖ The total cost can be work out only after completion.
- ❖ The measurements are taken carefully and entered in M- Book is an extra task
- ❖ Extra care is needed by the authority to avoid sub standard materials used for construction

Percentage contract

It is also known as cost plus percentage contract. In this type, the contract executes the work by receiving a fixed percentage of actual cost in addition to actual cost. This gives freedom to contractor from uncertainty in the market rates of materials and labour. The department keeps the actual records of works. The contractor arranges labour, materials and resources

Types

- ✓ Fixed percentage of cost
- ✓ Cost plus a fixed sum
- ✓ Cost plus a fixed sum with profit sharing
- ✓ Cost plus variable percentage

Advantages:

- ❖ There is no possibility of dispute between contractor and authority
- ❖ The work can be completed at rapid time and rate
- ❖ The alterations are made easily

Disadvantages:

- ❖ Continuous inspection is necessary to avoid using inferior quality of materials and to avoid lesser efficiency in work
- ❖ Constant supervision on account is a difficult task
- ❖ Generally Govt. departments cannot adopt this method due to many complications

Departmental execution of works

This type of execution mode is adopted by the engineering department of the government under following circumstances

- a) To execute works of urgent nature like canal breach, flood relief work, disaster management etc.
- b) When no contractor turns up to take up the work.
- c) When all the contractors quote exorbitant rates.

In such situations, the government or the department cannot abstain from its responsibilities. The engineer in charge directly executes the work under direct supervision by purchasing materials from the open market and nominating workers to get the work done. Such situations rarely occur

Negotiated contracts

In case of rate quoted is abnormally high, the department can negotiate with the party offering lowest tender to agree to reduce his rates to a reasonable level. This is known as negotiated contract.

Departmental execution of works

In certain cases, works are carried out by department itself by direct employment of labours. When the works are to be completed immediately, this method is more suitable. All the materials required for the construction are arranged by the department.

Sub contracts





In the case of major construction works, sub-contracting may be permitted for the works like supply of materials, electrification, plumbing etc., with liability of the work is towards main contractor.

Measurement of works

Taking the measurements of works and recording it is very important with regard to the preparation of bills and making payments. The general rules for taking the measurements of each work have been given in the PWD data book. The least count for each measurement and method of taking measurements of various works has been specifically dealt with.

Pre-Measurement

Generally, measurements of works are taken after its completion. But in certain cases, measurements are taken and recorded prior to the commencement of the work, since the evidence for taking the measurement of such works done may not be available after the execution of work. Such measurements which are recorded before the execution or completion of the works are known as Pre-Measurement. E.g.

-  Measurements of Clearing the site,
-  Demolishing of structure
-  Reinforcement of RCC
-  Initial levels of earth work etc.

M-book (Measurement book)

It is the book in which the official measurement of works is recorded by the AE, which is also check measured by AEE and EE. The M-book should be certified by a competent authority (usually the EE) regarding the number of pages before issuing and using it. Each page of the M-book will be machine numbered serially, having a title portion to record the details of the work, followed by a tabulation column to record the measurements.

Rules for recording in M-book:

- The measurements should be recorded in the M-book in the AE's own handwriting directly from the site.
- Measurements should be recorded in the presence of a contractor or his nominee, and their acceptance of the measurements should be recorded on the last page with the certificate 'I accept the measurements'
- Measurements should be recorded with permanent ink.
- No erasing or over righting is permitted. In the event of an error it shall be cancelled with a single stroke and with the initial of the AE
- No line or page should be left blank.
- If any line or page has been left blank by oversight, it shall be cancelled by striking off with the initial of the AE
- The details of the work such as name of work, details of agreement and the date of recording measurements shall be recorded on the top of the page.
- Check measurements by AEE and EE shall be marked with ink of different colour
- After making the payments of a work, all the relevant pages of the M-book should be scored with double lines and stamped as PAID' in order avoid duplicating payments

Bills

The bill of the works done is the statement of the amount due to the contractor and the details of deductibles from the amount due. The bill is prepared based on the measurements recorded in the M-book and the rates agreed upon as per the agreement. Before making the payments, the calculations of measurements should be double checked to avoid arithmetical mistakes and should be certified with regard to this effect.

Types of bills

The different types of bills are

- First and final bill (F&F bill)
- part bills in the case of running account bill system and
- Part and final bill or the final & part bill.

First and Final (F&F) bill:

When the duration of the work is comparatively short and the amount involved is small, the payment is made as a single installment after the completion of the work by preparing a first and final bill for the whole work

Part bills:

If the work is for a longer duration, and that too involving a larger sum of money, the contractor will be paid interim payments in the form of part bills prepared based on measurements (measurements are taken only to ensure that the part payment does not exceed that for the work done). Instead of making it the exact amount based on the works carried out thus far, a rounded lower amount will be paid to the contractor as an advance. The bills thus prepared to make part payments are known as part bills. Such a bill system is known as running account bills

Final bill:

In the case of a running account bill system, on completion of the work in all respects, a bill will be prepared for the entire work. This bill is known as final bill. From the final bill, the part payments will be deducted. A complete final bill is prepared to avoid any overlapping of measurements in any part bill and duplication in payments. Sometimes the final bill may contain the last part of the work carried out, in such cases the bill is known as part and final bill.

Recoveries or deductibles made from the bill

These are the amounts recovered or withheld from the bill.

This includes

- All part payments
- Amount towards security deposit
- Cost of departmentally supplied materials
- Hire charges of department equipment and machinery
- Statutory payments like income tax TDS, GST, labour welfare fund etc.
- Penalties if any

Hand receipt

For petty payments at the site, bills in proper form may not be available. For making such payments stamped hand receipts will be obtained from the receiver narrating the details for which the payment is made and the amount involved. The full address details of the receiver should be furnished. There is a statutory limit on the amount for making such payments.

Imprest money

At a project site, there may be urgencies and petty payments which need to be paid in cash. Imprest money refers to the fixed cash advance given to the project engineer to meet the petty and urgent payments needed at the site. The project engineers make such payments from imprest money and get it reimbursed periodically by submitting the bills. Imprest money is kept in a chest box on site. Imprest money is also available with many officers in government departments, to meet urgent needs like disaster management. Sometimes, imprest money is referred to as petty cash