

COPY OF RECENT VIGILANCE CIRCULARS

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BITES LTD/RAIL INFRA DIVISION/GURGAON

No.RITES/RI/MIS/11-B
11/01/2008

Sub: Tendering Process – Negotiations with L-1 tenderer.

A copy of the CVC's Circular No.4/3/07 issued vide their letter No.005/CRD/012 Dt.03.03.07 was circulated vide this office circular of even file No.11-B dated 19.06.07. Subsequently a circular dated 15.10.07 has also been received from Railway Board on the subject. The matter has been considered further in this office and following instructions are issued for guidance and compliance by all concerned.

- (i) Normally there should be no post tender negotiations. Negotiations should strictly be in certain exceptional situations like, for procurement of proprietary items, suspicion of pooling/cartel formation with unreasonable rates.
- (ii) Negotiations, wherever held, should only be with L-1 tenderer.
- (iii) Counter offer to L-1, in order to arrive at an acceptable price, shall amount to negotiations.
- (iv) Before resorting to negotiations, adequate care should be taken to scrutinize the rates received and convincing reasons recorded by Tender Committee and accepted by Accepting Authority to conduct negotiations to avoid infructuous instances of negotiations.
- (v) There shall be no compromise to transparency, equity or fair treatment to all the participants in a tender.
- (vi) It should be ensured that tenders are invariably decided within their validity period including the time required to conduct negotiations, if any, with L-1 tenderer.
- (vii) In case L-1 backs out, there should be re-tender.

As regards the splitting of quantities, the directions contained in para (iv) & (v) of Railway Board Circular No.99/RS(G)/779/2 dt.15.10.2007 (copy enclosed) should be followed.

This issues with the approval of Competent Authority.

(S.K.Malhotra)
JGM(MIS)/RI

Encl: Railway Board's circular dated 15/10/2007

Distribution: All Divisional Heads/SBU Heads

Copy to: MD, DP,DT,DF,CVO – for kind information please.

**Government of India
Ministry of Railways
(Railway Board)**

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

New Delhi, dated 15-10-2007

The General Manager, All Indian Railways & PU s including NF (Const).
The General Manager, CORE, Allahabad.
The General Manager, Metro Railway, Kolkata.
The Director General, RDSO, Lucknow.
The Director General, Railway Staff College, Vadodara.
CAO/DCW, Patiala and COFMOW, New Delhi.
CAO/MTP, Mumbai & Chennai.
CAO/MTP, NBCC Place, Bhishma Pitamah Marg, Pragati Vihar, New Delhi.
The MD, RITES, RITES Bhavan, Sector-29, Gurgaon.
The MD, Konkan Railway Corporation Ltd., Raigad Bhavan, 8th Floor, Sector –11, CBD, Belapur, Navi Mumbai.
The MD, Mumbai Rail Vikas Corporation, 2nd Floor, Church Gate station Building, Mumbai –400 020.
MD, CRIS, Chanakyapuri, New Delhi.

Sub: Tendering Process – Negotiations with L-1

The instructions issued by CVC, vide their Order No.005/CRD/012 dated 03-03-2007, on the above matter have been examined in detail by a Committee of Additional Members consisting of AM/CE, AM/RS, AM/F & AM/ME as nominated by Board. Accepted recommendation of the Committee on the guidelines contained in CVC's letter dated 03-03-2007 are detailed below:

- (i) There should normally be no negotiations. Negotiations will strictly be an exception rather than rule and only where rates received are unjustifiably higher and also in situation of cartel formation with unreasonable rates.

Before resorting to negotiations, adequate care should be taken to scrutinize the rates received to avoid infructuous instances of negotiations as such negotiations may cause unnecessary delay in procurement without any appreciable reduction in rates.

- (ii) Negotiations, wherever held, should only be with the L-1 tenderer as explained in Board's letter of even no.dated 01.03.2000.
- (iii) There shall be no compromise to transparency, equity or fair treatment in acceptance of tenders. Prescribed time frame of settling tenders is to be strictly adhered to.
- (iv) (a) As regards the splitting of quantities, some organizations have expressed apprehensions that pre-disclosing the distribution of quantities in the bid document may not be feasible, as the capacity of

L-1 firm may not be known in advance. It may be stated that if, after due processing, it is discovered that the quantity to be ordered is far more than what L-1 alone is capable of supplying and there was no prior decision to split the quantities, then the quantity being finally ordered should be distributed among the other bidders in a manner that is fair, transparent and equitable.

(b) while deciding in advance to have more than one source of supply, Railway should keep in view the various extant guidelines issued by Railway Board from time to time on the matter of splitting of the tender quantity and with specific reference to:

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

In all cases of pre-decided split ordering, the following shall be stipulated as tender conditions:

- (i) The Purchaser reserves the right to distribute the procurable quantity on one or more of the eligible tenderers. Zone of consideration of such eligible tenderers will be the right of the Purchaser.
- (ii) Whenever such distribution/splitting of the tendered/procurable quantity is made, the quantity distribution will depend upon the differential of rates quoted by the tenderers (other aspects i.e adequate capacity-cum-capability, satisfactory past performance of the tenderers, outstanding orders load for the Railway making the procurement etc. being same/similar). For example: if the differential of rates between the L-1 and L-2 eligible vendors is 5%, then the distribution of quantity will be approximately in the ratio 55:45 (55% for the L-1 tenderer). If the price differential is 3%, then the distribution of quantity will be approximately in the ratio 53:47 (53% for the L-1 tenderer) and so on.
- (iii) The rate of the highest eligible tenderer within the zone of consideration has to be, per-se, reasonable to the Purchaser.
- (iv) In the cases of inadequate capacity-cum-capability, dissatisfactory past performance, large quantity of outstanding orders (liquidation of which will take very long time) etc. the purchaser shall have the right to distribute the procurable quantity amongst tenderers with due consideration of these constraints and in such a manner as would ensure timely supply of materials in requisite quantity to meet the needs of operation, maintenance, safety etc. of the Railways, regardless of inter-se ranking of the tenderers and in a

fair and transparent manner with due conformity to the Principle of natural Justice and Equity.

- (v) Counter offer to L-1, in order to arrive at an acceptable price, shall amount to negotiation. However, any counter-offer thereafter to L-2, L-3, etc. (at the rates accepted by L-1) in case of splitting of quantities, as pre-disclosed in the tender, shall not be deemed to be a negotiation. However, in the cases where the rate of highest tenderer within the zone of consideration, per-se, is reasonable, and a counter offer is made only to economise the purchase, then the same may be done simultaneously to all the tenderers within the zone of consideration.

However, it may be noted that ordering on Part-II approved vendors, as per extant directives of Board, shall not construe splitting of the procurable quantity.

The above instructions should be followed by Railways scrupulously.

This issues with the concurrence of Finance Directorate of Ministry of Railways.

(Aruna Jain)
DDRS(G)-II
Railway Board

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

New Delhi, dated 15-10-2007

Copy to: FA&CAO, all Indian Railways & Production Units.

No.RITES/ACCTS/BG/2008

Dated 27th February, 2008

Sub: Revised Procedure for acceptance and confirmation of Bank Guarantees (BGs)

Consequent upon issuance of guidelines by CVC for acceptance of the bank guarantees vide its memorandum No.01/01/08 dated 31.12.2007, the existing procedure order issued vide our letter No.RITES/ACCTS/2007 dated 19.02.07 stands revised as under:-

- (i) Copy of proper prescribed format on which BGs are accepted from the contractors should be enclosed with the tender document and it should be verified verbatim on receipt with original document.
- (ii) It should be insisted upon the contractors, suppliers etc. that BGs to be submitted by them should be sent to the organization directly by the issuing bank under Registered Post (A.D).
- (iii) In exceptional cases, where the BGs are received through the contractors, suppliers etc. the issuing branch should be requested to immediately send by Registered Post (A.D) an unstamped duplicate copy of the guarantee directly to the organization with a covering letter to compare with the original BGs and confirm that it is in order.
- (iv) As an additional measure of abundant precaution, all BGs should be independently verified by the organization.
- (v) Send photocopy of the BG together with the letter asking for the confirmation from the issuing bank and the Regional Office.
- (vi) Send Names along with the specimen signatures of authorized signatories operating RITES bank accounts to the banks issuing the BGs.
- (vii) In case any bank guarantees have to be revoked, cancelled or discharged the authorized officials, in such cases are authorized signatories of Company's bank accounts.

(viii) DFO shall ensure that name and the specimen signatures of such officials are intimated to those banks also who have issued bank guarantees in favour of RITES on behalf of RITES suppliers/contractors/service providers.

All DFOs/Finance Heads will be responsible for verification, acceptance, timely renewal, cancellation, encashment and maintenance of records of the guarantees pertaining to their SBU/Unit/Office.

Please ensure strict compliance of the above guidelines.

(Ajay Gaur)
General Manager(F)-III

Addressed to:

All Eds/GGMs/GMs in ROC Gurgaon

All DFOs – Corporate Office

GGMs/GMs- Project Offices – Bangalore, Kolkata, Lucknow, Mumbai, Nagpur, Bhubaneshwar, Secunderabad, Talcher & Tenughat.

GGMs/GMs- Inspection Offices, Chennai, Mumbai, Kolkata, & Bhilai.

Copy to : JGMs/Secys –MD/DP/DT/DF/CVO

RITES LTD/RAIL INFRA DIVISION/GURGAON

No.RITES/RI/MIS/11B

Dt.05/03/2008

Sub: Timely finalisation of Operation/Maintenance/Security Contracts

It has come to notice that in the rate contract for maintenance services/security services, there is a provision of extension of the Contract beyond the original contract period, on terms and conditions to be mutually agreed upon. In other words, there is likelihood that the extension of Contracts by a Contractor may be conditional with its attendant implications. Even otherwise, extension of Contract of an existing Contractor is likely to invite objections from Audit/Vigilance.

It is, therefore, enjoined upon all the officers of RITES, responsible for inviting tenders/awarding Contracts for Operation and Maintenance Services/Security Services, to ensure that new Contracts are finalized well before the expiry of the existing Contracts. Suitable entry regarding date of expiry of Contract/Start of tendering process for the next Contract, may be made in red ink in the Agreement register, which may be put up to the Bill Passing Officer along with each bill and watch kept for timely start of tendering process for the new Contract. Officers-in-charge of such Contracts may introduce any other suitable alternative in-built mechanism in their procedures so that reminder is generated timely to start tendering process for the new Contract.

These instructions may be complied with by all concerned in RITES.

The above is issued with the approval of competent authority.

(S.K.Malhotra)
JGM/MIS/RI

All Divisional Heads/SBU Heads

Copy to : CVO for information please.

No.PERS/11/D&AR Policy/2007
Dated 07.03.2008

Office Order No.PP/15/2008

In terms of Central Vigilance Commission, Government of India's Officer Order No.44/12/07 dated 28th December, 2007, requiring amendment of RITES Limited (Conduct, Discipline and Appeal) Rules 1980 providing for continuation of disciplinary proceedings against an employees after his superannuation and passing of final orders thereon, the RITES Limited (Conduct, Discipline and Appeal) Rules, 1980 stands amended with the introduction of a new rule as under: -

Rule -27 (A): Continuation of disciplinary proceedings after retirement of the employee".

"The employee against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned employee will not receive any pay and/or allowance after the date of superannuation. He will also not be entitled for the payment of retirement benefits till the proceedings are completed and final order is passed thereon except his own contribution to CPF".

This has the approval of the Managing Director.

(Rahul Jha)
Group General Manager(P)

Copy to : All SBU Heads/GGMs/GMs as per mailing list,
Company Secretary – for ratification by BOD on file enclosed.

RITES LTD/RAIL INFRA DIVISION/GURGAON

No.RITES/RI/MIS/11B
11/03/2008

Sub: Verification of authenticity of documents of 'L-1' bidder

Instances have come to notice that PQ documents/credentials submitted by some bidders were found fake/forged. It is, therefore, imperative that the authenticity of documents like Solvency Certificate, Works Experience Certificate, Bank Guarantees etc. is ascertained before entering into contract with 'L-1' bidder. This has been emphasized by CVC also.

In order to avoid delay in finalisation of tenders within their validity period, following procedure may be adopted: -

1. Documents of all the bidders be sent for verification immediately after opening of Technical Bids.
2. The processing of tenders may continue without waiting for verification of documents.
3. Authenticity of Solvency Certificates/Bank Guarantees issued by Banks, may be got ascertained by Fax/E-mail from the issuing Bank.
4. Authenticity of Performance/Experience Certificate may be ascertained by Fax/e-mail/deputing officer not below the rank of Manager.
5. It may be ensured by Project Co-ordinator that before submission of recommendation by the Tender Committee to the Tender Accepting Authority report on verification of documents/credentials of 'L-1' Bidder is available.
6. The Tender Committee shall make suitable mention regarding verification of documents in their recommendations to the Tender Accepting Authority.

These instructions may be complied with by all concerned in RITES.

These instructions are issued with the approval of Competent Authority.

(S.K.Malhotra)
JGM/MIS/RI

All Divisional Heads/SBU Heads/GMs/CVO

Copy to : SS to MD/DP/DT/DF