

SPECIAL CONDITIONS

1.0 **Quantity to be ordered:**

- 1.1 The Controller of Stores / Southern Railway acting on behalf of the President of India is not bound to accept the lowest or any tender, nor to assign any reason for not doing so and reserve to himself the right to accept any tender in respect of the whole or any portion of the items specified in the tender and contractor shall be required to supply at the rate quoted / accepted.
- 1.2 Railway reserves the right to cancel the tender in whole or order either for full or part quantity tendered without assigning any reason. The rates quoted by the Tenderers for full tendered quantity would be taken as valid for part quantity also.
- 1.3 Railway also reserve the right to order the tendered quantity or part thereof on an existing contract by operating quantity option clause at lower rates (if available) than the rates quoted in this tender.
- 1.4 **Option Clause:-** (Applicable for all tenders wherever specifically mentioned in the tender conditions as applicable) :-The purchaser reserves the right to increase and / or decrease the order quantity by a quantity not exceeding 30% of the ordered quantity on the same price and terms and conditions during the currency of the contract by giving reasonable time / notice for executing such increase or decrease to the contractor.
- 1.5 In case of (+)30%, the purchaser reserves the right to vary the ordered quantity by (+)30% at any time, till final delivery date of contract, by giving reasonable notice even though quantity ordered initially has been supplied in full before the last date of delivery period & also during extended delivery period.
- 1.6 In case of (-) 30% Option Clause, a reasonable notice consequent to decrease in prices subsequent to the placement of contract will be served by giving reasonable opportunity to the contractor to unconditionally agree to accept such lower rates for the quantity unsupplied on the date of reduction / decrease of prices or (-) 30% quantity, whichever is less and no consent from the contractor towards exercise of the contractual Option Clause will be required.

2.0 **Eligibility Criteria :**

2.1 Ordering on Approved Sources : Railway procure some of the items from approved sources . The Approving agencies such as RDSO / PUs / CORE etc. publish vendor list periodically say by RDSO every six months. Granting of Approval is a continuous ongoing activity, therefore vendor list can undergo changes after opening of tender . The approval status of the firm shall be reckoned as on the date of tender opening and not thereafter. But in case of downgrading /removal / suspension / banning etc after opening of the Tender, such changes will be taken into account while deciding tenders. This however does not apply for placing small quantity contracts on new sources, as their capacity & capability will only be ascertained before placement of developmental order.

2.2 Ordering on Approved Vendors: Wherever there is a restriction policy to procure the item from approved sources, the same will be followed as under:

2.2.1 It may specifically be noted that approval of a vendor only signifies its technical capability to supply the items for which it has been approved / registered and it is quite likely that such vendors differ in terms of capacity, past performance etc. The quantity to be ordered on approved sources, therefore, will be decided duly considering factors such as past performance, capacity, delivery requirements, quantity under procurement, nature of items and outstanding order load etc. and the tender conditions in fair transparent and equitable manner.

2.2.2 Wherever necessary, as per policy of procurement, bulk purchase will be made only from those firms who have been approved by RDSO / Productions Units / CORE etc. Vendors participating in tender shall have such approvals before opening of tender for the items tendered to manufacture and supply the same. The tenderers should attach scanned copies of such approval letters and approved QAP, along with their e-offers.

2.2.3 Minimum 80% of the net procurement quantity (NPQ) shall be ordered on "Approved Vendors"

2.2.4 It is clarified that approved and registered are one and same for the items approved by the nodal agencies such as RDSO / PUs / CORE etc.

2.3 **Ordering on new / developmental sources :**

(a) If the tendering firm (s) is not approved by RDSO/PUs/CORE, then they must submit their credentials details i.e Machinery and Plant, Testing Facilities, QAP, Technical Manpower etc. to evaluate their capacity cum capability. Failure to furnish requisite credentials details will make their offer liable to be ignored.

(b) The Tenderers to specifically note that there is no policy of placing bulk orders on developmental sources for restricted items, even though firm might have been approved as source under development.

(c) **When the vendor approving / registering agency grades vendors only as registered / approved vendors:**

The Developmental order can be given upto 20% of the NPQ on unregistered / untried firms about whom Railway is prima facie satisfied that they are capable of executing the order. This 20% quantity will be within the NPQ. However, there may be some cases of procurement of materials where Railways may not be willing to undertake the risk of the failure on the part of the supplier on whom the

developmental orders have been placed. In such cases, Railway may go in for increased purchase quantity in consultation with Finance and keeping in view budgetary and other aspects so that 100 percent order could be placed on registered / approved suppliers and quantity not more than 20% of NPQ could be placed as a developmental order outside the NPQ.

2.4. Procurement from (OEM's) manufacturers or authorized agent / dealers: OEMs can authorize and give Tender Specific Authorization to its Agent / dealers to quote on their behalf provided the vendor takes full responsibility for the quality of the material including warranty obligation and the inspection of product against Railway's order is carried out at the manufacturer's premises.

2.4.1 (a)(i) In a tender, either the Indian agent on behalf of the Principal/OEM or Principal/OEM itself can bid but both cannot bid simultaneously for the same item/Product in the same tender.

ii) In a tender, if Indian agent on behalf of the Principal/OEM or Principal/OEM bids simultaneously for the same item/product in the same Tender, then both the offers will be considered ineligible and will be summarily rejected.

b)(i) If an agent submits bid on behalf of the Principal/OEM, the same agent shall not submit a bid on behalf of another Principal/OEM in the same tender for the same item/product.

(ii) If an agent submits bids on behalf of the Principal/OEM and also on behalf of another Principal/OEM in the same tender for the same item/Product, then Both offers will be considered ineligible and will be summarily rejected.

(c) In view of the above, Manufacturer may note that an agent can represent only One firm in a tender and any manufacture cannot submit more than one offer Against a tender through different sole selling agents or one offer directly and Other offers through sole selling agents, in other words, in a tender, either the Indian agent on behalf of the Principle/OEM or Principal/OEM itself can bid but both cannot bid simultaneously for the same items/product in the same tender. In such a situation all the offers will be rejected. Also a "100% Indian Subsidiary" of the foreign firm cannot bid through another agent. The Relation between the Principal/OEM & Agent or Indian Subsidiary(100% or Otherwise) should be contractually established and clear.

(d) The above conditions shall apply for all types of Tenders.

2.5 Acceptance of Offers from unregistered and untried firms through advertised tenders:

2.5.1 Where the tendered item is not covered by restrictive procurement policy from approved Sources, all unapproved, unregistered and untried firms should furnish along with their quotation the following: –

- a) The performance statement in the prescribed pro forma given in e-tender regarding supplies made by them against contracts received from other Railways, DGS&D and other agencies for similar stores in the past 3 years.
- b) Details of equipment they possess for manufacture of the tendered item including quality control.
- c) Details of technical manpower employed.
- d) The name and full address of their Bankers and Income Tax PAN Number.
- e) ISO 9000 / 14000 / 18000 certificates, whichever is applicable.
- f) Details of EMD paid and willingness to pay SD

2.5.2 At least 80 percent of the procurable quantity will be covered invariably on the registered / approved suppliers. The balance quantity up to 20 percent could be covered on the unregistered firms whose capacity could not be tried by an educational order earlier but whose offers are competitive and prima facie the Railway is satisfied that they are capable of executing the order.

2.5.3. There may also be some cases where the Administration may consider after due verification that the new supplier who has quoted competitive rate is having the required capacity- cum- capability and in those cases the Railway Administration may place bulk orders on these suppliers straightaway.

2.6 Consideration of unsolicited offers against Limited / Bulletin tender enquiries:

2.6.1 Unsolicited offers received against Limited Tender enquiries and offers from the firms against Bulletin tender enquiries for which they are not registered with the Railways for the tendered items, will normally be ignored. However, Railway reserves the right to consider such offers under exceptional circumstances, where it is felt necessary to consider such offers, on account of - inadequate competition, non-availability of suitable quotation from registered suppliers, urgent demands, capacity / capability of the firm offering to supply the relevant item being known and rates received are reasonable etc.

2.7 Time Preference Orders:

2.7.1 In cases where it is decided to accept a higher price than the lowest tender in consideration / interest of earlier delivery, passing over the lowest acceptable offer, following conditions will apply:

“It should be noted that if a contract is placed on a higher tenderer as a result of this invitation of this tender, in preference to the lowest acceptable offer, in consideration of offer of earlier delivery, the contractor will be liable to pay to the Government the difference between the contract rate and that of the lowest acceptable tenderer on the basis of final price, FOR destination including all elements of freight, sales tax, local taxes, duties and other incidentals in case of failure to complete supplies in terms of such contract within the date of delivery specified in the tender and incorporated in the contract. This is in addition and without prejudice to other rights under the terms of Contract.”

3.0 Cartel formation by approved vendors: The tenderers are expected to quote rates which are most competitive and reasonable, commensurate with market trend in fair competition.

3.1 Wherever all or most of the approved firms quote equal rates and cartel formation is suspected, Railways reserve the right to place order on one or more firms with exclusion of the rest without assigning any reasons thereof.

3.2 Firms are expected to quote for a quantity not less than 50% of tendered quantity. Offers for quantity less than 50% of tendered quantity will be considered unresponsive and liable to be rejected in case cartel formation is suspected. Railways, however reserve the right to order any quantity on one or more firms.

3.3 The firms who quote in cartel may note that their names are likely to be deleted from approved list.

3.4 The present policy of distribution of ordering quantities on approved sources and new sources, based on the status of approval obtaining on the date of tender opening will be followed in normal circumstances. However in tenders, where cartel formation is suspected, the purchaser will be free to distribute the ordering quantities in any manner deemed fit in the interest of the administration ignoring the status of approval.

3.5 In the event of the offers conforming to any aspect of the definition of cartel mentioned in “The Competition Act 2002 (12 of 2003)”, in addition to the existing remedies, the purchaser also reserves the right to refer the matter to the Competition Commission of India (CCI), which is a statutory body constituted under “The Competition Act 2002 (12 of 2003)”, for providing necessary relief to the Purchaser who represent Central Government organisation serving the public. In addition, the purchaser also draws attention of the tenderers to Chapter VI of the “The Competition Act 2002 (12 of 2003)” which deals with Penalties. This will be in addition to other rights and remedies available to the Railway Administration under the Contract and Law.

3.6 Whenever tender is floated with purchase restriction from sources approved by nominated authorities and there exists a suspected cartel situation by approved sources or the rates available from approved source/sources are adjudged unreasonably high, despite fair efforts as permissible, the purchaser reserves the right to place orders on firms outside the approved vendors list, without any restrictions.

4.0 Splitting of tendered quantity:

4.1 Case of no prior decision to split the order:

Normally full order should be placed on the L1 firm. However, if after due processing it is discovered that the quantity to be ordered is more than what L1 alone is capable of supplying and there was no prior decision to split the quantities then this aspect should be recorded in TC Minutes/Acceptance in direct acceptance cases. The quantity being finally ordered will be distributed among the other bidders in a manner that will be fair, transparent and equitable manner with a specific note of past performance, capacity, delivery requirements, quantity to be procured, nature of the items and outstanding order load etc.

4.2 Case for pre-decided split ordering:

It has to be decided in advance to have more than one source of supply on account of delivery requirements in tender, past performance and capacity, quantity under procurement and nature of the items.

Following provision shall be applicable in all such cases of pre-decided split ordering:

4.2.1 The Purchaser reserves the right to distribute the procurable quantity on one or more than one of the eligible tenderers. Zone of consideration of such eligible tenderers will be the right of the Purchaser. The zone of consideration will be a dynamic mix of inter-se position of firms, supply performance of the firms, quantity being procured critically of and lead time of supply of the item, number of established suppliers, their capacity etc.

4.2.2 Whenever such splitting of the procurable quantity is made, the quantity distribution will depend (in an inverse manner) 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, quoted delivery schedule vis-à-vis the delivery schedule incorporated in the tender enquiry etc. being same / similar) in the manner detailed in the table below:

Price differential between	Quantity distribution ratio between
L1 and L2	L1 and L2

Up to 3%	60 : 40
More than 3% and upto 5%	65 : 35
More than 5%	At least 65% on the L1 tenderer. For the quantity to be ordered on the L2 tenderer, TC / TAA shall decide.

4.3 If splitting of quantity is required to be done by ordering on tenderers higher than the L2 tenderer, then the quantity distribution proportion amongst the tenderers will be decided by transparent / logical / equity based extrapolation of the model as indicated in Para 4.2.2 above.

4.4 There could be situation when between the lowest firm considered suitable for bulk quantity (L1 firm 'A') i.e. for 65% of NPQ and another firm (L4) considered suitable for bulk quantity order, in between there are firms who are considered suitable only for part quantity i.e. for developmental order, splitting will be done between these two firms.

In such cases, developmental orders shall be given its proportion i.e. out of 35% of the balance NPQ, as detailed below:

- (a) L2 and L3 firms will be considered to get orders within the overall ceiling of 20 % (of 35% of NPQ)
- (b) L4 firm (Approved / registered) will get balance quantity.

4.5 In cases of pre-decided splitting, if the purchaser decides not to split the ordered quantity, the reason for the same should be recorded in TC Minutes/Acceptance in direct acceptance cases.

4.6 For cases where the Railways / Production Units has entered into ToT/JV agreements, the following clause should be stipulated as tender conditions:

“As the Railway has entered into ToT/JV agreements withno. of firms, they reserve the right to place orders on all such ToT / JV agreement partners. However for ratio / proportion of quantity distribution among such agreement partners, conditions as detailed in 4.2.2, 4.3 and 4.4 shall apply with the exception that the aspect of per-se reasonability will not be applicable”.

4.7 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 to 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.

5.0 Supply of Materials

5.1 Risk in the Stores : As per IRS conditions of contract para 1501, the contractor shall perform the contract in all respects in accordance with the terms and conditions thereof. The stores and every constituent part thereof, whether in possession or control of the Contractor, his agents or servants and the purchaser, his agents or servants, shall remain in every respect at the risk of the contractor until their actual delivery to the consignee at the stipulated place or destination or, where so provided in the acceptance of tender until their delivery to a person specified in the schedule as interim consignee for the purpose of dispatch to the consignee. The contractor shall be responsible for all loss, destruction, damage or deterioration of or to the stores from any cause whatsoever while the stores after approval by the Inspecting Officer are awaiting dispatch or delivery or are in the course of transit from the Contractor to the consignee or, as the case may be, interim consignee. The contractor alone shall be responsible to make claim against Railway Administration or other Carrier in respect on non-delivery, short delivery, misdelivery, loss, destruction, damage or deterioration of the goods entrusted to such Carrier by the Contractor for transmission to the consignee or interim consignee as the case may be.

5.2 Terms of Delivery:

- (a) Mode of dispatch should be by road.
- (b) Suppliers should clearly quote - FOR destination rates, destination wise.

5.3 Delivery Schedule:

(a) Firms are required to quote in accordance with delivery requirement as per tender. In case of major deviation, their offer is liable to be ignored.

(b) The delivery period quoted by the firm should be very specific and cogent instead of vague terms like 2 to 32 weeks or 2 to 10 months. Such offers will be considered with longest delivery period for the purpose of tender evaluation. Such offers are liable to be ignored in preference to offers with earlier deliveries.

(c) Railway prefers deliveries in instalments. Therefore firm should quote supplies in instalments, they intend to deliver and with completion date / month, so that contract can be made severable.

(d) Delay & Default by Supplier: If the Contractor fails to deliver the stores or any instalment thereof within the period fixed for such delivery in the contract or as extended or at any time repudiates the contract before the expiry of such period the Railway may without prejudice to other rights :-

(i) Will recover from the contractor, as agreed, Liquidated Damages and not by way of penalty, a sum equivalent to 2 per cent of the price of any stores (including elements of taxes, duties, freight, etc) which the contractor has failed to deliver within the period fixed for delivery in the contract or as extended for each month or part of a month during which the delivery of such stores may be in arrears where delivery thereof is accepted after expiry of the aforesaid period subject to a maximum of ten percent of value of the delayed supplies

(ii) Upper limit for recovery of liquidated Damages in Supply Contracts will be 10 % (Ten Percent) of value of delayed supplies irrespective of delays, unless otherwise provided, specifically in the contract.

5.4. **Default and Risk Purchase:** In case, the tenderer after placement of the purchase order, defaults to supply the material within the delivery date / extended DD, the purchaser reserves the right to initiate action as under:

- A. Wherever SD has been taken, in respect of orders for Safety as well as non-safety items, SD will be forfeited & unsupplied quantity will be procured independently without risk and cost of the original firm / supplier of the defaulted contract. In these cases, adverse performance of the supplier will be recorded and intimated to the approving agencies (i.e. RDSO/ PUs/CORE/NSIC etc.) wherever applicable, which shall be taken into account in future tender.
- B. In respect of orders, where no security deposit has been taken from firms Risk Purchase action will be initiated against the supplier as per IRS conditions of Contract. The period of initiating Risk Purchase will be 9 months instead of 6 months from the date of last delivery date or extended delivery date as provided in clause No.702 (b) of IRS Conditions of Contract.
- C. Notwithstanding anything contained herein the Railway Administration shall be at liberty to forfeit the Security Deposit or recover and adjust from the Security Deposit and other amounts of the Contractor that may be lying with the Railway, any loss suffered on account of the breach of contract arising on account of refusal or failure on the part of the Contractor to perform the contract.

6.0 Inspection Clause :

(a) Inspection Clause:

- 6.1 Final inspection & acceptance of material will be done by the consignee after its receipt.
- 6.2 Pre despatch inspection will be by RDSO/RITES/consignee at Railway's option as per Tender Enquiry. Tenderers to quote clearly their inspection clause. No change in inspection at a later stage will normally be considered.
- 6.3 Material peculiar to Railway such as parts and fittings of rolling stock except raw material, which have been found rejected during inspection and which could not be rectified, are to be defaced by the inspecting authority to avoid recycling of such rejected material and to avoid ultimate failures of assets. All such rejected materials peculiar to Railways will be mechanically defaced to prevent sale to Railways again.
- 6.4 In case the firm fails to offer the material for inspection against inspection call issued to inspection agency or if the material have to be re-inspected due to rejection of the material at the firm premises by the inspecting agency or due to non-despatch of material within validity of inspection certificate, then 50% of the inspection charges applicable for the offered quantity subject to maximum of Rs 5,000/- and actual test charges incurred will be paid by the supplier to the inspecting agency.
- 6.5 For authorised dealers/ Agents the inspection of material will be done at the manufacturers premises only.
- 6.6 All articles ordered are subject to inspection, test and approval by an officer of this Railway irrespective of any other inspection indicated in the Purchase Order. Supplies not in accordance with the order will be rejected and the Controller of Stores will be at liberty to cancel the order and re-purchases at the risk and cost of the defaulting firm. Cost of test on supplies rejected will be recovered from Suppliers. The Test Report of the Railway will be final and binding on the Contractor

6.7 The tenderers to specifically note that:-

- 6.7.1 In cases where only a portion of the stores ordered is tendered for inspection at the end of the delivery period and also in cases where inspection is not completed in respect of the portion of the stores tendered for inspection during the delivery period, the purchaser reserves the right to cancel the balance quantity not tendered for inspection within the delivery period fixed in the contract at the risk and expense of the Contractor without any further reference to him. If the stores tendered for inspection during or at the end of the delivery period are not found acceptable after carrying out the inspection, the purchaser is entitled to cancel the contract in respect of the same at the risk and expense of the Contractor. If, however, the stores tendered for inspection are found acceptable, the purchaser may grant an extension of the delivery period subject to the following conditions :-
 - 6.7.1.1 The purchaser has the right to recover from the contractor under the provisions of clause 0702 (a) of I.R.S. conditions of Contract liquidated damages or the difference in rate if the same material is purchased at a cheaper rate (with the consent of the firm)- whichever is higher, on the stores which the contractor has failed to deliver within the period fixed for delivery
 - 6.7.1.2 That no increase in price on account of any statutory increase in or fresh imposition of Customs Duty, Excise Duty, Sales Tax or on account of any other tax or duty leviable in respect of the stores specified in Contract which takes place after the

date of the delivery period stipulated in the contract shall be admissible on such of the said stores as are delivered after the date of the delivery stipulated in the contract.

- 6.7.1.3 That notwithstanding any stipulation in the contract for increase in price on any other ground no such increase which takes place after the date of delivery stipulated in the Contract shall be admissible on such of the said stores that are delivered after the expiry of the delivery period stipulated in the Contract.
- 6.7.1.4 But nevertheless, the purchaser shall be entitled to the benefit of any decrease in price on account of reduction in or remission of Custom Duty, Excise Duty, Sales Tax or on account of any other tax or duty or on any other ground as stipulated in the price variation clause which takes place after the expiry of the date of delivery stipulated in the contract.
- 6.7.2 The contractor shall not dispatch / deliver the stores till such an extension in terms of para 1 (a) to(d) above is granted by the Purchaser & accepted by the contractor. If the stores are dispatched by the contractor before an extension letter as aforesaid is issued by the purchaser and the same are accepted by the consignee, the acceptance of the stores shall be deemed to subject to conditions para 1 (6.7.1.1. to 6.7.1.4) above.
- 6.7.3 In case where the entire quantity has been tendered for inspection within the delivery period stipulated in the contract and the purchaser choose to grant an extension of the delivery period the same would be subject to the conditions (6.7.1.1. to 6.7.1.4) mentioned in Paragraph 6 . 7 .1 above.

7.0 Price Variation Clause :

7.1 Railways, in general, prefer firm price contracts.

7.2. As such, where no price variation has been incorporated by the Railway, in the tender schedule, tenderers are to quote on firm price basis.

7.3. However, there may be cases of procurement of stores, which are raw-material (Steel/ Non-Ferrous) intensive, wherein the tender schedule itself will indicate Price Variation clause along with the PVC formula, generally based on following Price Variation Clauses:-

- a) IEEMA PVC for the items covered by IEEMA formula.
- b) Railway Board's/CORE's PVC for items covered by such formula.
- c) DGS&D's PVC for the items which are covered by such formula etc.
- d) PVC based on prices of HCL, HZL, SAIL, LME, BME etc.
- e) PVC based on WPI
- f) For those items, which are not covered by any of the aforesaid PVC, other PVC specific for such stores (e.g. Import items subject to variation in CD/FE) may be considered , if found to be in order.

7.3.1 In tenders floated with PVC by Railways , tenderers are advised to quote as per specific PV formula given in the tender schedule. **Offers with deviation in the PV formula other than the one as prescribed in the tender schedule will be summarily rejected. Offers from tenderers quoting with fixed price, where Railway has incorporated pre-defined PV formula, will be summarily rejected.**

7.4 Tenderer who quote with price escalation on account of raw material in the tenders will please note that such escalation claims will be subject to verification by the Financial Adviser and Chief Accounts Officer of the Railway with reference to the records that may be called for from them. Successful tenderer will be required to produce complete records, at the time of submission of bill for verification / examination of their claims under price escalation before their claims are accepted. If the tenderer fails to establish his claim by producing unsatisfactory records before the FA & CAO of this Railway, their claim will be disallowed and/ or proportionately reduced.

7.5 In case of entire or severable contract, with staggered delivery schedule, the PVC claims if any, will be restricted for that particular quantity of supply required to be completed in that period, as indicated in the original delivery schedule, irrespective of the fact, whether the supply has been made/completed subsequently, within the over all delivery schedule of the contract..

7.6 In case of tenders floated with PVC in tender schedule, all the offers shall be updated based on indices as prevailing one month(i.e.30 days) prior to the date of opening(excluding the date of opening) for PVC updation purpose. Evaluation of offers and determination of inter-se ranking will be based on updated offers as on one month (i.e.30 days) prior to the date of opening of the tender(excluding the date of opening) .

7.7 In all other cases, evaluation and determination of interse ranking will be done as on the date of opening.

8.0 Price Fall Clause (Wherever applicable viz in Rate Contracts and if Stipulated in the Tender):

8.1 For Fixed quantity contracts / Running Contracts :

8.1.1 Applicable for purchase of such stores as are usually dealt with by centralized procurement agencies and also in case of certain very high value tenders in a situation where other Railways also deal with tender cases for such materials, concurrently.

8.1.2 The Text of fall clause **For Fixed quantity contracts / Running Contracts** is as under :

The price charged for the stores supplied under the Contract by the contractor shall in no event exceed the lowest price at which the contractor sells the stores or offer to sell stores of identical description to any persons / organizations including the purchaser or any Department of Central Government or any Railway Office or any Railway undertaking, as the case may be during the period till performance of all supply orders placed, during the currency of the contract is completed. The lower price will be applicable to supplies made after the date of coming into force of such reduction or sale or offer to sell at a reduced rate."

If at any time during the said period the contractor reduces the sale price, sells or offers to sell such stores to any persons, organizations including the purchaser or any Department of Central Government or any Railway Office or any Railway Undertaking as the case may be at a price lower than the price chargeable under the contract, they shall forthwith notify such reduction or sale or offer of sale to the purchaser and the price payable under the contract for the stores supplied after the date of coming into force of such reduction or sale or offer of sale, shall stand correspondingly reduced."

8.1.3 The Contractor shall furnish the following certificate to the concerned Account Officer along with each bill for payment of supplies made against the contract.

"I / We certify that there has been no reduction in sale price of the stores of description identical to the stores supplied to the Government under the contract herein and such stores have not been offered / sold by me/us to any person / organization including the purchaser or any Department of Central Government or any Railway Office or any Railway Undertaking as the case may be, up to the date of bill, at a price lower than the price charged to the Government under the contract. "

8.2 Price Fall Clause is generally applicable for **Rate Contracts** as per text in para 8.1.2 above :

8.2.1 Besides, the above stipulation will however not apply to :

- (a) Exports by the Contractor
- (b) Sale of goods as original equipment at price lower than the price charged for normal replacement
- (c) Sale of goods such as Drugs which have expiry dates.
- (d) Sale of goods at lower price on or after the date of completion of sale / placement of order of goods by the Authority concerned under the existing or previous rate contracts as also under any previous contract entered into with the Central or State Government Department including their undertaking (excluding joint sector companies and /or private parties) and bodies.

8.2.2 The Contractor shall furnish the following certificate to the concerned FA & CAO along with each bill for payment of supplies made against the Rate contract.

"I / We certify that there has been no reduction in sale price of the stores of description identical to the stores supplied to the Government under the contract herein and such stores have not been offered /sold by me/us to any person / organization including the purchaser or any Department of Central Government or any Railway Office or any Railway Undertaking as the case may be, up to the date of bill / the date of completion of supplies against all supply orders placed during the currency of the contract at a price lower than the price charged to the Government under the contract for quantity of Stores Categories under sub clauses (a), (b), (c) and (d) of Sub para 8.2.1.

8.2.3 Note : - The contractor will also inform the FA&CAO concerned and Controller of Stores as soon as supplies against all orders placed against the rate contract are completed.

9.0 Book Examination Clause :

9.1 The tenderers are to agree for the Standard Book Examination Clause as stated below. In case the tenderer do not agree to this clause, it is made clear that under Section 209-A of Companies Act, the Government have got powers to examine the book of the company. The Book Examination Clause can be invoked wherever it is felt by the purchaser that the rates quoted by the firm is unreasonable with due regard to the previous purchase rates, price trends intrinsic worth of the items.

- (i) The contractor shall whenever called upon and requiring to produce or cause to be produced for Examination by the Government Officer duly authorized in that behalf, any cost or other account book of account voucher, receipt, letter, memorandum paper and writing or any other copy or extract from any other such documents and also furnish information relating to such transaction and produce before the duly authorized Government Officer returns verified in such manner as may be required relating in any way to the execution of this contract or relevant for verifying or ascertaining the cost of execution of this contract (the decision of such Government Officer on the question of relevancy of any document, information or return being final and binding on the parties). The obligation imposed by this clause is without prejudice to the obligation of the Contractor under any statute, rules or orders shall be binding on the contractor.
- (ii) The Contractor shall, if the authorized Government Officer so requires (whether before or after the prices, have been finally fixed), afford facilities to the Government Officer concerned to visit the Contractors works for the purpose of examining the process of manufacturing and estimating or ascertaining the cost of production of the articles. If any portion of the work be entrusted or carried out by a sub-contractor or any of its subsidiary or allied firm or company, the authorized Government Officer shall have the power to examine all the relevant book of such sub-contractor or any Subsidiary or allied firm or company and it shall be opened to his inspection as mentioned in clause (1).

- (iii) If on such examination, it is established that the contracted price is in excess of the actual cost plus reasonable margin of profit, the purchaser shall have the right to reduce the price and determine the amount to a reasonable level.
- (iv) Where a contract provided for book examination clause the Contractor or its agency bound to allow examination of its books within a period of 60 days from the date the notice is received by the Contractor, or his agencies calling for the production of documents as under clause (i) above. In the event of Contractor's or his agencies failure to do so, the contract price would be reduced and determined according to the best judgement of the purchase which would be final and binding on the Contractor and his agencies.

10.0 Warranty / Guarantee period: Warranty / Guarantee clauses IRS Conditions of Contract are normally applicable. The contractor should guarantee that the said goods / stores / articles would continue to conform to the description and quality as aforesaid, for a period of 30 months after their delivery or 24 months from the date of placement in service whichever will be sooner, and this warranty shall survive notwithstanding the fact that the goods/stores/articles may have been inspected, accepted and payment thereof made by the purchaser.

10.1 The warranty clause, wherever mentioned in the technical specification of the item under procurement, if at variance with the standard warranty clause prescribed in IRS conditions of contract, the warranty clause as per technical specification will prevail.

10.2 For Machinery & Plant etc., the Tenderer should abide by the following Guarantee Clause:--

The Contractor guarantees that the Stores which he supplies will be built fully in accordance with Specifications and will operate properly. In all cases the Contractor guarantees that his design would strictly follow the drawings with modifications if any that are notified in respect of each type. The Contractor further guarantees that the Stores will be free from defects in material and workmanship provided that the Contractor's liability in this respect shall be limited to the furnishing and installation or replacement parts free of any charge, of the repair of defective parts only to the extent that such replacements or repairs are attributable to or arise from faulty workmanship or material, or design in the manufacture of the stores. All replacement parts shall be shipped by the contractor C.I.F Indian Port, from which point the purchaser shall clear through customs and deliver at his expense to inland destination. If the contractor so desire the replace parts can be taken over by the Representatives in India for disposal as he deems fit, within a period of three months from the date of receipt of replacement parts. At the expiry of this period, no claim whatsoever shall lie on the Purchaser.

It shall be a condition of the guarantee hereunder that any defects complained of shall be brought to the Contractor's attention within a reasonable time of their being first discovered. The guarantee herein contained shall not apply to any material which shall have been repaired or altered by the Purchaser, or on his behalf in any way so as to affect its strength, performance or reliability, or to any defect to any part due to misuse, negligence or accident.

The guarantees herein shall expire in respect of each item of stores, on the expiration of 30 months from the date of its delivery in India or 24 months from the date of its placing in service whichever is earlier, except in respect of defects notified to the Contractor prior to expiration of such date. All replacements and repairs that the Purchaser shall call upon the Contractor to deliver or perform under the guarantee shall be delivered and performed by the Contractor promptly and satisfactorily.

Any approval or acceptance by the Purchaser of the stores or of the materials incorporated therein shall not in any way limit the Contractor's liability hereunder. The decision of the Purchaser in regard to Contractor's liability under the guarantee shall be final and conclusive.

11.0 Negotiations :

In case of negotiation, the tenderer will have to depute their authorized representative to attend the negotiation along with proper authority letter, who can take on the spot decisions as may be required in the matter.

They have to give the following declaration before the negotiation:-

"DECLARATION

I do hereby declare that in the event of failure of the contemplated negotiations relating to Tender No..... opened on my original offer shall remain open for acceptance on its original terms and condition upto

I also declare that I am aware that during this negotiation, I cannot increase originally quoted rates against any of the individual items and that in the event of my doing so, the same would not be considered at all i.e. reduction in rate during negotiation alone would be considered and for some items if I increase the rates, the same would not be considered and in lieu my originally quoted rates alone would be considered and my offer would be evaluated accordingly."

12.0 Evaluation of the offers: The Inter-se position of all offers received will be decided item wise /consignee wise unless stated otherwise in the tender schedule.

(a) Rates quoted without any condition attached (viz. discounts having linkages to minimum order quantity, prompt payment, prompt Receipt Note etc.) will only be considered for tender evaluation purpose. Thus discounted rates - linked to minimum order quantities and prompt payment etc will be ignored for calculating inter-se position. Southern Railway however reserves the right to use the discounted rate /rates if considered workable and appropriate for counter offer to the successful tenderers. Though the rates without any conditions attached will only be considered for evaluation purposes, this does not preclude

Southern Railway from making counter offer of rates of any of the discounted offers.

(b) The tenderers should note that tender quantity is only approximate and subject to variation at the time of actual finalisation of the tender. Moreover, as per the terms and conditions of the tender, the purchaser also reserves the right to accept the offer for the full quantity or part thereof tendered.

(c) All-inclusive cost comprises of Basic Rate, Excise Duty, Sales Tax, Packing charges, Forwarding charges, Insurance (if any) and Freight charges up to destination and any other charges quoted by the Tenderer. This will be calculated and ranking will be decided accordingly.

(d) All offers will be arranged in ascending order of the all inclusive cost as calculated .

(e) Time preference orders on higher tenderers with assurance of earlier delivery in preference to lowest acceptable offers with longer delivery can be placed by Southern Railway in case of emergency / urgent requirement.

(f) All conditions in the offers, involving financial angle should be indicated in the "rate schedule" .

(g) For any statutory variations such as Excise Duty and Sales Tax announced by the Central Government the inter-se ranking of the offers shall be evaluated as per the tax regime as applicable on the date of tender opening.

13.0 Marking of material Supplied : The contractor should indicate the Manufacturers Name / Month and Year of manufacturing / Purchase Order Number by process of Stamping / etching / embossing as appropriate or as specified in specification, in order to identify the suppliers in case of premature failure of the materials in actual use. The location of these identification should be such that they do not get obliterated on wear and tear and without affecting the functional utility and structural stability of the components / materials.

14.0 Purchase / Price Preference Clause :

14.1 There will not be purchase preference for products and services of central CPSE except for preferential purchase policies framed for specific sectors like MSEs/ SSI Sectors separately as per the Government policy from time to time. The public procurement policy on MSEs envisages certain benefits/preferential treatment to micro and small enterprises(MSEs) for their participation in Government procurement as per guidelines of Govt. of India.

14.2 In order to extend the benefit/ preferential treatment to eligible MSEs, the following conditions apply:

(I) MSEs who are interested in availing themselves of these benefits will enclose with their offer the proof of their being MSE registered with any of the agencies mentioned in the notification of Ministry of MSME indicated below:

- (i) District Industries Centers
- (ii) Khadi and Village Industries Commission
- (iii) Khadi and Village Industries Board
- (iv) Coir Board
- (v) National Small Industries Corporation
- (vi) Directorate of Handicraft and Handloom
- (vii) Any other body specified by Ministry of MSME

(II) The MSEs must also indicate the terminal validity date of their registration.

14.3 At present, the benefits extended to MSEs as per Public Procurement Policy are as below and the web address of MSME is www.domsmc.gov.in:

- (i) Tender sets shall be provided free of cost to MSEs registered with the agencies mentioned in 14(b) for the item tendered.
- (ii) MSEs registered with the agencies for the item tendered will be exempted from payment of Earnest Money.
- (iii) In tenders, participating MSEs quoting a price within price band of L1+15% shall be allowed to supply a portion of the requirement by bringing down their price to L1 price in a situation, where L1 price is from someone other than a MSE and such MSEs can be together ordered upto 20% of value of net procurable quantity.
- (iv) In case of tendered quantity / item cannot be split or non-divisible, etc. MSE quoting price within price band L1+15% may be awarded full / complete supply of total tendered value to MSE, considering the spirit of policy for enhancing the Government procurement from MSE.
- (v) The start-ups and MSME firms are exempted from condition of prior turn over and prior experience in all public procurements subject to meeting of quality and technical specification

14.4 For availing the facilities as above, the tenderers are required to submit copies of relevant documents indicating details of registration along with validity, name of the registering organization and details of the item, details of ownership etc, failing

which the tender case will be decided based on the available documents.

15.0 In case anything stipulated in the tender schedule are at variance with the special conditions mentioned herein, the additional special conditions mentioned in particular tender schedule will prevail. If technical specification prescribe any condition involving financial repercussion, which is in conflict with instructions to tenderers, IRS conditions, special condition and additional special conditions of contract(except warranty/guarantee period), then same will be ignored for tender evaluation purpose unless made a additional special condition of tender.