

NOTE.—Rules regulating the payment of bonus to contractors in very exceptional cases are given in Appendix XVII.

III—CONTRACT DOCUMENTS AND ENFORCEMENT

151. Before a work is given out on contract, the authority competent to accept the contract must prepare “contract documents” to include:—

(i) a complete set of drawings showing the general dimensions of the proposed work and so far as necessary, details of the various Parts-works to be done under lump-sum items in the schedule to the agreement should be clearly defined by specifications or drawings, as necessary.

(ii) a complete specification of the work to be done and of the materials to be used, unless reference can be made to specifications contained in the Tamil Nadu Building Practice and its Addenda Volume (in the case of the items of work for which there are already standard specifications the numbers of the relevant specifications of the Tamil Nadu Building Practice should be referred to in the schedule attached to the agreement).

NOTE.—Item (i) and (ii) above are necessary for both piece work contracts and contracts based on the lump-sum tender system.

(iii) a schedule of the quantities of the various descriptions of work (This is necessary only in the case of contracts based on the lump-sum tender system as defined in the Tamil Nadu Building Practice. In such a case, the total under the Schedule-A of the agreement must be equal to the lump-sum entered in the agreement), and

(iv) a set of ‘conditions of contract’ to amplify as necessary, the preliminary and other specifications of the Tamil Nadu Building Practice forming part of contracts based on the lump-sum tender system (in the case of piece-work contracts, the condition considered necessary for any particular case in addition to those printed in Form PWD V. 51 should be attached to the agreement).

152. The terms of a contract must be precise and definite and there must be no room for ambiguity or misconstruction therein. No contract involving an uncertain or

indefinite liability or any condition of an unusual character should be entered into without the previous consent of the competent financial authority.

If the contract, even when it is within the powers of acceptance of the Executive Engineer, is to be of a very special nature, he should, before inviting tenders publicly, submit the contract documents to the Superintending Engineer for his approval or remarks together with a copy of the proposed advertisement for tenders and the form in which the tenders are to be submitted. The Superintending Engineer should similarly when the amount of the contract is likely to exceed his powers for acceptance or when it is to be a very special nature requiring, in his opinion, the Chief Engineer's advice, submit the contract documents to the Chief Engineer for approval.

153. Contract should, where possible, be executed on one or other of the standard forms, but they may be modified to suit the requirements of any particular case, or for works of great magnitude, after consultation with the legal advisers of the Government. In cases where it is considered that none of the standard forms can be used even with suitable modifications, the contracts should be got prepared specially by the Government Law Officers.

Engineers and their subordinates are responsible that the terms of contract are strictly enforced and that no act is done tending to nullify or vitiate a contract.

All agreements entered into with the department by contractors for the execution of works are exempt from stamp duty.

III—TENDERS

154. Tenders, which should always be sealed, should invariably be invited in the most open and public manner possible, whether, by advertisement in the Government Gazette or local newspapers, or by notice in English and Tamil posted in public places, and tenderers should have free access to the contract documents. The notice should in all cases state:—

(i) When and where the contract documents can be seen and the blank forms of tenders can be obtained and also the amount to be paid for sets of plans or other tender documents;

(ii) When and where tenders are to be submitted and are to be opened (in the case of large contracts, that is, works costing more than Rs. 5 lakhs, the date of receipt of tenders should be atleast one month after the date of first advertisement or notice. In the case of works costing less than Rs. 5 lakhs the time limit of one month can be reduced for good and sufficient reasons which shall be recorded in writing.

(iii) the amount of earnest money to accompany the tender, and the amount and nature of the security deposit required in the case of the accepted tender; in the case of lump-sum contracts the amount of earnest money and that of the additional security (and in the case of piece-work contracts the amount of earnest money) should each be $2\frac{1}{2}$ per cent of the sanctioned estimate figure when the contract is for all the items of work included in the estimate or $2\frac{1}{2}$ per cent of the estimated amount of the contract when the contract is only for part of the work included in the estimate; and

(iv) with whom or what authority, the acceptance of the contract will rest.

NOTE 1.—In the case of standing contractors of repute from whom special lump sum deposit of Rs. 50,000 together with Indemnity bond have been taken, the rates mentioned in (iii) above, shall be 1 per cent each in respect of Earnest Money and Security Deposit, in case of lump sum contracts; and 2 per cent in respect of Earnest Money for K2 contracts, in such cases the retention money from bills as additional security for the due fulfilment of the contract shall be $2\frac{1}{2}$ per cent instead of 5 per cent. The number of deposits of Rs. 50,000 to be taken from contractors, who are admitted to the concession shall be limited to 5; that is one deposit shall be utilised to cover irrigation Branch and Project works, which ever Chief Engineer is in-charge of the work and the remaining 4 deposits each for (a) Building works (b) public Health Engineering and Municipal works (c) Electrical Department works and (d) Highways Department works.

The period of agreement with such contractor shall be limited to 3 years at a time.

The authority to extend the concession to such contractors is vested with the Chief Engineers concerned.

Authority should always be reserved to reject any, or all of the tenders so received without the assignment of a reason and this should be expressly stated in the advertisement.

In the case of works to be given on contract based on the lump sum tender, as defined in the Tamil Nadu Building Practice, the form of tender notice and tender (standardized) as P. W. D. forms Nos, V. 53 (a) and 53 (b) should be used with such modification as any particular work may require.

No tender should be accepted from any person directly or indirectly connected with the Government Service-vide paragraph 72 of this code.

The Executive Engineer or the Superintending Engineer as the case may be, should open the tenders in the presence of the tenderers or their authorized agents who may choose to be present at the time. The officer opening the tenders should also initial all corrections in each tender, which have been initialed by the tenderer. If there are corrections in the tender unattested by the tenderer, a note of such corrections should be made on the tender itself, when it is opened-vide paragraph 9 of the standard tender notice P.W.D. Form No. V. 53 (a). The officer opening the tender should keep a personal note of the total number of tenders opened by him and verify therewith the number in the comparative statement of tenders.

After the receipt of the comparative statement and before the selection of a tenderer the officer concerned should examine all the tenders and satisfy himself that no corrections which were not in the tenders at the time he received them had been made in any of them.

NOTE 2.—Tenders should invariably be called for when the amount involved in a particular contract is Rs. 5,000 or more. If it is proposed in any case, whether for urgency or any other reason, to depart from this rule, the previous approval of the Superintending Engineer, should be obtained in the case of works costing not more than Rs. 20,000 and of the Chief Engineers or Government as the case may be in the case of those costing more than Rs. 50,000. When the amount involved is less than Rs. 5,000 the Executive Engineer may call for tenders or not at his discretion. This rule does not admit of a major work being split up into parts, each costing less than Rs. 5,000 and each part being given out on contract without calling for tenders.

NOTE 3.—Notices calling for tenders should invariably be published in prominent local newspapers in respect of all works costing over Rs. 1,00,000.

NOTE 4.—The Chief Engineers may authorize dispensing with tenders in the case of contracts pertaining to major works provided that the total aggregate value of such contracts in respect of particular major work does not exceed Rs. 50,000.

NOTE 5.—When once tenders have been called for a work in accordance with Note 2 above and there is no response or all the tenders received are unsatisfactory and have to be rejected and it is considered that a call for further tenders will be fruitless or is undesirable the officer who is competent to accept the tender may, allot the work to a contractor selected by him with the sanction of his immediate Superior authority.

NOTE 6.—The rule in Note 2 above applies.—

(a) to contracts for execution of works including supply of materials for such works by the contractors themselves, but not to contracts involving only supply of materials (other than road quarry materials) or tools and plant; and

(b) to contracts for the supply of road quarry materials.

In the case of supply of materials (other than road quarry materials) and tools and plant, the stores rules in Appendix 15 to the Tamil Nadu Financial Code (Volume II) apply vide also Article 187, Tamil Nadu Financial Code, Volume I).

Asphalt, tar and such bituminous products for road surfacing are governed by the Stores rules.

(c) In the case of purchase of stores in respect of large contracts the time limit of one month from the date of first advertisement shall be made applicable, if the value of stores is more than Rs. 2 Lakhs. In the case of tenders for purchase of stores below Rs. 2 Lakhs, a minimum time limit of 15 days shall be fixed.

NOTE 7.—When stores are proposed to be purchased in India for water-supply and drainage schemes, tenders should be called for by the Superintending Engineer of the Circle in which the works are executed.

155. As a rule, no tender for the execution of works of any description should be received unless accompanied by a treasury chalan, deposit at call receipts or Demand drafts or Government securities or Electricity Board Bonds, or National Savings Certificates or 10 years Defence Deposit Certificates or 12 year National Defence Certificates, for earnest money to the extent which has been notified as necessary in the tender notice. The earnest money is the guarantee of the tenderer to deposit the requisite security and to enter into the required agreement on intimation of the acceptance of his tender. It is forfeited in case of default—vide forms of tender notice and tender P. W. D. Forms Nos. V. 53 (a) and 53 (b).

NOTE 1.—Deposit at call receipts may be accepted towards earnest money subject to the condition that confirmatory advice from the Reserve Bank of India towards its acceptance is received along with it.

NOTE 2.—The deposit at call receipts of scheduled banks will be treated as cash in Account book of the Public Works Divisions for purposes of earnest money deposit.

NOTE 3.—The earnest money in the shape of deposit at call receipts of scheduled banks attached to tender and returned to contractors whose tenders are rejected on the same date will not pass through Divisional Accounts, provided that the contractors concerned give a stamped receipt for the money in the Register of Tender maintained in the Division Office.

NOTE 4.—The earnest money in the shape of deposit at call receipts of Scheduled banks which is received prior to the date fixed for opening the tenders or which, for any reason cannot be returned on that date should be brought on to Account in the cash book and thereafter accounted in the manner prescribed in paragraphs 454 and 455 of the Tamil Nadu Public Works Account Code.

NOTE 5.—Demand drafts should be drawn in favour of the Executive Engineer by designation only and the acceptance is subject to the realisation of each before consideration of the tenders.

NOTE 6.—State Government Securities, Electricity Board Bonds or National Savings Certificates accepted towards Earnest Money Deposit should be endorsed or pledged in favour of the Executive Engineer concerned and the provisions in paragraph 454 of Tamil Nadu Public Works Account Code and Article 279 of Tamil Nadu Financial Code, Volume I should be observed.

NOTE 7.—The 10 year Defence Deposit Certificate and the 12 year National Defence Certificates accepted towards Earnest Money Deposit should be endorsed or pledged in favour of the Executive Engineer concerned subject to the condition that the ruling price at the time of disposal of the certificate only will be recovered for determining its price value and to the observance of the formalities specified in Article 279 (5) of the Tamil Nadu Financial Code, Volume I.

NOTE 8.—The tenderers in other states remit earnest money deposit direct to the departmental officers by means of bank drafts drawn on schedule banks or the State Bank of India and the departmental officers shall credit the proceeds of the Bank drafts into Treasury/Bank under the head "Reserve Deposits" and arrange for their refunds by means of Bank Drafts.

156. In selecting the tenderers to be accepted, the financial status of the tenders, their capability, the security offered by them or the record of their execution of any works previously, should be taken into consideration. Other conditions being equal the lowest tender is accepted, a confidential record should be kept of the reasons for doing so. This confidential record should be shown to the Inspecting Officer of the Audit Department, if required. The Superintending Engineers and the Executive Engineers during their inspection of the division and subdivision offices, should also examine every case in which a tender other than the lowest has been accepted and bring to the notice of the higher authorities, cases in which the rule about the acceptance of the lowest tender has been departed from without sufficient justification.

The acceptance or rejection of tenders is however, left entirely, to the discretion of the officer to whom the duty is entrusted and no tenderer can demand the case of rejection of his offer. Such an explanation may, however, be called for by a superior authority, if considered necessary

IV—FORMS OF SECURITY FOR PERFORMANCE OF CONTRACTS.

157. The forms of a security to be taken in the case of piece-work contracts is laid down in the conditions printed in P. W. D. Form No. V. 51.

The forms of security to be taken in the case of contracts based on the lumpsum tender system as defined in the Tamil Nadu Building Practice, are given in the forms of tender notice and articles of agreement connected therewith (P. W. D. Forms Nos. V. 53 (a) and 53).

V.—CUSTODY OF ACCEPTED TENDERS AND OTHER CONTRACT DOCUMENTS AUTHORITY COMPETENT TO GIVE CERTIFIED COPIES OF TENDERS AND AGREEMENTS.

158. Originals of tenders and agreements for execution of works approved by the Executive Engineer of a division or by higher authorities should be kept in the personal custody of the Accountant of the division office. He should maintain a careful check of all original tenders and agreements that are put up for reference in connection with audit of bills, etc., or sent to Subdivisional officers. When copies of such tenders and agreements are issued to subdivision officers or contractors, the Executive Engineers should see that the copies are correctly transcribed from the original and should sign them himself. Similarly, originals of the tenders and the agreements approved by the Subdivisional officers should be kept in their personal custody and they are responsible for their safe preservation. Copies made for submission to the Executive Engineer or for issue to contractors should be signed by the Subdivisional Officer.

At the time of transfer of charge, a written statement of original tenders and agreements handed over and taken over should be made out and signed by the relieved and relieving Accountants or Subdivisional officers as the case may be.

VI--OFFICERS EMPOWERED TO EXECUTE CONTRACTS AND RULES ON CONTRACT.

159. No authority lower than the Officer in-charge of a Subdivision can accept any tender or make a contract for public works. The Officers legally empowered to execute on behalf of the Governor of Tamil Nadu, the different classes of deeds, contracts and other instruments are detailed in Appendix III. This power is, however, in each case, subject to the departmental rules laying down the powers of officers, to enter into contracts.

160. An officer empowered to enter into contracts may, after the estimate has been duly sanctioned, give out to different contractors a number of contracts relating to one work, eventhough the estimated cost of the work may exceed the amount upto which he is empowered to accept tenders, provided there are no special orders to the contrary, and the amount of each contract is within the limit of the Officer's power to accept tenders. But no contract may be entered into with any individual contractor in excess of this limit nor may a second contract be entered into with a contractor, who has already received a contract in connection with the same work, which is still in force, if the sum of the contracts exceeds the power of acceptance of tenders of the authority concerned.

NOTE.—The restrictions in the second sentence of this paragraph do not apply to sub-works in irrigation maintenance scheme estimates, provided the sub-works are independent works unconnected with each other.

161. The following rules must be carefully noted:—

1. No officer may enter into a contract into which he is not empowered to enter under the provisions of paragraph 159 and Appendix III to this Code.

2. The limitations defined in paragraph 415 (v), 416 (iv), 422, 431 or 436 (d) shall not be exceeded.

3. No authority may accept any contract for a work until an assurance has been received from the authority competent to provide funds for the same, that such funds will be allotted before the liability matures—vide the last sentence of paragraph 173:

4. On no account, should rates in excess of those provided in the agreement be paid, as the payment of such rates which are not due would nullify the contract.

5. Duplication of agreements should in no case be required, that is to say, authority who has concluded an agreement should not be required to draw up and sign again an agreement already executed—vide also rule 2 under paragraph 95, Tamil Nadu Public Works Account Code.

6. No authority subordinate to the Government may waive the provisions of the stores purchase rules in articles 125 to the Tamil Nadu Financial Code (Volume I).

161-A. If under clause 3 of the articles of agreement (Form PWD V 53) for execution of a work on lumpsum tender system, a dispute arises between the department and the Contractor, and is proposed to be referred to arbitration the procedure laid down in clause 69-1 of the preliminaries specification to TNBP shall be followed. Further the rules framed in appendix XXIII under the "Indian Arbitration Act of 1940 (Act X of 1940)" for the guidance of the arbitrators coming under the purview of note 1 under paragraph 73 of this code and also for the Executive Engineers in regard to action to be taken after the award is passed shall be strictly adhered to.

G.—SALE, ACQUISITION AND LEASE OF LAND

I—SALE OF GOVERNMENT LAND AND IMMOVABLE PROPERTY.

162. All land, the property of Government should ordinarily be sold through the Revenue Department.

163. The sale of land or buildings with the site on which they stand is generally left to the Collector of the district but it is at the same time open to the Public Works Department to apply for permission to sell, land, etc., themselves when they see cause to recommend such a measure.

164. Collectors have powers to sell buildings with their sites and attached lands if the combined value does not exceed Rs. 5,000. The Board of Revenue exercise similar

powers up to a limit not exceeding Rs. 10,000. The sanction of Government is necessary when the value exceeds Rs. 10,000.

NOTE.—Lands in-charge of the Public Works Department which are no longer required by the department for some administrative purpose or for some sanctioned scheme, which has to be executed in the near future, should be handed over to the Collector of the district.

165. When any immovable public property is made over to a local authority for public religious, educational or any other purposes, the grant should be made expressly on the conditions, in addition to others, that may be settled, that the property shall be liable to be resumed by Government, if used for other than the specific purposes for which it is granted and that, should the property be at any time resumed by Government, the compensation payable therefor, shall in no case exceed the amount (if any) paid to Government for the grant together with the cost of their present value whichever may be less, of any buildings erected or other works executed on the land by the local authority.

II—ACQUISITION OF LAND.

(a) GENERAL.

166. When land which is not already in the possession of the Government is permanently required for the purpose of the Government it should be acquired through the agency of the Land Acquisition Act (Act I of 1894) as amended by Act XXXVIII of 1923, which alone can confer an indefeasible title. The officer concerned should, in the first instance, consult the Revenue Divisional Officer and obtain from him the fullest possible information as to the probable cost of the land per acre or otherwise, together with the value of buildings etc., situated on the property, for which compensation will have to be paid and a draft notification under section 4 (1) of the Land Acquisition Act. Upon the information thus obtained, an estimate should be framed by the Public Works Officer and submitted for sanction. The draft notification should be submitted with the estimate for the approval of Government and publication in the *Fort. St. George Gazette*.

in cases in which the owner of a land about to be acquired is willing to make a free gift of the land required, a deed of gift should not be executed in favour of Government but the procedure prescribed by the Land Acquisition Act should be followed and an award should be passed under section 11 of the Act for the full market value of the land and not for a nominal amount. The owner who is willing to make a free gift of the land should receive the compensation awarded and may make a gift of the amount of the compensation to Government to be utilised for the public purpose for which the land is acquired.

There is, however, no objection to local officers negotiating with the owners of land with the object of coming to an amicable agreement with them to the price to be paid previous to the initiation of the proceedings under the Land Acquisition Act, with a view to guard against subsequent exorbitant demands or awards, provided that this procedure will result in economy. Any settlement thus arrived at should immediately be communicated to the Land Acquisition Officer. The settlement must take the form of an agreement that the owner is willing to sell for a certain specified sum plus 15 per cent of that sum for compensation, the total of the two sums being the actual price agreed on.

167. In cases of urgency, acquisition should be made under section 17 of the Act, possession is then obtainable fifteen days after publication of notice under section 9 (1) of the Land Acquisition Act. When possession has once been taken under section 16 or 17 of the Act, Government cannot withdraw from its acquisition, therefore when the claim is in large excess of the award, possession should not be taken without a reference to the authority sanctioning the work.

168. When sanction to an estimate framed as above directed has been obtained and when the draft notification referred to in paragraph 166 has been published, the Executive Engineer should make over the matter to the Revenue Divisional Officer who will take the necessary steps for the acquisition and transfer of the land, subject to the instructions which he may receive from the Revenue authorities to whom he is subordinate. These instructions provide that if the estimate originally framed and sanctioned is likely, when the land comes to be acquired, to be materially exceeded, the Revenue Officer making the award should give sufficient notice to the Public Works Officer and should take into

consideration any representation which such officer may make; whether it is made orally or by letter. More especially he should, before making the award, allow such an officer an opportunity of appearing in person or by agent and of producing evidence as to the value of the land. When such a reference is made, the Public Works Officer should, if it is found impossible to obtain the land required without materially exceeding the estimate, or to obtain some other plot of land in lieu of that originally proposed submit a revised estimate for sanction. When possession has once been taken under section 16 or 17 of the Act, Government cannot withdraw from the acquisition of the land. In cases, therefore, where the amount claimed in pursuance of a notice under the Act is largely in excess of the amount subsequently awarded by the Collector and the acquisition of the land is not absolutely necessary, possession should not be taken without a reference to the authority sanctioning the work until the time within which an application for a reference to the Court must be made under section 18 of the Act has elapsed without such application being made.

169. The arrangements between the office of the department and the Revenue Officers to determine as to which land should be taken up should, where practicable, be made without divulging the intentions of the Government, in order to prevent the prices being put up and to render private bargaining possible.

170. After the preliminary arrangements described in the preceding paragraphs have been duly carried out, the land will be taken under the Act either by the Collector or by a Special Officer placed at the disposal of the Public Works Department and invested with the powers of a Collector under the Act. The procedure in the two cases is described in the Civil Account Code, Volume I, Appendix 7.

(b) Land held for Military purposes.

171. No Land, whether—

- (a) within cantonment limits;
- (b) forming part of an encamping ground; or
- (c) otherwise held for military purposes;

should be taken up or occupied for any purpose whatever, either by contractors or any other persons (Official or non-Official) acting under the orders of any Civil department of the State until the sanction of the Government of India in the Army Department to the occupation or use of the land has first been obtained and communicated to the General Officer Commanding the Division or Independent Brigade. In all such cases, the sanction of the Government of India should be obtained by the General Officer Commanding the Division or Independent Brigade through the Quartermaster-General in India.

Application for such land when within cantonment limits should be made by the officer in-charge of the works to the cantonment authority, and by the latter to the superior military authority, but in the case of military encamping ground application should be made to the General Officer commanding the Division or Independent Brigade. The Military authorities will then take the necessary steps to obtain (i) the opinion of the State Government, which should invariably be recorded upon all applications, and (ii) the sanction of the Government of India to the occupation of the required land. The foregoing procedure will apply in cases where it is proposed to purchase, or otherwise acquire permanently, any building situated on military land for the use of a civil department.

III.—LEASE OF LANDS IN-CHARGE OF THE PUBLIC WORKS DEPARTMENT.

172 (i) Lands in-charges of the Public Works Department are of two kinds:—

(1) Lands acquired by the Public Works Department for the construction of buildings but not immediately used for the purpose; and

(2) Lands in-charge of Public Works Department for administrative purposes, e. g. lands in berms of canals, drains, channels, etc. and at wharfs.

(ii) The procedure of grant under Board's Standing Orders should be adopted for grants of these lands for temporary occupation for agricultural and non-agricultural purposes. Grants for such occupation may be made in favour of individuals, private bodies, companies, or associations and local bodies.