

## **‘Standard Conditions of Contract’ for the Contracts awarded through e-Auction**

### **‘Standard Conditions of Contract’ for Commercial Earning, Non-Fare Revenue (NFR) and other earning/ leasing contracts awarded through e-Auction**

Bidding for commercial earning and non-fare revenue (NFR) contracts shall be done through e-Auction (*close-ended forward auction*) on the website of Indian Railways e-Procurement System (IREPS) [www.ireps.gov.in](http://www.ireps.gov.in). Bidders intending to participate in the e-auction should register themselves, and participate in auctions by submitting their bids on [www.ireps.gov.in](http://www.ireps.gov.in) by the bid closing date and time.

Following ‘Standard Conditions of the Contract’ shall be applicable:

#### **1. *Registration of bidders:***

- 1.1 Prospective bidders will be required to get themselves registered in IREPS ‘E-Auction leasing’ module online. Firms already having IREPS account for other modules (Commercial Tendering module, etc) will be able to enrol themselves for commercial auction module also by editing their account profile. The Registration will be valid for all Zones and PUs of Indian railways, and separate registration for individual Zone/ Division will not be required.
- 1.2 One-time non-refundable Registration Fees of Rs 10,000 + GST (as applicable) shall be paid online by the entity before starting participation in commercial e-Auctions.
- 1.3 The entity once registered in IREPS after payment of the one-time Registration Fee will be free to participate in any e-Auction conducted through E-Auction Leasing module of IREPS, of any Zone or Division of Indian Railways for any category or sub category of any type of asset(s).
- 1.4 The entity shall be required to upload registered legal document(s) in its profile in IREPS at the time of registration in IREPS or before participation in auction. Railways reserve the right to verify the documents uploaded in IREPS profile of the successful bidders at any time, and if any information provided is found to be false/ misleading, or the documents uploaded by the entity are found to be false/ invalid, then the Railway may take appropriate punitive action against the entity, including but not limited to termination of the awarded/ running contracts along with forfeiture of the Security Deposit, or cancellation of allotted lots with forfeiture of Earnest Money, without any further notice.

#### **2. *Minimum Eligibility for the Contracts:***

- 2.1 The minimum annual financial turnover required for participation in the e-Auction shall be stipulated in the Auction Catalogue for the lot(s).

- 2.2 The entity shall be required to upload the Audited Balance Sheets and P&L Account Statements of the previous three Financial Years in their profile in IREPS before start of the auction in which they desire to participate. Railways reserve the right to verify the Audited Balance Sheet(s) and P&L Account Statement(s) uploaded in IREPS profile of the successful bidder(s) at any time during the currency of the contract, and if the information about the annual turnover is found to be false/ misleading or the documents uploaded by the firm are found to be false/ invalid, then the Railway may take appropriate punitive action against the entity, including but not limited to termination of the awarded/ running contracts along with forfeiture of the Security Deposit, or cancellation of allotted lots with forfeiture of Earnest Money, without any further notice.

If the Audited Balance Sheet and/or P&L Account Statement of all of the three preceding Financial Year(s) are not available, then the documents of the years (out of the three preceding years) which are available shall be uploaded, and the same will be taken into consideration for judging the eligibility of the bidder. The highest annual turnover entered by the bidder for any of the three Financial Years preceding the current Financial Year will be taken as the turnover for adjudging the eligibility of the bidder. The registered entities will be required to update the financial turnover details at the start of a new Financial Year; however the entities will be free to update their financial turnover at any time.

If the turnover details are not entered by a registered entity for any of the three preceding financial years in its IREPS profile, it will be allowed to participate only in the auction for lots for which the minimum turnover required is Nil (Zero).

**3. *Publishing the Auction Catalogues:***

- 3.1 The Auction Catalogue containing all the lots proposed to be auctioned off on a given date & time, and the terms & conditions applicable for the Auction Catalogue shall be published minimum fifteen (15) days in advance of the auction start date. Complete details of the lots and assets included in a lot will be included in the auction catalogue. The contractors will be able to check the lot specific financial eligibility on IREPS at least seven days before start of the auction.
- 3.2 The intending bidders are advised to carefully study the scope and associated conditions mentioned in the Auction Catalogue. Any submission of bids by the bidders shall be deemed to have been done after a careful study and examination of Auction Catalogue with full understanding of the implications thereof. All terms and conditions shall be deemed to have been accepted upon submission of bid by any bidder.
- 3.3 The intending bidders are advised to physically check the locations and site of the assets being leased by visiting the concerned Railway office during any working hours. Any submission of bids by the bidders in any auction shall be deemed to have done after a careful checking and understanding of locations and sites of the assets to be leased. Representation regarding any difficulty faced by the contractor during

execution of the contract or any claim on any account for rebate on lump-sum freight/ rent/ license fees shall not be entertained by the Railway Administration.

- 3.4 In case of any dispute about details of the assets, decision/ interpretation of the Auction conducting Officer shall be final.

**4. Mode of bidding:**

4.1 Mode of bidding will be close ended forward e-Auction on IREPS portal. The auction will start on the scheduled date and time mentioned in the catalogue. Thirty minutes of cooling off period will be provided after start of auction and no lot included in the auction catalogue shall be closed for bidding during the initial cooling off period. After the end of initial cooling off period, the lots included in the auction catalogue will be closed one by one (as per the pre-decided schedule). The scheduled interval between the closures of two successive lots will initially be as mentioned in the auction catalogue, subject to auto-extensions.

4.2 If any bid is received within the last 02 minutes of bid closing time (auto-extension zone) for any lot, the auction closing time for that specific lot will be auto-extended for 02 minutes (auto-extension period). A maximum of 10 such auto extensions will be permitted for one lot. After the end of 10<sup>th</sup> auto-extension, the bidding will close irrespective of receipt of bids during the last auto-extension period.

4.3 Minimum Increment for submission of next higher bid value shall be as specified in the Auction Catalogue. Bidders, however, shall be free to submit any bid subject to minimum increment from previous highest bid.

4.4 Highest bid for any lot equal to or more than the Reserve Price for the specific lot will only be considered for the award of contract. Reserve Price for the lot(s) shall not be disclosed and the bidders should offer their best bids considering true commercial earning potential of the assets as per their own assessment.

**5. Earnest Money Deposit (EMD):**

5.1 Earnest Money of the requisite amount, currently 5% of the annual bid value (for contracts of validity one year or more) or 5% of total bid value (for contracts of validity less than one year), shall be deposited online at the time of bidding. EMD shall be submitted through 'lien-marking' functionality available on IREPS.

5.2 It shall be mandatory for the contractors to have a *Current Account* in State Bank of India (SBI). The Contractor shall have to link his IREPS user account with their SBI account through the online functionality available on IREPS.

5.3 Once the IREPS user account and SBI bank account has been linked, the contractor will be able to lien mark any amount available in his SBI account through an online functionality available in IREPS. The process for linking of account as well as lien marking of money is described in the User Manual for Contractors for 'E-Auction Leasing', available on IREPS website.

- 5.4 Submission of a bid by a bidder will automatically result in blocking of lien marked amount equivalent to the requisite Earnest Money for the lot. On submission of a higher bid for the same lot by another bidder, the lien marked amount of *the new bidder will automatically get blocked*, and the blocked amount of the previous highest bidder will be unblocked automatically.
- 5.5 A bidder can submit any number of bids against one or more lots during any e-Auction, as long as the total blocked amount (considering all the lots where his amount has been blocked) taken together is within the total amount lien marked by the bidder. The bidder will be able to lien mark additional amount at any point of time before or during e-Auctions.
- 5.6 If one of the bids against a lot is accepted, the amount blocked against the lot will automatically be transferred from the 'successful' bidder's bank account to Railways' account and the balance available in the lien amount of the bidder will get reduced accordingly. If, however, all the bids are rejected, the blocked amount of all the bidders will be unblocked automatically.
- 5.7 A bidder may unmark the unblocked balance lien marked amount at any point of time through the Mark/ Unmark Lien functionality available on IREPS portal.
- 5.8 EMD of the successful bidder will be retained by Railways as Security Deposit.
6. Contract will be awarded to the highest bidder who has offered bid rate above or equal to the Reserve Price subject to correctness of annual turnover declaration and fulfilment of all other terms & conditions by the bidder. Award of contract to the highest bidder will be subject to realisation of EMD/ SD amount in Railways account. Railways, however, reserve the right to not to award any contract for some or all the lots without assigning any reason.
7. Bid Sheets with all details of the lot and asset, accepted bid details, etc. will be generated online, and will be signed digitally after closure of the auction. The bid sheet will be delivered to the successful bidder online through his IREPS user account. An SMS/ E-mail shall also be sent simultaneously intimating the successful bidder.
- 7.1 SMS and E-Mail are additional facilities which are being provided for the sake of convenience of the bidders. However, the onus will be on the bidders to regularly check their IREPS account for new bid sheets issued in their name. No claim shall be entertained by Railways on account of non-delivery or delay in delivery of SMS/ E-mail.
8. The successful bidder shall be required to execute an Agreement with the President of India acting through the Auction Conducting Officer. The Contract Agreement, duly signed by the Auction Conducting Officer will be delivered to the successful bidder online, which can be accessed by the bidder through his IREPS user account. The

bidder will have to sign the contract agreement within 05daysfrom date of receipt of the same. Contracts will have to be signed digitally, by both the Auction Conducting Officer and the bidder. If the bidder fails to sign the Contract within 05 days of receipt of the same, the Auction Conducting Officer may at his discretion cancel the allotment of the lot to the bidder and forfeit the Earnest Money deposited by the bidder against the lot.

- 8.1 If the contractor desires to get the Agreement registered as per law of the land, he shall do so on his own, and shall be solely responsible for the same. All costs, charges and expenses of and incidental to engrossing and completing the Agreement including stamp duty and Registration Charges shall be borne and paid by the contractor. However, this process shall not affect the execution of the contract in any manner whatsoever, and the contractor shall have no claim for deferment, extension or otherwise of the contract and/or the contractual payments.
- 8.2 Scope of the contract will be as stipulated in the lot details, asset details, instructions to bidders, general conditions of contract, special conditions of contract(if any), and any other condition mentioned in the Auction Catalogue.

**9. *Security Deposit (SD):***

Security deposit equivalent to 5% of annual bid value as per accepted rates (for contracts of validity one year or more), or 5% of total bid value (for contracts of validity less than one year) will be applicable. EMD of the successful bidder will be kept by Railways as Security Deposit.

Security Deposit shall be refunded after successful completion of the contract subject to payment of all dues by the contractor. No interest shall be payable on the Security Deposit.

**10. *Contract Period:***

Duration of contract will be as specified in the Auction Catalogue against each lot. Contract 'start date' and 'end date' shall be as mentioned in the Auction Catalogue, the contractor shall be required to start the contract from the contract start date. Minimum fifteen (15) days shall be given for start of the contract from the date of signing of Bid Sheet.

No extension of contract period shall normally be permitted. Railways may, however, consider need based extension of the contract period with the approval of the Competent Authority, up to a period of maximum three months, in deserving cases duly considering Railway's requirement and contractor's performance in terms of timely payment of lump-sum freight/ rent/ license fee and execution of the contract satisfactorily. Such extension in contract period shall be purely on the discretion of Railways and will not be the contractor's right. However, it will be obligatory on part of the contractor to execute the contract in the extended period up to three months and the contractor's consent will not be required for such extension. Rent/ license fee of the assets shall be paid by the contractor for the extended period on pro-rata basis.

11. There would be no escalation in lump-sum freight/ rent/ license fee during the contract period for contracts of up to 3 years validity. For contracts of more than 3 years validity, 10% compounded annual escalation of lump-sum freight/ rent/ license fee shall be applicable from the fourth year onwards.

Notwithstanding anything contained in para 11 above, for pay-&-use toilets built on BOT model (contract duration 15 years) as well as on ROMT model (contract duration 10 years), the compounded annual escalation from fourth year onwards shall be 5% only.

12. ***Untoward Incidence:***

The Railway administration shall not be liable to pay any compensation to the passenger/ public for any negligence of the licensee resulting in injuries or death. The licensee shall be bound to pay any claims arising out of such incidence as per Railway rules and shall also abide the decision of the Railway Claims Tribunal under section 124/A of The Railways Act 1989 or any other decision given by court of Law on this matter.

13. Lump-sum freight/ rent/ license fees, along with GST, GST-cess, etc (as applicable), shall be paid online through IREPS by the contractor. Amount and time period allowed for depositing the lump-sum freight/ rent/ license fees amount by the contractor will be as below:

<b><i>Type of contract</i></b>	<b><i>Amount to be deposited</i></b>	<b><i>Time for depositing</i></b>	<b><i>Grace period with penalty of 0.5% of the delayed amount, per day</i></b>
Leasing of parcel space	Daily (per trip-day)	At least one day prior to the day of start of train	Maximum 7 days
Contracts other than leasing of parcel space	Quarterly	First installment within 15 days of issue of Contract; Subsequent installments 15 days prior to the start of the quarter	

- 13.1 In case of contracts for leasing of parcel space if the contractor fails to pay the lump-sum freight for 03 continuous train running days, he will not be permitted to load in the parcel space (till all the pending dues are cleared), and the Railway shall have the right to utilize the parcel space as per its own requirement. The contractor shall, however, be required to deposit the lump-sum freight for all the days, even if the space had been used fully or partially by the Railway on some of the days.
- 13.2 If the contractor fails to pay the full due amount, as specified in para 19.1, even after expiry of grace period with penalty of 0.5% per day on the delayed amount, the contract will be terminated and Earnest Money/ Security Deposit will be forfeited without any further notice.

**14. Delay in Contract execution on contractor's account:**

- 14.1 For the contracts related to passenger amenities (such as parking contracts, pay & use toilet, passenger lounges, cloakrooms, catering units, etc.), if the contractor fails to start the contract execution from the contract start date even after paying the due rent/ license fees within the permitted time period, the Railways may terminate the contract with forfeiture of Security Deposit and the rent/ license fees already paid, in view of the inconvenience to rail-users.
- 14.2 For the contracts mentioned in para 14.1 above, Railways may, on the request of the contractor, condone the delays in starting the contract execution – duly considering the merits of the case, subject to no arrears in payment. This condonation shall not be for a period more than 30 days.
- 14.2.1 However, there shall not be any extension/ waiver/ deferment in the lump-sum freight/ rent/ license fees payment period beyond the maximum permissible period (with delay as permitted in para 13) on this account. The time period allowed for depositing the lump-sum freight/ rent/ license fees by the contractor shall be as detailed in para 13 and there shall not be any change in the same due to extension of contract execution start date as detailed above.
- 14.2.2 There shall be no extension of contract end date on grounds of delay in starting the execution of contract.

**15. Waiver of licensing fee for stipulated period on Railway account:**

- 15.1 In cases of non-availability of the asset (e.g., non availability of space in SLR or Parcel Van for loading) to be utilized by the contractor, due to unforeseen circumstances or administrative reasons on part of Railways, the lump-sum freight/ rent/ license fees already paid by the contractor will be adjusted against subsequent payments, if it possible to do so. However, if it is not possible to adjust the refundable amount against subsequent payments, the lump-sum freight/ rent/ license fees already paid by the contractor may be refunded
- 15.2 However, in cases of permanent or long term (more than 3 months) non-availability of the assets the lump-sum freight/ rent/ license fees already paid by the contractor may be refunded on request of the contractor, considering merit of the case.
- 15.3 For short term non-availability of the asset, deferment of payment of lump-sum freight/ rent/ license fee for the period of non-availability may also be considered by Railways – on the request by the contractor, with documentary proof.

**16. Appeal against punitive action of EMD/SD forfeiture/ termination of contract on any grounds:**

- 16.1 In cases of forfeiture of EMD/SD and/or termination of the contract as per any of the terms & conditions of e-Auction/ contract/ Agreement, or otherwise, the contractor, if desires so, may prefer an appeal to the DRM (for contracts finalized by Division) or the concerned PHOD/CHOD (for the contracts finalized by the Zonal Headquarters) within 30 days of the action of forfeiture/ termination.

**17 Exit clause:**

17.1 *By the Contractor:* If it is not feasible for the contractor to continue the contract due to any reason, the contractor can terminate the contract by giving 30 days' notice to the Railway Administration 'subject to completion of six months contractual period.' The complete Security Deposit will be refunded in such cases. This provision shall not be applicable on the contracts of less than six months duration. In case the leaseholder surrenders his contract before completion of six month or complete duration of the contract, whichever is less, the Security Deposit shall be forfeited. Further, if the contractor fails to adhere to the 30 days' notice period, the Security Deposit shall be forfeited.

17.2 *By Railway Administration:* Railway shall have the right to terminate the contract/ Agreement without any financial repercussion on either side for any reason whatsoever after serving one month's notice to the contractor.

Railway shall also reserve the right to terminate the contract, with immediate effect, without any financial repercussions on either side in case of operational exigencies or in cases where the asset, for which the contract was awarded, is not available for commercial exploitation due to some other development or change in site or any other reason. Full EMD or SD and lump-sum freight/ rent/ license fee paid by the contractor, shall be refunded to the contractor without any interest.

17.3 If for any reason the Railways is not able to honour the part of contract and considers it necessary to cancel the whole contract or to reduce the scope of the contract on Railway account, no compensation will be payable for such cancellation or reduction, except refund of the proportionate amount of lump-sum freight/ rent/ license fee paid by the contractor, without any interest. No appeal against this decision will be entertained.

However, Railway shall reserve the right to terminate the contract as a punitive measure without any notice and at any time in case of violation of any of the terms and conditions of the contract or due to any other serious misconduct by the contractor.

**18 Termination of the contract:**

18.1 Railway shall reserve the right to terminate the contract as a punitive measure without any notice at any time in case of violation of any of the terms and conditions of the contract or due to any other serious misconduct (including but not limited to violation of Railway Act 1989, commissioning of an unlawful act which is not in-line with good industry practices, or an activity of moral turpitude) by the lease holder, forfeiting full EMD/ SD amount.

**19 Penalties:**

19.1 Penalties for defaulting the terms and conditions of the contract, passenger inconvenience, delay in contract execution, etc – as specified in the special conditions and any other conditions for the lot in auction catalogue – will be applicable and will be



recovered from the contractor. The quantum of penalty shall not exceed 2% of the annual contract value or full contract value, whichever is lower, for the first irregularity, 5% of the annual contractor full contract value, whichever is lower, value for the second irregularity, and 10% of the annual contract value or full contract value, whichever is lower, for the third or subsequent irregularities. The penalty shall be payable within fifteen (15) days. In case of non-payment of the penalty within the stipulated period, the railway may at its discretion cancel the contract, and forfeit the Security Money.

**20 Force Majeure:**

20.1 Conditions beyond control of either parties like war, hostility, acts of public enemy, civil commotion, sabotage, serious loss or damage by fire, explosions, epidemics, strikes, lockouts or acts of God come under the legal concept of Force Majeure (FM). Delays in performance of contractual obligations under influence of FM conditions are condonable by the other party without any right to termination or damages, provided, notice of the happening of any such event is given by the affected party to the other within 30 (thirty) days from the date of occurrence. Contract execution shall be resumed as soon as practicable after such event has come to an end or ceased to exist. However, if such event continues for a period exceeding 120 days, either party may at its option terminate the contract by giving notice to the other party.

**21 Banning of firms:**

21.1 *Temporary suspension of the contractors:* To prevent repetition of false declaration regarding annual turnover (financial eligibility) by any contractor in e-Auctions, the contractor shall be suspended temporarily for 90 days upon repetition of such instance of false declaration of annual turnover in e-Auctions on three different days within a year (counted from first instance of false declaration by the contractor). The contractor shall not be allowed to participate in any e-Auctions through 'E-Auction leasing' module of IREPS during this 90 days' period. During the suspension period, however, the contractor will continue to execute the contracts already awarded, provided those contracts were not awarded on the basis of false declaration.

21.1.1 Suspension of the contractor shall be automatically revoked after expiry of period of 90 days.

21.1.2 In addition to the temporary suspension of 90 days, Railways may also ban the contractor/ entity.

21.2 A bidder/ contractor shall be debarred if he has been convicted of an offence under the Prevention of Corruption Act, 1988; or The Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of any contract.

21.3 A bidder/ contractor banned/ debarred under sub-sections 21.1.2 & 21.2 above, or any successor of such a bidder/ contractor, shall not be eligible to participate in any bidding (including e-Auctions) process of any Railway unit for a period not exceeding three years commencing from the date of debarment.

21.4 Any bidder/ contractor shall not be debarred, unless such the bidder/ contractor has been given a reasonable opportunity to represent against such debarment.

**22 *Dispute resolution and arbitration:***

22.1 As per the provisions of Indian Railways Standard 'General Conditions of Contract' for Works Contracts – issued by Engineering Department in April 2022.

23. Railway reserves the right to cancel the e-auction and/or reject all the bids at any stage without citing any reason, before the issue of bid-sheet.

24. In case of any conflict between these 'Standard Conditions of Contract' and 'Special Conditions of Contract' (issued by Railway Board/ Zonal Railway/ Division for any specific category of contracts, if any), the provisions of 'Special Conditions of Contract' shall prevail – provided such Special Conditions are as per the provisions of 'policy for Commercial Earning & NFR contracts awarded through e-Auction'.

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