

Forest Department – Revocation of tenders before the firm period – steps to be taken to prevent it – orders issued.

According to condition 7 of the tender notification that is now being followed, tenders should be kept firm for a period of three months and no tenderer will be permitted to withdraw his offer before this period is over. According to condition 8, the successful tenderer will make the necessary security deposit and execute the agreement etc. within ten days of the issue of confirmation orders. Again, according to condition 10, failure to remit the security deposit or to execute the agreement will entail forfeiture of earnest money and a retender will be done at the risk and loss of the tenderer. But there have been cases in which the successful tenderers have withdrawn offers before the firm period of three months and before they were accepted. No action was possible against them, as, under section 5 of the Contract Act, a proposal could be revoked at any time before acceptance. As the revocation and taken effect before acceptance, there was no offer open for acceptance, in spite of the fact that there is condition 7 of the tender, making it obligatory on the part of the offerers to keep the offer firm for three months, which condition has been held to be not binding on the offerer. The question of application of conditions 8 or 10 of the tender does not in such cases arise, and therefore no retender can be ordered at the risk and loss of the tenderer.

2. In view of the above position, it has become necessary for Government to find out ways and take measures which would safeguard Government interests as a result of tenderers playing fast and loose as occasions demand. All the aspects of the question have therefore been examined. If there is an undertaking by a person that he will not withdraw his offer for a specified period, such offer not to withdraw will be binding on him provided the undertaking not to withdraw is supported by consideration. Such an undertaking will also be binding if there is a provision of statute or a statutory rule which stipulates that no person shall withdraw an offer within a specified period.

3. From the above, it follows that either a statutory provision in the Forest Act is to be introduced, or a stipulation in condition 3 or condition 7 of the tender notification included to the effect that earnest money to be deposited shall ordinarily be at the usual rate (according to the value of the contract), but that those who would agree to keep the tender open for a period of three months without the right to withdraw need deposit only one-half of the amount as earnest money. What is intended is that in consideration for keeping the tender open for three months, the earnest money is reduced to one-half of the amount. The same effect can be achieved more effectively by getting an agreement at the time of the deposit of the earnest money at the reduced rate to the effect that in consideration of the offerer's agreement not to withdraw the offer for three months, only one-half of the stipulated amount is deposited instead of the full amount, as earnest money.

4. In the above circumstances, Government order that clause 3 and clause 7 of the tender notification should be amended in the manner pointed out above and an agreement executed by tenderers who availing themselves of the reduction of the earnest money deposit desire to keep their offers for the stipulated period. Clause 10 of the tender notification also will have to be modified to the effect that withdrawal of the offer within three months will entitle to Government to forfeit the earnest money.

5. The above procedure should be followed in the case of auction sales also. The Chief Conservator of Forests will take necessary action accordingly.

Sd/- K.K. Gopalan,
Assistant Secretary.

Endt. on D.Dis.20556/66 (C1) dated 23-12-1967.

Copy to all the Conservators of Forests in continuation of endt. on even no. dated 17-7-67 for information and strict attention.

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Sd/- For Chief Conservator of Forests.

Endt. on ML. 135/67 dated 4-1-1967.

Copy to sections KT, TR and CH
Copy to Circular and stock files.

For Conservator of Forests.