भारत सरकार / **GOVERNMENT OF INDIA**
रेल मंत्रालय /**MINISTRY OF RAILWAYS**
(रेलवे बोर्ड/**RAILWAY BOARD**)
****

No. 2017/RS(G)/779/1 **New Delhi, dated : 7 .06.2017**

The General Manager, All Indian Railways/PUs, NF(C), CORE
The DG/RDSO/Lucknow & NAIR/Vadodara
CAOs, DMW/Patiala, WPO/Patna, COFMOW/NDLS, RWP/Bela

Sub: Policy for transfer of design drawings/ other IPR of a Railway Unit to be given to contractors/ tenderers for the purpose of supplies to IR against IR contract/ preparation of Bids

Ref: (i) Railway Board letter no 2012/RS(F&EC)-142/Coaches/10 dated 13.02.2013
(ii) Railway Board letter no 2008/M(PU)/1/50 dated 18.01.2017

There have been instances where after placement of contracts by Railway Board, the drawing holding authority was having reservations for transferring the drawings to the vendor/contractors. This issue was resolved after due deliberations and approval of Board (MTR, MRS, FC, CRB) specific to the contracts as per above referred Railway Board letters which has caused delay in execution to contracts.

Accordingly a need was felt to issue general policy directives to cover this aspect for future tenders/contracts as per following-.

i) **Cases where contracts have already been placed** – In such cases the design drawings can be transferred by signing the MOU (Enclosed as Annexure) with the IPR holding authority and the contractor after taking incidental charges, if any.

ii) **Cases where tenders are yet to be opened/to be issued** – In such cases, the copy of design drawings as mentioned in the list of exhibited drawings in the RDSO specification, should be made available to tender issuing authority before issue of the tender in manual/digital form by drawing/IPR holding authority. It will be the responsibility of tender issuing authority to safeguard the interest of IPR holding authority, by way of providing drawings to tenderers only after signing of above mentioned MOU with the tenderer after taking incidental charges, if any.

This has been issued with the concurrence of Finance Directorate of Ministry of Railways.

DA: As Above

Santosh Mittal
(Santosh Mittal)
Dy. Dir. Rly. Stores(G)-I
Railway Board

No. 2017/RS(G)/779/1 New Delhi, dated : 7 .06.2017

1. FA&CAOs, All Indian Railways & Production Units.
2. PCEs, All Indian Railways & PUs, WPO/Patna, RCF/RBL, COFMOW, DMW
3. The ADAI(Railways), New Delhi (with 10 spares copies)
4. The Director of Audit, All Indian Railways

for Financial Commissioner / Railways

No. 2017/RS(G)/779/1 New Delhi, dated : 7 .06.2017

1. COSs, CMEs, CEEs, CSTEs All Indian Railways & PUs, RCF/RBL/NDLS, COFMOW, CORE, WPO and RWP/Bela.
2. The Directors–
   a) Indian Railway Institute of Sig. Engg. & Telecom, Secunderabad
   b) Indian Railway Institute of Mech. & Elec. Engg., Jamalpur
   c) Indian Railway Institute of Elect. Engg., Nasik
   d) Sr. Prof. (Material Management), NAIR, Vadodara
   e) Indian Railway Institute of Civil Engg., Pune
   f) Indian Railway Institute of Traffic Management, Lucknow
3. MD, CRIS, Chanakya Puri, New Delhi
4. MD, RITES, RITES Bhavan, Sector-29, Gurugram
5. Director, Iron & Steel, 3, KollaGhat Street, Kolkata
6. Executive Director (Stores), RDSO, Lucknow
7. Chief Commissioner, Railway Safety, Lucknow
8. Zonal Railway Training Institute, Sukadia Circle, Udaipur

Santosh Mittal
(Santosh Mittal)
Dy. Dir. Rly. Stores(G)-I
Railway Board

No. 2017/RS(G)/779/1 New Delhi, dated : 7 .06.2017

Copy to:

1. The Genl. Secy., AIRF, Room No. 248, & NFIR Room No. 256-C, Rail Bhavan
2. The Secy. Genl., IRPOF, Room No. 268, FROA, Room No. 256-D & AIRPFA, Room No. 256-D Rail Bhavan

Santosh Mittal
(Santosh Mittal)
Dy. Dir. Rly. Stores(G)-I
Railway Board

Copy to: Sr. PPSs / PPS / PS to:

1. MR, MoS(S), MoS(G)
2. CRB, FC, ME, MTR, MRS, MS, MT, SECY., DG(RS), DG(S&T),DG(Personnel),DG (RHS), DG (RPF)
3. All AMs, Advisors & Executive Directors of Railway Board

ANNEXURE

1

MODEL AGREEMENT FOR TEMPORARY USAGE OF TECHNICAL INFORMATION

This AGREEMENT made this _____ day of _____ 20..... between the President of India, represented by Chief Design Engineer, Integral Coach Factory, Chennai/Railway Coach Factory, Kapurthala/ any other IPR/drawing holding authority under Ministry of Railways, Government of India, which expression shall unless repugnant to the context or the meaning thereof include his successors and assigns on first party and M/s. _____, which expression shall unless repugnant to the context or to the meaning thereof include its successors and assigns on the second party referred to as the "Firm".

WHEREAS (i) ICF/RCF/ any other IPR/drawing holding authority have all along been engaged in designing and manufacture of different types of Rolling Stock to specifications issued by Research Design and Standards Organisation, Lucknow, from time to time.

(ii) ICF/RCF/ any other IPR/drawing holding authority is the beneficial owner of valuable design and manufacturing techniques and has information relating to manufacture of _____ (type of rolling stock) on which the Indian Railways assert their intellectual Property Rights and shall seek to enforce the same;

(iii) AND WHEREAS M/s. _____, inter alia, is engaged in the designing and manufacture of Rolling Stock of Broad Gauge for Indian Railways as per RDSO design with their facilities at their works at _____;

(iv) AND WHEREAS M/s. _____ wishes to obtain from ICF/RCF/ any other IPR/drawing holding authority the necessary DRAWINGS and INFORMATION to manufacture _____ (type of rolling stock) to integral design being adopted by ICF/RCF/ any other IPR/drawing holding authority, test and supply them to Indian Railways as per Ministry of Railways' Contract/Tender No. _____ dated/due on _____ (hereinafter referred to as ORDER/TENDER as the case may be);

(v) AND WHEREAS ICF/RCF/ any other IPR/drawing holding authority is willing to provide the Firm with such technical details in the form of drawings for Jigs, Fixtures, ICF/RCF/ any other IPR/drawing holding authority Specifications for bought-out items, Tools and test schedules, excluding process sheets, man-hour and machine hour calculations, under the terms and conditions hereinafter set forth;

(v) NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter contained, the parties hereto have agreed and do hereby agree as follows:

Santosh Mittal

ARTICLE-I: DEFINITIONS

For the purpose of this Agreement, the following terms when used in CAPITAL LETTERS either in Singular or Plural forms shall unless the context clearly indicates the contrary have the following meanings:

1.1 The term "DRAWINGS" means all drawings relating to _____ (type of rolling stock).

1.2 The term "INFORMATION" shall mean any and all information relating to manufacture, assembly, quality control, testing, procurement other than process sheets, man-hour and machine hour calculations for manufacture of ____ (type of rolling stock).

1.3 The term "ORDER/ TENDER" shall have the same meaning as assigned hereinbefore.

ARTICLE-II: VALIDITY

2.1 This AGREEMENT shall come into force on the date it is signed by the parties after all necessary approvals have been obtained by the parties and the incidental charges as laid down hereunder as deposited by the Firm with ICF/RCF/ any other IPR/drawing holding authority.

2.2 The term of this AGREEMENT should be upto the date of completion of delivery of the _____ (type of rolling stock) ordered against the contract placed on the Firm by Ministry of Railways.

2.3 ICF/RCF/ any other IPR/drawing holding authority shall hand over to the Firm complete DRAWINGS and INFORMATION as detailed in the foregoing Article on a mutually agreed schedule.

ARTICLE-III: NON COMPETITION

3.2 During the delivery period of the contract placed by Ministry of Railways, or an extension thereof, ICF/RCF/ any other IPR/drawing holding authority grants to the Firm a non-transferable right to manufacture _____ (type of rolling stock) on order utilizing the DRAWINGS and INFORMATION in India.

3.3 The Firm agrees to sell the _____ (type of rolling stock) manufactured by them as per the DRAWINGS and INFORMATION handed over to them by ICF/RCF only to the Indian Railways against the said ORDER/ TENDER only and not for any other ORDER/ TENDER from any source whatsoever.

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ARTICLE-IV: NON DISCLOSURE

4.1 The firm undertakes not to disclose DRAWINGS and INFORMATION received from ICF/RCF/ any other IPR/drawing holding authority to any person and use all care to protect the DRAWINGS and INFORMATION from disclosure to third parties during the validity of the AGREEMENT and also for all time thereafter.

4.2 The Firm shall hold all documents relating the DRAWINGS and INFORMATION absolute secret and shall not during the continuance of this AGREEMENT or at any time after its expiry or premature termination disclose or permit to be disclosed the same to any third party whatsoever.

4.3 Where the Firm proposes to use sub-contractors for assistance in the manufacture of ____ (type of rolling stock)/components, it may be provided that adequate undertaking of secrecy is obtained before disclosure of necessary documentation relating to the DRAWINGS and INFORMATION and will enforce the terms of the undertaking at its own cost against any sub-contractors in breach thereof.

4.4 DRAWINGS and INFORMATION provided to the Firm shall be used strictly for manufacture of _____ (type of rolling stock) within their manufacturing facility for Indian Railways and shall not be used, with or without modification, for any other commercial purpose, including for manufacture and supply to Indian Railways of any other type of Rolling Stock other than the said ORDER/ TENDER.

4.5 The Firm shall also conclude suitable non disclosure agreements with all its employees who are required to have access to the DRAWINGS and INFORMATION given by ICF/RCF/ any other IPR/drawing holding authority for the purpose of execution of the ORDER/ TENDER.

4.6 The Firm shall put in place a suitable system to maintain confidentiality and secrecy to prevent accidental or intended revelation or copying of these DRAWINGS and INFORMATION by the persons who are not authorized to have access to the same.

ARTICLE-V: PREMATURE TERMINATION

5.1 Subject as aforesaid, the AGREEMENT shall remain in force and govern themselves between the parties hereto until cancelled or terminated in the manner hereinafter expressed.

5.2 In the event any of the parties to the AGREEMENT falls in or delays the performance of its obligations under this AGREEMENT and fails to remedy the default or delay or the consequences thereof within sixty (60) days following the receipt of a written reminder, the other party may terminate this AGREEMENT by giving two (2) months' written notice.

5.3 If the Firm becomes insolvent or goes into liquidation or receivership or be declared bankrupt, this AGREEMENT shall stand terminated.

5.4 This AGREEMENT shall also stand terminated in the event of any disclosure of DRAWINGS and INFORMATION to third parties or misuse of such drawings or information by third parties.

5.5 The failure of ICF/RCF/ any other IPR/drawing holding authority to enforce at any time any terms and conditions hereunder shall not be deemed a waiver of the ICF/RCF/ any other IPR/drawing holding authority's right there under to enforce each every terms and conditions of this AGREEMENT.

5.6 In the event of premature termination of this AGREEMENT, the rights and obligations of the parties hereto as against each other shall be those as may then be agreed upon between the parties hereto and failing such agreement within three (3) months after termination, they shall be determinable by recourse to arbitration as provided for in Article VIII hereof. However, it is agreed that any such termination will have no effect on the rights and obligations of the Firm to fulfill the commitments under the contract concluded with the Ministry of Railways prior to the date of such premature termination.

ARTICLE-VI: FORCE MAJEURE

6.1 A delay in or failure of performance of either party hereto with respect to its obligations under this AGREEMENT shall not constitute a default hereunder or give rise to any claim for damages, if and to the extent such delay or failure is caused by occurrences beyond the control of the party affected; such occurrence including but not limited to acts of God, War, destruction, floods, earthquakes, tempest, expropriation or confiscation of facilities, order or request of Government authorizes which affects to a degree not presently existing the supply, availability or use of materials or labour, public disorders, strikes, riots or other causes, whether or not of similar kind, not within the control of the party affected and which, by exercise or reasonable diligence, said party is unable to prevent.

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6.2 The party claiming the existence of force majeure condition(s) shall give written notice to the other party within fifteen (15) days of becoming aware of the first occurrence of force majeure giving full particulars of the cause or event and the date of the first occurrence thereof.

6.3 The parties agree that if a case of majeure or the effects thereof extends over a period of time exceeding six (6) months, the party aggrieved there from may terminate this AGREEMENT after notifying the other party accordingly and upon a notice of sixty(60) days. A declaration of this effect shall be disregarded if the circumstances referred to cease to exist during the course of the sixty (60) days.

ARTICLE-VII: RETURN OF DRAWINGS

7.1 Upon expiry or premature termination of this AGREEMENT, the Firm shall return all original documents and copies thereof relating to DRAWINGS and INFORMATION and other documents handed over to them earlier under this AGREEMENT, without demur and without retaining any, back to ICF/RCF / any other IPR/drawing holding authority within a period of thirty (30) days from the date of expiry or premature termination. The Firm shall issue a certificate this affect to ICF/RCF/ any other IPR/drawing holding authority at the time of returning the drawings and information.

ARTICLE-VIII: ARBITRATION

8.1 In the event of any question, dispute or difference arising under this AGREEMENT, neither party shall assign this AGREEMENT without the consent in writing of the other party (except as to any matters the decision of which is specially provided for by these conditions) and the same shall be referred to the sole arbitration of a Gazetted ICF/RCF/ any other IPR/drawing holding authority officer appointed to be the arbitrator, by the General Manager, Integral Coach Factory or Rail Coach Factory/ any other IPR/drawing holding authority . The Gazetted ICF/RCF/ any other IPR/drawing holding authority officer to be appointed as arbitrator, however, will not be one of those who had an opportunity to deal with the matters to which this AGREEMENT relates or who in the course of his duties as Railway Servant has expressed his views on all or any of the matters under dispute or difference. The award of the arbitrator shall be final and binding upon the parties to this AGREEMNT.

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27/3/31

8.2 In the event of the arbitrator dying, neglecting, refusing to act or resigning or being unable to act for any reason, or his award being set aside by the court for any reason, it shall be lawful for the authority appointing the arbitrator to appoint another arbitrator in place of outgoing arbitrator in the manner aforesaid.

8.3 It is further a term of this AGREEMENT that no person other than the person appointed by the authority as aforesaid should act as arbitrator and that if for any reason that is not possible, the matter is not to be referred to arbitration at all.

8.4 The arbitrator may from time to time with the consent of all the parties to the AGREEMENT enlarge the time for making the award.

8.5 Upon every and any such reference, the assessment of the cost incidental to the reference and award respectively shall be in the direction of the arbitration award.

8.6 Subject as aforesaid, the Arbitration and Conciliation Act 1996 and the Rules there under and any statutory modifications thereof for the time being in force shall be deemed to apply to the arbitration proceedings under this clause.

8.7 The venue of arbitration shall be at Chennai/Kapurthala/etc. only and the award of the arbitration shall be final and binding on both the parties to the contract.

8.8 In this clause, the authority to appoint the arbitrator includes, if there be no such authority, the officer who is for the time being discharging the functions of that authority, whether in addition to other functions or otherwise.

ARTICLE IX: APPLICABILITY OF LAWS

9.1 The laws of India shall be applicable for the construction and interpretation of this AGREEMENT.

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ARITICLE X: CHARGES

10.1 DRAWING and TECHNICAL INFORMATION would be provided to the Fir free of charges, except the following:

(a) All incidental expenses connected with preparation and printing of drawings and cost of booking staff etc shall be borne by the Firm.

(b) All Governmental applicable charges relating to or arising out of this AGREEMENT or of any rights in the form of permits or taxes of any Governmental or local law or any decree shall also be borne by the Firm.

ARITICLE XI: STAMP DUTY

11.1 Stamp Duty, if payable on this AGREEMENT shall be borne by the Firm.

ARICLE XII: REMEDIES

12.1 In additional to his rights under the Arbitration Clause, it shall be open to the President of India to seek any other legal remedy AT ANY TIME EVEN AFTER EXPIREY OF THIS AGREEMENT in the event of any unauthorized transfer of DRAWINGS and INFORMATION to third parties by the Firm.

ARTICLE XIII: NOTICES

13.1 This AGREEMENT on behalf of the President of India shall be operated by _____(designation of the concerned ICF/RCF/ any other IPR/drawing holding authority officer).

13.2 All notices, requests or demands given or made in accordance with the provisions of this AGREEMENT shall be in writing and shall be sent by registered mail, receipt of notice required, by one party to the other, at their respective addresses given below or such addresses as the parties may notify in writing from time to time:

(a) If to ICF/RCF/ any other IPR/drawing holding authority :_____(Designation of ICF/RCF/ any other IPR/drawing holding authority officer with complete postal address)

(b) If to the Firm:_____(Name of the Firm with complete postal address)

Santosh Limited

ARTICLE XIV: MISCELLANEOUS

14.1 This instrument contains the entire and only agreement between the parties hereto in respect of the said ORDER and supersedes and cancels all previous agreements, negotiations, commitments and representations in respect thereof, which may have been made between the parties hereto.

14.2 The headings are for the sake of convenience only and the same shall not in any way affect the interpretation or construction of any provision of this AGREEMENT.

14.3 Any amendment or alteration to this agreement shall be valid only if set down in writing and signed by the parties hereto.

IN WITNESS WHEREOF the parties hereto have caused these presents to be executed in English Language and in duplicate by their respective representatives thereunto duly authorized as of the date first above written with each of the party receiving one signed copy.

For and on behalf of the President of India **For and behalf of the Firm**

Witnessed by:

1. **Signature, Name and address:**

2. **Signature, Name and address:**

भारत सरकार
रेल मंत्रालय
रेलवे बोर्ड

सं. 2017/आरएस(जी)/779/1 **नई दिल्ली, दिनांक 07.06.2017**

महाप्रबंधक, सभी भारतीय रेलें/उत्पादन इकाइयां, पूर्वोत्तर सीमा रेलवे(निर्माण), कोर महानिदेशक/अ.अ. एवं मा.सं./लखनऊ एवं भारतीय रेल राष्ट्रीय अकादमी/वडोदरा मुख्य प्रशासनिक अधिकारी, डीजल इंजन आधुनिकीकरण कारखाना/पटियाला, डब्ल्यूपीओ/पटना, कॉफमो/नई दिल्ली, आरडब्ल्यूपी/बेला.

विषय: भारतीय रेल की संविदा के तहत भारतीय रेल को आपूर्ति करने/बोली तैयार करने के लिए संविदाकारों/निविदाकारों को दिए जाने वाले रेल यूनिट के डिजाइन आरेखण/अन्य आईपीआर को ट्रांसफर करने की नीति।

संदर्भ: (i) रेलवे बोर्ड का दिनांक 13.02.2013 का पत्र सं. 2012/आरएस(एफ एण्ड ईसी)-142/कोचेस/10.

(ii) रेलवे बोर्ड का दिनांक 18.01.2017 का पत्र सं. 2008/एम(पीयू)/1/50.

ऐसे उदाहरण मिले हैं जहां रेलवे बोर्ड द्वारा संविदा देने के बाद विक्रेताओं/संविदाकारों को ड्राइंग ट्रांसफर करने का अधिकार आरेखण स्वामित्व प्राधिकरण के पास सुरक्षित था। ऊपर संदर्भ में दिए गए रेलवे बोर्ड के पत्रों के अनुसार संविदा विशिष्ट पर उपयुक्त विचार-विमर्श करने और बोर्ड (सदस्य/कर्षण, सदस्य/चल स्टॉक, वित्त आयुक्त, अध्यक्ष/रलवे बोर्ड) का अनुमोदन प्राप्त होने के बाद इस मामले का समाधान कर दिया गया था जिसके कारण संविदाओं के निष्पादन में विलम्ब हुआ है।

तदनुसार, भावी निविदाओं/संविदाओं के लिए इस पहलू को शामिल करने के लिए निम्नानुसार सामान्य नीतिगत दिशा-निर्देश जारी करने की आवश्यकता महसूस हुई:

(i) **ऐसे मामले जिनमें पहले से संविदा दे दी गई हैं:** ऐसे मामले में यदि कोई प्रासंगिक प्रभार हो तो उसे प्राप्त करने के बाद आईपीआर स्वामित्व वाले प्राधिकरण और संविदाकार के साथ समझौता ज्ञापन (अनुलग्नक के रूप में संलग्न) पर हस्ताक्षर करके डिजाइन आरेखण का ट्रांसफर किया जा सकता है।

(ii) **ऐसे मामले जिनमें निविदाएं अभी भी खोली जानी हैं/जारी की जानी है:** ऐसे मामले में अनुसंधान अभिकल्प एवं मानक संगठन के ब्यौरे में दर्शाई गई ड्राइंग की सूची में किए गए उल्लेख के अनुसार डिजाइन आरेखण की प्रति ड्राइंग/आईपीआर स्वामित्व वाले प्राधिकरण द्वारा वास्तविक/डिजिटल रूप में निविदा जारी करने से पूर्व निविदा जारी करने वाले प्राधिकारी को उपलब्ध कराई जानी चाहिए। यह निविदा जारी करने वाले प्राधिकारी का उत्तरदायित्व होगा कि वह प्रासंगिक प्रभार, यदि कोई हो, प्राप्त करने के बाद निविदाकार के साथ उपर्युक्त समझौता ज्ञापन पर हस्ताक्षर करने के बाद ही निविदाकारों को ड्राइंग मुहैया कराकर आईपीआर स्वामित्व वाले प्राधिकारण के हित की रक्षा करे।

इसे रेल मंत्रालय के वित्त निदेशालय की सहमति से जारी किया गया है।

संलग्नक: यथोक्त

संतोष मित्तल
(संतोष मित्तल)
उप निदेशक रेल भंडार(सा.)-I
रेलवे बोर्ड

सं. 2017/आरएस(जी)/779/1 नई दिल्ली, दिनांक 07.06.2017

प्रतिलिपि प्रेषित:

1. वित्त सलाहकार एवं मुख्य लेखा अधिकारी, सभी भारतीय रेलें एवं उत्पादन इकाइयां
2. पीसीई, सभी भारतीय रेले एवं उत्पादन इकाइयां, डब्ल्यूपीओ/पटना, रेल कोच फैक्टरी/आरबीएल/नई दिल्ली, कॉफमो, कोर, डब्ल्यूपीओ और आरडब्ल्यूपी/बेला.
2. एडीएआई (रेलें), नई दिल्ली (10 अतिरिक्त प्रतियों सहित)
3. निदेशक, लेखा परीक्षा, सभी भारतीय रेलें

कृते वित्त आयुक्त/रेलें

सं. 2017/आरएस(जी)/779/1 नई दिल्ली, दिनांक 07.06.2017

प्रतिलिपि प्रेषित:

1. सीओएस, सीएमई, सीईई, सीएसटीई, सभी भारतीय रेलें एवं उत्पादन इकाइयां, रेल कोच फैक्टरी/आरबीएल/नई दिल्ली, कॉफमो, कोर, डब्ल्यूपीओ और आरडब्ल्यूपी/बेला.
2. **निदेशक-**
   - क. भारतीय रेल सिगनल इंजीनियरी एवं दूरसंचार संस्थान, सिंकदराबाद
   - ख. भारतीय रेल यांत्रिक एवं बिज़ली इंजीनियरी संस्थान, जमालपुर
   - ग. भारतीय रेल बिजली इंजीनियरी संस्थान, नासिक
   - घ. वरिष्ठ प्रो. (सामग्री प्रबंधन), नेशनल अकादमी ऑफ इण्डियन रेलवे, वडोदरा
   - ड. भारतीय रेल सिविल इंजीनियरी संस्थान, पुणे
   - च. भारतीय रेल यातायात प्रबंधन संस्थान, लखनऊ
3. प्रबंध निदेशक, क्रिस, चाणक्या पुरी, नई दिल्ली
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7. मुख्य रेल संरक्षा आयुक्त, लखनऊ
8. क्षेत्रीय रेल प्रशिक्षण संस्थान, सुकाडिया सर्कल, उदयपुर

संतोष मित्तल
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उप निदेशक रेल भंडार (सा.)।
रेलवे बोर्ड

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प्रतिलिपि प्रेषित:

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