

## 4.1 CONTRACT

Contract is defined as the agreement between two parties or persons, which is enforceable by law.

### Nature and Contractual Obligation

The purpose of a contract is to establish the agreement that the parties have made and to fix their rights and duties in accordance with that agreement. The courts must enforce a valid contract as it is made, unless there are grounds that bar its enforcement.

Statutes prescribe and restrict the terms of a contract where the general public is affected. The terms of an insurance contract that protect a common carrier are controlled by statute in order to safeguard the public by guaranteeing that there will be financial resources available in the event of an accident.

The courts may not create a contract for the parties. When the parties have no express or implied agreement on the essential terms of a contract, there is no contract. Courts are only empowered to enforce contracts, not to write them, for the parties. A contract, in order to be enforceable, must be a valid. The function of the court is to enforce agreements only if they exist and not to create them through the imposition of such terms as the court considers reasonable.

It is the policy of the law to encourage the formation of contracts between competent parties for lawful objectives. As a general rule, contracts by competent persons, equitably made, are valid and enforceable. Parties to a contract are bound by the terms to which they have agreed, usually even if the contract appears to be improvident or a bad bargain, as long as it did not result from Fraud, duress, or Undue Influence.

The binding force of a contract is based on the fact that it evinces a meeting of minds of two parties in Good Faith. A contract, once formed, does not contemplate a right of a party to reject it. Contracts that were mutually entered into between parties with the capacity to contract are binding obligations and may not be set aside due to the caprice of one party or the other unless a statute provides to the contrary.

## TYPES OF CONTRACTS

The contract system the execution of work is taken up only after the administrative approval and technical sanction.

1. Piece work contract
2. Lump sum contract
3. Schedule Contract or Item Rate Contract
4. Cost plus percentage contract system

### **Piece work contract system**

In this system the contractor to execute a specified work are part of the work at specified rate. The department will arrange the supervisor.

### **Lump sum contract system**

In Lump-Sum Contract the contractor undertakes the execution or construction of a specific work with all its contingencies, to complete it in all respects within a specified time for a fixed amount. The detailed specification of all items of works pertaining to the whole work, plans and detailed drawings, and deposit of 10% security money, penalty, progress and other conditions of contract are included in the contract agreement. The general specification and descriptions of different part of the building with dimensions where required are included. The quantities or schedule of different items of work are not provided, the contractor shall have to complete the work as per plan and specification, within the contract fixed sum, within a fixed time irrespective of quantities of different items. On completion of the work no detailed measurement of different items of work is required but the whole work is compared and checked with plans and drawings.

### **Schedule Contract or Item Rate Contract**

In schedule contract, the contractor undertakes the execution or construction of a work on the item rate basis. The amount the contractor is to receive depends upon the quantities of various items of work actually

done. The contract agreement includes quantities, rates and amounts for various items of work and the total amount of contract (Bill of quantities with rate, amount and total amount), plans and detailed drawings, detailed specifications and deposit of 10% security money; penalty, progress, date of completion and other conditions of contract. The payment to the contractor is made by detailed measurement of different items of works actually done by the contractor. The system is used for all works, Item rate contract may also be a percentage above or below the printed schedule of rates of the department.

### **Cost plus percentage contract system**

Cost plus percentage contract. -- In this system contractor is given certain percentage over the actual cost of the construction as his profit. Contractor arranges materials and labour at his cost and keeps proper account and he is paid by the department or owner the whole cost together with certain percentage, say 10% as his profit as agreed upon beforehand. An agreement is prepared with all conditions of contract in advance. In this case proper control in the purchase of the materials and in labour shall have to be exercised by the department or owner.